UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

Chris Carrigan, Michael Venti, and Sylvain Yelle, individually and as representatives of a class of similarly situated persons, and on behalf of the Xerox Corporation Savings Plan **Plaintiffs,** **v.** **Xerox Corporation, the Xerox Corporation Plan Administrator Committee, and John Does 1-30** **Defendants.**	Civil Action No. 3:21-cv-01085-SVN **Plaintiffs' Motion for Preliminary Approval of Class Action Settlement** December 16, 2022

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

Plaintiffs Chris Carrigan, Michael Venti, and Sylvain Yelle ("Plaintiffs") respectfully move the Court to: (1) preliminarily approve the Parties' Class Action Settlement Agreement in the above-referenced matter; (2) approve the proposed Settlement Notices and authorize distribution of the Notices to the Settlement Class; (3) preliminarily certify the Settlement Class for settlement purposes; (4) schedule a final approval hearing; and (5) enter the accompanying Preliminary Approval Order.

This motion is made pursuant to Federal Rule of Civil Procedure 23(e) and is based on the accompanying Memorandum of Law and authorities cited therein, the Declaration of Brock J. Specht and exhibits attached thereto (including the Settlement Agreement attached as **Exhibit A**), the Declarations of Chris Carrigan, Michael Venti, and Sylvain Yelle, and all files, records, and proceedings in this matter. Defendants do not oppose the motion as parties to the Settlement.

Dated: December 16, 2022

Respectfully submitted,

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INTRODUCTION

Plaintiffs Chris Carrigan, Michael Venti, and Sylvain Yelle ("Plaintiffs") submit this Memorandum in support of their Motion for Preliminary Approval of their class action settlement with Defendants Xerox Corporation ("Xerox") and the Xerox Corporation Plan Administrator Committee ("Committee") relating to the management of the Xerox Corporation Savings Plan ("Plan").[1]

Under the terms of the proposed Settlement, Xerox will pay a Gross Settlement Amount of $4.1 million into a common fund for the Settlement Class's benefit. This is a significant recovery for the Class compared to the claims that were alleged, and it falls well within the range of negotiated settlements in similar ERISA cases. The Settlement also provides for meaningful prospective relief, as Defendants have agreed to retain an independent consultant to assist them in ensuring that the Plan's recordkeeping fees remain competitive in the future by means of a request for proposal, fee benchmarking study, or other comparative analysis.

For the reasons set forth below, the Settlement is fair, reasonable, and adequate, and it merits preliminary approval so that notice may be sent to the Settlement Class. Among other things supporting preliminary approval:

- The Settlement was negotiated at arm's length by experienced counsel with the assistance of a well-respected mediator, David Geronemus;
- The Settlement provides for significant monetary relief and an equitable method of distribution;
- The Settlement provides for automatic distribution of the settlement proceeds to the accounts of Current Participants, and Former Participants who no longer have active accounts will automatically receive their distribution via check;

[1] A copy of the Class Action Settlement Agreement ("Settlement" or "Settlement Agreement") is attached as **Exhibit A** to the accompanying Declaration of Brock Specht ("*Specht Decl.*"). Unless otherwise specified herein, all capitalized terms have the meaning assigned to them in Article 2 of the Settlement Agreement.

- The Settlement provides for meaningful prospective relief;
- The release is appropriately tailored to the claims that were asserted in the action;
- The proposed Settlement Class is consistent with the requirements of Rule 23;
- The proposed Settlement Notices provide fulsome information to Class Members about the Settlement, and will be distributed via first-class mail; and
- The Settlement provides Class Members the opportunity to raise any objections they may have to the Settlement and to appear at the final approval hearing.

Accordingly, Plaintiffs respectfully request that the Court enter an order: (1) preliminarily approving the Settlement; (2) approving the proposed Notices and authorizing distribution of the Settlement Notices to the Settlement Class; (3) certifying the proposed Settlement Class; (4) scheduling a final approval hearing; and (5) granting such other relief as set forth in the accompanying proposed Preliminary Approval Order. Although Defendants dispute the allegations and deny liability for any alleged violations of ERISA or any other law, they do not oppose relief sought in this motion.

BACKGROUND

I. THE PLEADINGS AND MOTION TO DISMISS

On August 11, 2021, Plaintiffs filed this action alleging that Defendants breached their ERISA fiduciary duties by hiring themselves (and affiliated companies) to provide recordkeeping services to the Plan at a cost of up to four times more than what other recordkeepers would have charged for similar services. *ECF No. 1*. ¶¶ *4, 6-8.* Defendants filed a motion to dismiss the Complaint, *ECF No. 53*, which the Court denied on April 18, 2022, *ECF No. 78 at 20*. Defendants filed an Answer on May 7, 2022. *ECF No. 79*.

II. DISCOVERY, MEDIATION, AND SETTLEMENT

Prior to resolving this matter, the parties engaged in significant discovery efforts. Defendants produced over 7,200 pages of documents in response to Plaintiffs' document requests.

See Specht Decl. ¶ 12. Defendants also responded to Interrogatories propounded by Plaintiffs. After agreeing to mediate, the parties submitted a joint stipulation for reference to ADR, which requested the Court stay certain discovery deadlines pending this mediation. *ECF No. 84*. The Court granted the motion in part but declined to extend certain discovery deadlines as requested by the parties. *See ECF No. 85*. Given the Court's order, the parties engaged in a series of meet-and-confers and exchanged several emails regarding discovery issues. *See ECF No. 87-1* at 4. While these efforts resolved most of the disputes between the parties regarding discovery issues, there remained a handful of disputed issues that the parties were not able to resolve. As a result, Plaintiffs filed a motion to compel Defendants to produce certain categories of documents, but requested the Court hold this motion in abeyance until after mediation. *See ECF No. 87*; *ECF No. 87-1* at 1.

On October 11, 2022, the Parties engaged in a full-day, in-person mediation before Mr. Geronemus. *Specht Decl. ¶ 14*. Mr. Geronemus is an experienced and well-respected mediator, who has successfully resolved numerous ERISA cases and other complex actions. *Id. & id. Ex. B.* After extensive arm's-length negotiations through Mr. Geronemus, the Parties reached a settlement in principle, and then prepared the comprehensive Settlement Agreement that is the subject of this motion. *Id. ¶ 15*.

III. OVERVIEW OF SETTLEMENT TERMS

A. The Settlement Class

The Settlement applies to the following Settlement Class:

> All participants and beneficiaries of the Xerox Corporation Savings Plan at any time from August 11, 2015, until January 1, 2021 (the date that the Plan's current recordkeeper took over the recordkeeping function), excluding any persons with responsibility for the Plan's administrative functions or expenses.

Settlement ¶ *2.47*. This Settlement Class is consistent with certified classes in several similar ERISA suits, as it includes all participants in the Plan during the Class Period except those with fiduciary responsibilities relating to the Plan.[2] Based on the information provided by Defendants, there are approximately 36,000 Settlement Class Members. *Specht Decl.* ¶ *3.*

B. Monetary Relief

Under the Settlement, Defendants will contribute a Gross Settlement Amount of $4.1 million to a common Settlement Fund. *Settlement* ¶¶ *2.31, 5.4-5.5.* After accounting for any Attorneys' Fees and Costs, Administrative Expenses, and Class Representative service awards approved by the Court, the Net Settlement Amount will be distributed to eligible Class Members in accordance with the Plan of Allocation in the Settlement. *Id.* ¶¶ *2.35, 5.9, 6.1.*

The Plan of Allocation provides for the distribution of the Net Settlement Amount to Class Members in proportion to each Class Member's share of the injuries alleged in this matter. As described in the Complaint, excessive recordkeeping fees were charged to participants "as a percentage of the employee's assets in the Plan." *ECF No. 1* ¶ *20*. Accordingly, the Plan of Allocation establishes a pro rata division of the Net Settlement Amount among Settlement Class Members (and eligible Beneficiaries and Alternate Payees) in proportion to the level of assets each Class Member held in the Plan. *Settlement* ¶¶ *6.4.1-6.4.2*. This is done through the calculation of an Average Settlement Allocation Score for each Class Member, computed by the Settlement

[2] *See, e.g.*, *Wildman v. Am. Century Servs. LLC*, 2017 WL 6045487, at *7 (W.D. Mo. Dec. 6, 2017) (certifying litigation class of all plan participants and beneficiaries excluding Defendants, members of the board, and "employees with responsibility for the Plan's investment or administrative functions"); *Moreno v. Deutsche Bank Americas Holding Corp.*, 2017 WL 3868803, at *11 (S.D.N.Y Sept. 5, 2017) ("*Moreno I*") (same); *Urakhchin v. Allianz Asset Mgmt. of Am., L.P.*, 2017 WL 2655678, at *9 (C.D. Cal. June 15, 2017) ("*Urakhchin I*") (same); *see also Moreno v. Deutsche Bank Americas Holding Corp.*, No. 1:15-cv-09936, ECF No. 335 at ¶ 3 (S.D.N.Y. Oct. 9, 2018) ("*Moreno III*") (certifying similar class for settlement purposes); *Urakhchin v. Allianz Asset Mgmt. of Am., L.P.*, 2018 WL 3000490, at *2, *7 (C.D. Cal. Feb. 6, 2018) ("*Urakhchin II*") (same).

Administrator based on Class Members' account balances in the Plan for each quarter during the Class Period. *Id.* To calculate the Average Settlement Allocation Score, the Settlement Administrator will award one point for each dollar invested in the in the Plan, at the end of each quarter. *Id.* ¶¶ *6.4.1*. A Settlement Class Member's Average Settlement Allocation Score shall be the average of the quarterly scores during the Class Period, weighted to account for partial quarters. *Id.* ¶¶ *6.4.1-6.4.2*. Current Participants' accounts will be automatically credited with their share of the Settlement Fund. *Id.* ¶¶ *6.5-6.5.1.* Former Participants will be sent their distribution by check. *Id.* ¶ *6.2*.[3]

C. Prospective Relief

The Settlement also provides for meaningful prospective relief. Specifically, no later than five years from the Effective Date of the Settlement Agreement, Defendants will utilize the services of an independent consultant to assist with a request for proposal, fee benchmarking study, or other comparative analysis to ensure that the Plan's recordkeeping fees remain competitive. *Id.*¶ *7.1*.

D. Release of Claims

In exchange for the relief provided by the Settlement, the Settlement Class will release Defendants and affiliated persons and entities ("Released Parties") from all claims:

- That were asserted in the Action or that arise out of, relate to, are based on, or have any connection with any of the allegations, acts, omissions, purported conflicts, representations, misrepresentations, facts, events, matters, transactions, or occurrences that are alleged or asserted in the Action;[4] or
- That would be barred by res judicata based on entry by the Court of the Final Approval Order; or

[3] Under no circumstances will any monies revert to Defendants. Any checks that are uncashed will be paid into the Plan for the purpose of defraying future Plan administrative expenses. *Id.* ¶ *6.10.*
[4] The release language goes on to provide certain examples that are not repeated here due to space limitations. The full release language, incorporated by reference, is in the Settlement Agreement, ¶ 2.41.

- That relate to the direction to calculate, the calculation of, and/or the method or manner of allocation of the Qualified Settlement Fund pursuant to the Plan of Allocation or to any action taken or not taken by the Settlement Administrator in the course of administering the Settlement; or
- That relate to the approval by the Independent Fiduciary of the Settlement Agreement, unless brought against the Independent Fiduciary alone.

Id. ¶¶ *2.41.1; 2.41.2; 2.41.3; 2.41.4.* The Released Claims do not include claims to enforce the Settlement Agreement. *Id.* ¶ *9.2*.

E. Class Notice and Settlement Administration

Class Members will receive notice of the settlement via first-class U.S. Mail. *Id.* ¶ *3.3.1; Exs. 1 & 2*. The Settlement Notices provide information to the Settlement Class regarding, among other things: (1) the nature of the claims; (2) the scope of the Settlement Class; (3) the terms of the Settlement; (4) Class Members' right to object to the Settlement and the deadline for doing so; (5) the class release; (6) the identity of Class Counsel and the amount of compensation they will seek in connection with the Settlement; (7) the amount of the proposed Class Representative service award; (8) the date, time, and location of the final approval hearing; and (9) Class Members' right to appear at the final approval hearing and object. *Id.*

To the extent that Class Members would like more information, the Settlement Administrator will establish a Settlement Website on which it will post the Settlement Agreement, Notices, and relevant case documents, including the Complaint and a copy of all Court orders related to the Settlement. *Settlement* ¶ *12.1*. The Settlement Administrator also will establish a toll-free telephone line that will provide the option of speaking with a live operator if callers have questions. *Id.* ¶ *12.2.*

F. Attorneys' Fees and Administrative Expenses

The Settlement requires that Class Counsel file their Motion for Attorneys' Fees and Costs at least 30 days before the deadline for objections to the proposed Settlement. *Id.* ¶ *8.1*. Under the

Settlement, the requested fees may not exceed one-third of the Gross Settlement Amount. *Id.* ¶ *8.2.* In addition, the Settlement provides for recovery of Administrative Expenses related to the Settlement, and for service awards up to $5,000 per Class Representative. *Id* ¶¶ *8.1-8.2.*

G. Review by Independent Fiduciary

As required under ERISA, Defendants will retain an Independent Fiduciary to review and authorize the Settlement on behalf of the Plan. *Id.* ¶¶ *2.32, 3.1*; *see also* Prohibited Transaction Exemption 2003-39, 68 Fed. Reg. 75632, as amended, 75 Fed. Reg. 33830. The Independent Fiduciary will issue its report at least 30 days before the final Fairness Hearing, so it may be considered by the Court. *Id.* ¶ *3.1.2.*

ARGUMENT

I. STANDARD OF REVIEW

Rule 23(e) of the Federal Rules of Civil Procedure requires judicial approval of any settlement agreement that will bind absent class members. This involves a two-step process. *In re NASDAQ Market-Makers Antitrust Litig.*, 176 F.R.D. 99, 102 (S.D.N.Y. 1997). In the first step, the Court considers whether the settlement warrants preliminary approval, such that notice of the settlement may be sent to the class members. *Id.*[5] In the second step, after notice of the proposed settlement has been issued and class members have had an opportunity to be heard, the Court considers whether the settlement warrants final court approval. *Id*.

The decision whether to approve a proposed class action settlement is a matter of judicial discretion. *See Maywalt v. Parker & Parsley Petroleum Co.*, 67 F.3d 1072, 1079 (2d Cir. 1995)

[5] A motion for preliminary approval involves only an "initial evaluation" of the fairness of the proposed settlement. *Clark v. Ecolab Inc.*, 2009 WL 6615729, at *3 (S.D.N.Y. Nov. 27, 2009) (quoting 4 NEWBERG ON CLASS ACTIONS ("NEWBERG") § 11:25 (4th ed. 2002)). To grant preliminary approval, the Court need only find that there is "probable cause" to submit the settlement to class members and hold a full-scale hearing as to its fairness. *In re Traffic Exec. Ass'n*, 627 F.2d 631, 634 (2d Cir. 1980).

(reviewing the district court's approval of a settlement for an abuse of discretion). But there is a "strong judicial policy in favor of settlements, particularly in the class action context." *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 116 (2d Cir. 2005) (quotation omitted). As a result, "courts should give proper deference to the private consensual decision of the parties … [and] should keep in mind the unique ability of class and defense counsel to assess the potential risks and rewards of litigation." *Clark*, 2009 WL 6615729, at *3 (quotations omitted).

Under Rule 23(e)(1) as amended in 2018, courts are authorized to grant preliminary approval of a proposed settlement so long as the court will "likely be able to" grant final approval of the settlement and certify the class for purposes of settlement. Fed. R. Civ. P. 23(e)(1)(B); *In re GSE Bonds Antitrust Litig.*, 2019 WL 6842332, at *1 (S.D.N.Y. Dec. 16, 2019). As explained below, this standard is satisfied here.

II. THE SETTLEMENT MEETS THE STANDARD FOR PRELIMINARY APPROVAL

In order to approve a settlement under Rule 23(e)(2), the Court must consider four factors: (1) adequacy of representation, (2) existence of arm's-length negotiations, (3) adequacy of relief, and (4) equitableness of treatment of class members. Fed. R. Civ. P. 23(e)(2); *see also GSE Bonds*, 2019 WL 6842332, at *1 (explaining that new Rule 23 factors "supplement rather than displace the[] '*Grinnell*' factors" previously applied in this circuit).[6] All four of these factors and the relevant *Grinnell* factors support preliminary approval of the Settlement.

[6] The nine *Grinnell* factors are (1) the complexity, expense, and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through the trial; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation. *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 463 (2d Cir. 1974) (citations omitted). Consistent with the intent of the 2018 amendments, only those *Grinnell* factors that are relevant to this Settlement are addressed here. *See* Fed. R. Civ. P. 23(e)(2) advisory committee note (2018) (observing that the new Rule 23(e) factors are intended to help

A. The Class is Adequately Represented

"Rule 23(e)(2)(A) requires a Court to find that 'the class representatives and class counsel have adequately represented the class' before preliminarily approving a settlement." *GSE Bonds*, 2019 WL 6842332, at *2. This adequacy standard is more than met here.

The named Plaintiffs have adequately represented the Settlement Class. At the outset of litigation, the named Plaintiffs signed written acknowledgements of their duties as class representatives, and each of them have sought to fulfill those duties throughout the course of this case. *See Carrigan Decl. ¶ 2 & Ex. 1*; *Venti Decl. ¶ 2 & Ex. 1*; *Yelle Decl. ¶ 2 & Ex. 1*. Among other things, the named Plaintiffs have reviewed the allegations in the Complaint, provided information and documents to counsel to assist in the investigation and prosecution of the action; made themselves available answer questions from counsel and to stay informed on the status of the action, and conferred with counsel regarding the potential strengths and weaknesses of the claims asserted in this action and the potential risks and rewards of the Settlement compared to pursuing further litigation. *See Carrigan Decl. ¶¶ 2-3 & Ex. 1*; *Venti Decl. ¶¶ 2-3 & Ex. 1*; *Yelle Decl. ¶¶ 2-3 & Ex. 1*. The named Plaintiffs fall within the proposed Settlement Class and are not aware of any conflicts between themselves and any other class members. *See Carrigan Decl. ¶ 2 & Ex. 1*; *Venti Decl. ¶ 2 & Ex. 1*; *Yelle Decl. ¶ 2 & Ex. 1*. Thus, the Named Plaintiffs are adequate class representatives, who have diligently pursued this action on behalf of the Class.

Class Counsel are experienced ERISA litigators with a proven track record. *See Specht Decl. ¶¶ 19-21*. Indeed, "Class Counsel is one of the relatively few firms in the country that has the experience and skills necessary to successfully litigate a complex ERISA action such as this."

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the court and counsel focus on the most pertinent considerations: "This amendment . . . directs the parties to present the settlement to the court in terms of a shorter list of core concerns, by focusing on the primary procedural considerations and substantive qualities that should always matter to the decision whether to approve the proposal.").

Karpik v. Huntington Bancshares Inc., 2021 WL 757123, at *9 (S.D. Ohio Feb. 18, 2021). As detailed in the accompanying declaration, Nichols Kaster has (1) won favorable rulings on dispositive motions and/or class certification in over a dozen ERISA cases; (2) recently tried three ERISA class actions; (3) successfully litigated an appeal before the First Circuit in *Brotherston v. Putnam Invs., LLC*, 907 F.3d 17 (1st Cir. 2018); and (4) negotiated numerous ERISA class action settlements in addition to the present settlement. *See Specht Decl.* ¶¶ *19-21*. Given this, Class Counsel are more than adequate to represent the proposed Settlement Class.

B. The Proposed Settlement was Negotiated at Arm's-Length

The second factor examines whether "the proposal was negotiated at arm's length." Fed. R. Civ. P. 23(e)(2)(B). A class action settlement "will enjoy a presumption of fairness" where the settlement "is the product of arm's length negotiations conducted by experienced counsel knowledgeable in complex class litigation[.]" *In re Excess Value Ins. Coverage Litig.*, 2004 WL 1724980, at *10 (S.D.N.Y. July 30, 2004) (quotation omitted); *see also Wal-Mart*, 396 F.3d at 116. That is exactly the situation here. Class Counsel and Defendants' Counsel (Morgan Lewis & Bockius, LLP) are knowledgeable and experienced in complex class actions such as this and were assisted in their negotiations by Mr. Geronemus, an experienced and well-respected mediator. *See Specht Decl.* ¶¶ *14, 19-21.* And the settlement negotiations took place in the context of a full-day arm's length mediation session before an experienced and impartial mediator. *See Specht Decl.* ¶ *14 & Ex. B.* At all times, the negotiations were conducted at arm's length. So, this factor also favors settlement approval. *See GSE Bonds*, 2019 WL 6842332, at *2 (finding procedural fairness evidenced by arm's length where parties engaged an experienced mediator to facilitate extensive and informed negotiations).

"[T]he stage of the proceedings and the amount of discovery completed" are also pertinent to the Court's review. *Kemp-DeLisser v. Saint Francis Hosp. & Med. Ctr.*, 2016 WL 6542707, at

*8 (D. Conn. Nov. 3, 2016) (quotation omitted). While this case settled somewhat early in the discovery period, the following actions had already occurred: (1) Class Counsel undertook an extensive investigation of the factual and legal bases for Plaintiffs' claims prior to commencing the action, *Specht Decl. ¶ 10*; (2) the parties' legal positions were staked out in connection with the motion to dismiss, *id. ¶ 11*; (3) Defendants produced 7,200 pages of documents prior to mediation, *id. ¶ 12*; and (4) Class Counsel had the necessary experience and qualifications to evaluate the Parties' legal positions and the early discovery that was produced, *id. ¶¶ 19-21*. These circumstances further favor approval of the Settlement. *See Kemp-DeLisser*, 2016 WL 6542707, at *8 ("Although formal discovery had yet to occur at the time the parties engaged in settlement negotiations, Class Counsel conducted extensive investigation into the facts, circumstances, and legal issues associated with this case before agreeing to the Settlement.").[7]

C. The Settlement Provides Significant Relief to Class Members that Is Fair and Adequate Based on All Relevant Considerations

The parties' negotiations resulted in a Settlement that provides substantial relief to the Class. The negotiated monetary relief represents a significant portion of the alleged losses sustained by the Plan. At the time of the mediation, Plaintiffs' damages models estimated that the total losses were approximately $14 million. *Specht Decl. ¶ 4.* Based on this estimate, the $4.1 million recovery represents approximately 29% of the total estimated losses. *Id.* This is on par with numerous other ERISA class action settlements that have been approved across the

[7] Although this case was settled early, Class Counsel are no strangers to lengthy ERISA litigation. As noted above, Class Counsel have recently taken three ERISA class cases to trial, and litigated the *Deutsche Bank* ERISA action in this District to the very eve of trial before it was settled. *See Moreno v. Deutsche Bank Americas Holding Corp.*, No. 1:15-cv-09936, ECF No. 321 at 5 (S.D.N.Y. Aug. 14, 2018) *("Moreno II")* ("[T]he parties reached a settlement-in-principle on July 8, 2018 immediately preceding the scheduled start date of trial." (internal parentheses omitted)).

country.[8]

The Settlement also provides for meaningful prospective relief. As noted above, no later than five years from the Effective Date of the Settlement Agreement, Defendants will utilize the services of an independent consultant to assist with a request for proposal, fee benchmarking study, or other comparative analysis to ensure that the Plan's recordkeeping fees remain competitive. *Settlement* ¶ *7.1*. This relief directly addresses the core issue that Plaintiffs raised in the lawsuit and is designed to ensure that the Plan's expenses are reasonable going forward. This further supports approval of the Settlement. *See Moreno v. Deutsche Bank Americas Holding Corp.*, No. 1:15-cv-09936, ECF No. 348 at 4-5 (S.D.N.Y. Mar. 7, 2019) ("*Moreno IV*") (finding that "non-monetary benefits", including independent fiduciary review of the proprietary investments in the plan, "have significant value for Plan participants"); *accord Mohney v. Shelly's Prime Steak, Stone Crab & Oyster Bar*, 2009 WL 5851465, at *4 (S.D.N.Y. Mar. 31, 2009) (finding that settlement was "fair, reasonable, and adequate" where it provided for "meaningful injunctive relief").

Moreover, each of the adequacy factors enumerated in Rule 23(e)(2)(C) support approval of the Settlement. These factors include:

> (i) the costs, risks, and delay of trial and appeal;
> (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
> (iii) the terms of any proposed award of attorney's fees, including timing of payment; and

[8] *See, e.g.*, *Toomey v. Demoulas Super Markets, Inc.*, No. 1:19-cv-11633, ECF No. 95 at 10 (D. Mass. Mar. 24, 2021), *approved* ECF No. 100 (D. Mass. Apr. 7, 2021) (approving settlement that represented approximately 15–20% of alleged losses); *Beach v. JPMorgan Chase Bank, Nat'l Ass'n*, No. 17-cv-00563, ECF No. 211 (S.D.N.Y. May 20, 2020), *approved* 2020 WL 6114545, at *1 (S.D.N.Y. Oct. 7, 2020) (16% of alleged losses); *Price v. Eaton Vance Corp.*, No. 18-12098, ECF No. 32 at 12 (D. Mass. May 6, 2019), *approved* ECF No. 57 (D. Mass. Sept. 24, 2019) (23% alleged losses); *Sims v. BB&T Corp.*, 2019 WL 1995314, at *5 (M.D.N.C. May 6, 2019) (19% of estimated losses); *Urakhchin v. Allianz Asset Mgmt. of Am., L.P.*, 2018 WL 8334858, at *4 (C.D. Cal. July 30, 2018) ("*Urakhchin III*") (approximately 17.7% of losses under plaintiffs' highest model); *Johnson v. Fujitsu Tech. & Bus. of Am., Inc.*, 2018 WL 2183253, at *6–7 (N.D. Cal. May 11, 2018) (approximately 10% of losses under plaintiffs' highest model).

(iv) any agreement required to be identified under Rule 23(e)(3)[.]

Fed. R. Civ. P. 23(e)(2)(C). Each of these factors are briefly discussed below.

1. The Costs, Risks, and Delay of Further Litigation Were Significant

In the absence of a settlement, Plaintiffs would have faced potential litigation risks. *See In re WorldCom, Inc. ERISA Litig.*, 2004 WL 2338151, at *6 (S.D.N.Y. Oct. 18, 2004) (noting that there is a "general risk inherent in litigating complex claims such as these to their conclusion."); *In re PaineWebber Ltd. Partnerships Litig.*, 171 F.R.D. 104, 126 (S.D.N.Y. 1997) ("Litigation inherently involves risks."), *aff'd sub nom. In re PaineWebber Inc. Ltd. Partnerships Litig.*, 117 F.3d 721 (2d Cir. 1997) ("Litigation inherently involves risks."). While Plaintiffs prevailed on the motion to dismiss, there was a risk that the Court might have dismissed the claims on summary judgment. And, if the case proceeded to trial, Defendants still might have prevailed.[9] Finally, even if Plaintiffs prevailed on liability, issues regarding proof of loss would have remained. *See* Restatement (Third) of Trusts, § 100 cmt. b(1) (determination of losses in breach of fiduciary duty cases is "difficult"); *Sacerdote*, 328 F. Supp. 3d at 280 (finding that "while there were deficiencies in the Committee's [fiduciary] processes—including that several members displayed a concerning lack of knowledge relevant to the Committee's mandate—plaintiffs have not proven that … the Plans suffered losses as a result.").

None of this is to say that Plaintiffs lacked confidence in their claims. But there is no doubt that continuing the litigation would have resulted in complex and costly proceedings, and it would have delayed any relief to the Class, even if Plaintiffs ultimately prevailed. ERISA 401(k) cases such as this "often lead[] to lengthy litigation." *Krueger v. Ameriprise Fin., Inc.*, 2015 WL

[9] *See, e.g.*, *Rozo v. Principal Life Ins. Co.*, 2021 WL 1837539 (S.D. Iowa Apr. 8, 2021); *Sacerdote v. New York Univ.*, 328 F. Supp. 3d 273 (S.D.N.Y. 2018), *aff'd*, 9 F.4th 95 (2d Cir. 2021); *Wildman v. Am. Century Servs., LLC*, 362 F. Supp. 3d 685 (W.D. Mo. 2019).

4246879, at *1 (D. Minn. July 13, 2015) ("*Krueger II*"). Indeed, these cases can extend for a decade before final resolution, sometimes going through multiple appeals. *See, e.g., Tussey v. ABB, Inc.*, 850 F.3d 951, 954–56 (8th Cir. 2017) ("*Tussey II*") (recounting lengthy procedural history of case that was initially filed in 2006, and remanding to district court a second time); *Tibble v. Edison Int'l*, 2017 WL 3523737, at *15 (C.D. Cal. Aug. 16, 2017) (outlining remaining issues ten years after suit was filed in 2007). The duration of these cases is, in part, a function of their complexity, which further weighs in favor of the Settlement. *See Abbott v. Lockheed Martin Corp.*, 2015 WL 4398475, at *2 (S.D. Ill. July 17, 2015) (noting that ERISA cases such as this are "particularly complex"); *Koerner v. Copenhaver*, 2014 WL 5544051, at *4 (C.D. Ill. Nov. 3, 2014) ("The facts giving rise to Plaintiffs' claims are complicated, require the elucidation of experts, and are far from certain."). Given the risks, cost, and delay of further litigation, it was reasonable and appropriate for Plaintiffs to reach a settlement on the terms that were negotiated. *See Kruger v. Novant Health, Inc.*, 2016 WL 6769066, at *5 (M.D.N.C. Sept. 29, 2016) ("[S]ettlement of a 401(k) excessive fee case benefits the employees and retirees in multiple ways").

2. The Proposed Method of Distributing Relief to the Class is Effective

The proposed method for distributing the Settlement proceeds is fair and reasonable. Current Participants will have their Plan accounts automatically credited with their share of the Settlement, and Former Participants will automatically receive a check with their share of the Settlement. *See supra* at 1, 5. This method of distribution is both effective and efficient. No monies will revert to Defendants, and any uncashed checks will be used to defray Plan administrative fees and expenses that would otherwise be borne by participants. *See Settlement ¶ 6.10.*

3. The Settlement Imposes a Reasonable Limitation on Attorneys' Fees

The Settlement terms relating to attorneys' fees are also fair and reasonable. The amount of any fee award is reserved to the Court in its discretion. *See id. ¶ 8.2.* But Class Counsel have

agreed to limit their request to one-third of the settlement amount. *Id.* In ERISA breach-of-fiduciary-duty cases, courts in the Second Circuit "routinely approve fee awards of one-third of the common fund." *Cates v. Trustees of Columbia Univ. in City of New York*, 2021 WL 4847890, at *7 (S.D.N.Y. Oct. 18, 2021) (collecting cases). Moreover, with respect to the timing of payment, any attorneys' fees will be paid at the same time that funds to the class are distributed. *See Settlement* ¶ *5.9.*

4. No Separate Agreements Bear on the Adequacy of Relief to the Class

As the Settlement states, "[t]his Settlement Agreement and the exhibits attached hereto constitute the entire agreement among the Settling Parties and no representations, warranties, or inducements have been made to any party concerning the Settlement other than those contained in this Settlement Agreement and the exhibits thereto." *Settlement* ¶ *13.13.* Accordingly, there are no separate agreements bearing on the adequacy of relief to the Class. *See* Fed. R. Civ. P. 23(e)(2)(C)(iv).

D. The Settlement Treats Class Members Equitably

Finally, the Settlement also treats Class Members equitably. The same allocation formula is used to calculate settlement payments for all eligible Class Members (both Current Participants and Authorized Former Participants). *See id.* ¶ *6.4.* Moreover, that allocation formula is carefully tailored to the claims that were asserted in the case. *See supra* at 4-5; *Specht Decl.* ¶ *6.* This further supports approval of the Settlement.

III. THE CLASS NOTICE PLAN IS REASONABLE AND SHOULD BE APPROVED

The Court must ensure that notice is sent in a reasonable manner to all class members who would be bound by the settlement. Fed. R. Civ. P. 23(e)(1). The "best notice" practicable under the circumstances includes individual notice to all class members who can be identified through reasonable effort. Fed. R. Civ. P. 23(c)(2)(B). That is precisely the type of notice proposed here.

The Settlement Agreement provides that the Settlement Administrator will provide direct notice of the Settlement to the Settlement Class via first class U.S. Mail. *Settlement* ¶¶ *2.49, 3.3.1*. This type of notice is presumptively reasonable. *See Phillips Petrol. Co. v. Shutts*, 472 U.S. 797, 812 (1985).

The content of the Notices is also reasonable. The Notices include all relevant information, *see supra* at 6, and "fairly apprise the prospective members of the class of the terms of the proposed settlement and of the options that are open to them in connection with the proceedings." *Lomeli v. Sec. & Inv. Co. Bahrain*, 546 Fed. App'x 37, 41 (2d Cir. 2013) (quotation omitted); *see also In re Michael Milken & Assocs. Sec. Litig.*, 150 F.R.D. 57, 60 (S.D.N.Y. 1993) (class notice "need only describe the terms of the settlement generally"). And the Notices will be supplemented through the Settlement Website and telephone support line. *See supra* at 6.

IV. THE PROPOSED CLASS SHOULD BE CERTIFIED FOR SETTLEMENT PURPOSES

In addition to approving the Settlement and authorizing distribution of the Notices, this Court should certify the Settlement Class for settlement purposes.[10] To certify the class, Plaintiffs must satisfy the requirements of Rule 23(a) and meet one of the prerequisites of Rule 23(b). *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 345–46 (2011). In the context of settlement, however, the Court need not inquire whether a trial of the action would be manageable on a class-wide basis because "the proposal is that there be no trial." *Amchem*, 521 U.S. at 620. And "ERISA breach of fiduciary duty claims are particularly appropriate for class certification" under Rule 23 because these claims are "brought in a representative capacity on behalf of the plan as a whole." *In re Marsh ERISA Litig.*, 265 F.R.D. 128, 142 (S.D.N.Y. 2010) (quotation omitted). That is precisely

[10] In the context of a settlement, class certification is more easily attained because the court need not inquire whether a trial of the action would be manageable on a class-wide basis. *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997).

the nature of this action. *See ECF No. 1* ¶ *9* (citing 29 U.S.C. §§ 1109, 1132(a)(2)). And here, all of the requirements of Rules 23(a) and 23(b)(1) are met. So, the Settlement Class should be certified.

A. The Proposed Settlement Class Satisfies Rule 23(a)

Rule 23(a) of the Federal Rules of Civil Procedure sets forth four requirements applicable to all class actions: (1) numerosity; (2) commonality; (3) typicality; and (4) adequacy of representation. *Amchem*, 521 U.S. at 620. Each of these requirements is met here for settlement purposes.

***Numerosity*.** Numerosity requires that the number of persons in the proposed class is so numerous that joinder of all class members would be impracticable. Fed. R. Civ. P. 23(a)(1). This standard is clearly met for the Settlement Class, which includes approximately 36,000 Class Members. *See supra* at 4. This far exceeds the threshold for numerosity. *See Consol. Rail Corp. v. Town of Hyde Park*, 47 F.3d 473, 483 (2d Cir. 1995) ("[N]umerosity is presumed at a level of 40 members[.]").

***Commonality*.** Commonality requires the existence of "questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(1). This does not mean that all class members must make identical claims and arguments, but only that "plaintiffs' grievances share a common question of law or of fact." *Robinson v. Metro-North Commuter R.R.*, 267 F.3d 147, 155 (2d Cir. 2001). "'Where the same conduct or practice by the same defendant gives rise to the same kind of claims from all class members, there is a common question.'" *Moreno I*, 2017 WL 3868803, at *4 (quoting *Johnson v. Nextel Comms. Inc.*, 780 F.3d 128, 137 (2d Cir. 2015)).

"'Typically, the question of defendants' liability for ERISA violations is common to all class members because a breach of fiduciary duty affects all participants and beneficiaries.'" *Id.* (quoting *In re J.P. Morgan Stable Value Fund ERISA Litig.*, 2017 WL 1273963, at *7 (S.D.N.Y.

Mar. 31, 2017)). This case is no exception. This lawsuit raises numerous common questions, including: (1) Whether Defendants are Plan fiduciaries; (2) Whether Defendants breached their fiduciary duties by hiring themselves and affiliated recordkeepers to service the Plan and then failing to monitor or control recordkeeping expenses; (3) The proper form of equitable and injunctive relief; and (4) The proper calculation of monetary relief. Accordingly, commonality is satisfied.

Typicality. The typicality requirement "tend[s] to merge" with the commonality requirement. *Gen. Tel. Co. of the S.W. v. Falcon*, 457 U.S. 147, 157 n.13 (1982); *see also In re Virtus Invest. Partners, Inc. Sec. Litig.*, 2017 WL 2062985, at *3 (S.D.N.Y. May 15, 2017) ("The typicality requirement overlaps with that of commonality."). Typicality is satisfied when "'each class member's claim arises from the same course of events and each class member makes similar legal arguments to prove the defendant's liability.'" *Moreno I*, 2017 WL 3868803, at *7 (quoting *In re Flag Telecom Holdings, Ltd. Sec. Litig.*, 574 F.3d 29, 35 (2d Cir. 2009)). This does not require that the situation of the named representative and the class members be identical. *In re Veeco Instruments, Inc. Sec. Litig.*, 235 F.R.D. 220, 238 (S.D.N.Y. 2006). Rather, it is sufficient that "the disputed issue of law or fact occupies essentially the same degree of centrality to the named plaintiff's claim as to that of other members of the proposed class." *In re WorldCom, Inc. Sec. Litig.*, 219 F.R.D. 267, 280 (S.D.N.Y. 2003) (quotation omitted).

Here, Plaintiffs' claims are consistent with those of other Class Members who participated in the Plan, as they arise from the selection and retention of the Plan's service providers and the recordkeeping expenses incurred by the Plan. Plaintiffs do not have any unique claims against Defendants beyond those shared with the Settlement Class. Therefore, their claims are typical of the Settlement Class. *See Moreno I*, 2017 WL 3868803, at *7 (finding class representatives' claims

regarding allegedly excessive recordkeeping expenses were typical of the class).

Adequacy. Fed. R. Civ. P. 23(a)(4) requires that "the representative parties will fairly and adequately protect the interests of the class." To satisfy this requirement: (1) class counsel must be qualified, experienced and generally able to conduct the litigation; and (2) the representative plaintiffs' interests must not be antagonistic to those of the class. *Baffa v. Donaldson, Lufkin & Jenrette Sec. Corp.*, 222 F.3d 52, 60 (2d Cir. 2000). Both of those requirements are met for the reasons discussed above. *See supra* at 10.

B. The Proposed Class Satisfies Rule 23(b)(1)

In addition to meeting the requirements of Rule 23(a), the proposed Class also satisfies Rule 23(b)(1). Under Rule 23(b)(1), a class may be certified if prosecution of separate actions by individual class members would create a risk of:

> (A) inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the party opposing the class; or
>
> (B) adjudications with respect to individual class members that, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests[.]

Fed. R. Civ. P. 23(b)(1). Here, the proposed Settlement Class satisfies both prongs. *See, e.g.*, *Krueger v. Ameriprise Fin., Inc.*, 304 F.R.D. 559, 576–78 (D. Minn. 2014) ("*Krueger I*") (certifying class under both prongs). "Because of ERISA's distinctive representative capacity and remedial provisions, ERISA litigation of this nature presents a paradigmatic example of a (b)(1) class." *In re Glob. Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 453 (S.D.N.Y. 2004) (quotation omitted).[11]

[11] *See also Hochstadt v. Boston Scientific Corp.*, 708 F. Supp. 2d 95, 105 (D. Mass. 2010) ("[I]n light of the derivative nature of ERISA § 502(a)(2) claims, breach of fiduciary duty claims brought under § 502(a)(2) are paradigmatic examples of claims appropriate for certification as a Rule

1. Rule 23(b)(1)(A)

Certification of the class under Rule 23(b)(1)(A) is proper because prosecution of individual actions would create incompatible standards of conduct for Defendants. The fiduciary duties imposed by ERISA are "duties with respect to a plan" that are intended to protect the "interest of the participants and beneficiaries" collectively. *See* 29 U.S.C. § 1104(a). Accordingly, "separate lawsuits by various individual Plan participants to vindicate the rights of the Plan could establish incompatible standards to govern Defendants' conduct, such as ... determinations of differing 'prudent alternatives' against which to measure the proprietary investments, or an order that Defendants be removed as fiduciaries." *Krueger I*, 304 F.R.D. at 577; *see also Shanehchian v. Macy's, Inc.*, 2011 WL 883659, *9 (S.D. Ohio Mar. 10, 2011) ("If liability is found in one court but not in another, Defendants would be left in limbo, having been vindicated with respect to their duties to the Plans in one court but subject to judgment that would vitiate that vindication in another, thus making compliance impossible.").

2. Rule 23(b)(1)(B)

Likewise, because an adjudication on behalf of one participant of the Plan would effectively be dispositive of the claims of the other class members, class certification is also appropriate under Rule 23(b)(l)(B). *See Moreno I*, 2017 WL 3868803, at *8. The Advisory Committee Notes to Rule 23 expressly recognize that class certification is appropriate under Rule 23(b)(1)(B) in "an action which charges a breach of trust by an indenture trustee or other fiduciary similarly affecting the members of a large class of security holders or other beneficiaries, and which requires an accounting or like measures to restore the subject of the trust." Fed. R. Civ. P.

23(b)(1) class, as numerous courts have held.") (quotation omitted); *Tussey v. ABB, Inc.*, WL 4289694, at *8 (W.D. Mo. Dec. 3, 2007) ("*Tussey I*") ("Alleged breaches by a fiduciary to a large class of beneficiaries present an especially appropriate instance for treatment under Rule 23(b)(l).").

23, Advisory Committee Note (1966). "[T]his case falls squarely within the meaning articulated by the Advisory Committee as Plaintiffs allege breaches of fiduciary duties affecting the Plan[] and the thousands of participants in the Plan[]." *Shanehchian*, 2011 WL 883659, at *10. Numerous courts have granted certification under Rule 23(b)(1)(B) in similar cases.[12]

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court (1) preliminarily approve the Parties' Class Action Settlement Agreement; (2) approve the proposed Settlement Notices and authorize distribution of the Notices to the proposed Settlement Class; (3) preliminarily certify the Settlement Class for settlement purposes; (4) schedule a final approval hearing; and (5) enter the accompanying Preliminary Approval Order.

[12] *See, e.g.*, *Karg v. Transamerica Corp.*, 2020 WL 3400199 (N.D. Iowa Mar. 25, 2020); *Vellali v. Yale Univ.*, 333 F.R.D. 10 (D. Conn. Sept. 24, 2019); *Stevens v. SEI Investments Co.*, No. 2:18-cv-04205-NIQA, ECF No. 40 (E.D. Pa. July 31, 2019); *Beach v. JPMorgan Chase Bank, Nat'l Ass'n*, 2019 WL 2428631 (S.D.N.Y. June 11, 2019); *Cunningham v. Cornell Univ.*, 1:16-cv-6525, ECF No. 219 (S.D.N.Y. Jan. 22, 2019); *Cates v. The Trustees of Columbia University in the City of New York et al*, 1:16-cv-06524, ECF No. 210 (S.D.N.Y. Nov. 13, 2018); *Cassell v. Vanderbilt Univ.*, 2018 WL 5264640 (M.D. Tenn. Oct. 23, 2018); *Tracey v. MIT*, 2018 WL 5114167 (D. Mass. Oct. 19, 2018); *Henderson v. Emory Univ.*, 2018 WL 6332343 (N.D. Ga. Sept. 13, 2018); *Clark v. Duke Univ.*, 2018 WL 1801946 (M.D.N.C. Apr. 13, 2018); *Sacerdote v. New York Univ.*, 2018 WL 840364 (S.D.N.Y. Feb. 13, 2018); *Wildman*, 2017 WL 6045487; *Moreno I*, 2017 WL 3868803, at *8; *Urakhchin I*, 2017 WL 2655678, at *8; *Krueger I*, 304 F.R.D. at 577; *Hochstadt*, 708 F. Supp. 2d at 105; *Brotherston v. Putnam Invs., LLC*, No. 1:15-cv-13825-WGY, ECF No. 88 (D. Mass. Dec. 13, 2016) (text order); *Shanehchian*, 2011 WL 883659, at *10; *In re Beacon Assocs. Litig.*, 282 F.R.D. 315, 342 (S.D.N.Y. 2012); *In re Northrup Grumman Corp. ERISA Litig.*, 2011 WL 3505264 (C.D. Cal. Mar. 29, 2011); *Stanford v. Foamex L.P.*, 263 F.R.D. 156, 174 (E.D. Pa. 2009); *In re Norte/Networks Corp. ERISA Litig.*, 2009 WL 3294827, at *15 (M.D. Tenn. 2009); *Jones v. NovaStar Fin., Inc.*, 257 F.R.D. 181, 193 (W.D. Mo. 2009); *Kanawi v. Bechtel Corp.*, 254 F.R.D. 102 (N.D. Cal. 2008); *Tussey I*, 2007 WL 4289694; *In re Tyco, Int'l, Ltd. Multidistrict Litig.*, 2006 WL 2349338, at *7 (D.N.H. Aug. 15, 2006); *In re Williams Co. ERISA Litig.*, 231 F.R.D. 416, 425 (N.D. Okla. 2005); *WorldCom*, 2004 WL 2211664; *Koch v. Dwyer*, 2001 WL 289972, at *5 (S.D.N.Y. Mar. 23, 2001); *In re Ikon Office Solutions, Inc.*, 191 F.R.D. 457, 466 (E.D. Pa. 2000).

Dated: December 16, 2022 Respectfully submitted,

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

Chris Carrigan, Michael Venti, and Sylvain Yelle, individually and as representatives of a class of similarly situated persons, and on behalf of the Xerox Corporation Savings Plan **Plaintiffs,** **v.** **Xerox Corporation, the Xerox Corporation Plan Administrator Committee, and John Does 1-30** **Defendants.**	Civil Action No. 3:21-cv-01085-SVN **DECLARATION OF BROCK J. SPECHT IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT** December 16, 2022

I, Brock J. Specht, declare and state as follows:

1. I am a partner at Nichols Kaster, PLLP ("Nichols Kaster"), and am one of the attorneys of record for Plaintiffs in the above captioned action. I submit this declaration in support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement.

Settlement Terms

2. Attached hereto as **Exhibit A** is a true and correct copy of the proposed Class Action Settlement Agreement. The Settlement resolves Plaintiffs' class action claims against Xerox Corporation ("Xerox") and the Xerox Corporation Plan Administrator Committee ("Committee") (collectively, "Defendants") regarding Defendants' administration and management of the Xerox Corporation Savings Plan ("Plan").

3. The Settlement Agreement applies to the following Class:

> All participants and beneficiaries of the Xerox Corporation Savings Plan at any time from August 11, 2015, until January 1, 2021 (the date that the Plan's current

> recordkeeper took over the recordkeeping function), excluding any persons with responsibility for the Plan's administrative functions or expenses.

Settlement ¶ *2.47*. Based on information provided by the Plan's recordkeeper, there are approximately 36,000 Class Members.

4. Under the terms of the proposed Settlement, Defendants will pay a Gross Settlement Amount[1] of $4.1 million into a common fund for the benefit of the Settlement Class. *Id.* ¶¶ *2.31, 5.4–5.5.* Based on Plaintiffs' estimates, the Gross Settlement Amount represents approximately 29% of the total estimated losses ($14 million).

5. After accounting for any Attorneys' Fees and Costs, Administrative Expenses, and class representative service awards approved by the Court, the Net Settlement Amount will be distributed to eligible Class Members. *Id.* ¶¶ *2.35, 5.9, 6.1*.

6. Under the Plan of Allocation, the Net Settlement Amount will be divided pro rata among Settlement Class Members (and eligible Beneficiaries and Alternate Payees) based on their Average Settlement Allocation Score in relation to other Class Members. *Id.* ¶¶ *6.4.1-6.4.2*. To calculate the Average Settlement Allocation Score, the Settlement Administrator will review Class Members' account balances in the Plan for each quarter during the Class Period, and will award one point for each dollar invested in the Plan at the end of each quarter. A Settlement Class Member's Average Settlement Allocation Score shall be the average of the quarterly scores during the Class Period, weighted to account for partial quarters. *Id*.

[1] Unless otherwise specified herein, all capitalized terms have the meaning assigned to them in Article 2 of the Settlement Agreement.

7. Current Participants' accounts will be automatically credited with their share of the Settlement Fund. *Id.* ¶ *6.5-6.5.1.* Former Participants will be sent their distribution by check. *Id.* ¶ *6.2.*

8. In addition to the foregoing monetary compensation, the Settlement also provides that, within five years of the Settlement Agreement, Defendants will retain an independent consultant to assist with a request for proposal, fee benchmarking study, or other comparative analysis to ensure that the Plan's recordkeeping fees remain competitive. *Id.* ¶ *7.1.* This relief addresses the core issue that Plaintiffs raised in the lawsuit and is designed to ensure that the Plan's expenses are reasonable going forward.

9. In the absence of a settlement, Plaintiffs would have faced uncertainty and risk in connection with their claims. Given these risks (which are outlined in the accompanying Memorandum of Law), and the costs and potential delays associated with further litigation, I believe that the Settlement is fair, reasonable, and adequate.

Case Proceedings

10. Prior to filing the Complaint in this action, my colleagues and I conducted a thorough investigation of the claims that were asserted and the factual basis for those claims. As a result of our investigatory efforts, we were able to file a detailed, 22-page Complaint on August 11, 2021 (*ECF No. 1*).

11. On November 2, 2021, Defendants filed a motion to dismiss the Complaint. *ECF No. 53*. Plaintiffs filed a memorandum of law in opposition to Defendants' motion on November 23, 2021 (*ECF No. 57*), to which Defendants replied on December 7, 2021 (*ECF No. 61*).

12. While Defendants' motion to dismiss was pending, the parties engaged in early discovery to facilitate settlement discussions. In total, Defendants produced over 7,200 pages of documents.

13. The Court denied Defendants' motion to dismiss on April 18, 2022. *See ECF No. 78*.

14. Following the Court's order, the production and review of discovery materials, and submission of written mediation statements, the parties engaged in a mediation session with David Geronemus on October 11, 2022. Mr. Geronemus is an experienced and well-respected mediator, who has successfully resolved numerous complex class action cases, including ERISA class actions. A copy of Mr. Geronemus's biography is attached as **Exhibit B**.

15. At the conclusion of the mediation, the parties reached a settlement-in-principle. The Parties then negotiated the details of the comprehensive Settlement Agreement that is the subject of the present motion. For the reasons explained above, I believe the Settlement is fair, reasonable, and adequate.

Professional Overview

16. I am licensed to practice law in the State of Minnesota, and also have been admitted to practice in several federal district courts and appellate courts across the country. A list of jurisdictions in which I have been admitted is set forth below:

United States Court of Appeals for the Second Circuit
United States Court of Appeals for the Third Circuit
United States Court of Appeals for the Fourth Circuit
United States Court of Appeals for the Eighth Circuit
United States Court of Appeals for the Ninth Circuit
United States District Court for the District of Minnesota
United States District Court for the Western District of New York
United States District Court for the District of North Dakota
United States District Court for the Eastern District of Wisconsin
Minnesota Supreme Court

17. I have been actively engaged in the practice of law since 2007 and have been counsel of record for both plaintiffs and defendants in numerous large, complex cases that have resolved through the payments of hundreds of millions of dollars in settlements or awards. The principal types of cases that I have handled at Nichols Kaster are consumer class actions and ERISA class actions. With regard to ERISA class actions, I have substantial experience litigating these cases in federal courts across the country and, in connection with those cases, I have been involved in negotiating class action settlements providing for more than $250 million in available relief to ERISA plan participants. As part of this work, I have been admitted *pro hac vice* in numerous federal courts across the country and have argued before the United States Courts of Appeal for the Second, Eighth, and Ninth Circuits.

18. Along with my partner Paul Lukas, who is also counsel of record in this matter, I am one of the leaders of the ERISA practice group at Nichols Kaster. We have one of the most active and successful plaintiff-side ERISA litigation groups in the country. In addition to the present case, the firm's lawyers (including myself) have been appointed class counsel for litigation and/or settlement purposes in over twenty-five other class action cases involving retirement plans as set forth below:

- *Andrus v. NY Life Ins. Co.*, No. 1:16-cv-05698 (S.D.N.Y.);
- *Baker v. John Hancock Life Ins. Co. (U.S.A.)*, No. 1:20-cv-10397 (D. Mass.);
- *Beach v. JPMorgan Chase Bank, N.A.*, No. 1:17-cv-00563 (S.D.N.Y);
- *Berry v. FirstGroup America, Inc.*, No. 1:18-cv-00326 (S.D. Ohio);
- *Bhatia v. McKinsey & Co., Inc.*, No. 1:19-cv-01466 (S.D.N.Y.);
- *Brotherston v. Putnam Investments, LLC*, No. 1:15-cv-13825 (D. Mass.);
- *Clark v. Oasis Outsourcing Holdings Inc.*, No. 9:18-cv-81101 (S.D. Fla.);

- *Falberg v. The Goldman Sachs Group, Inc.*, No. 19-cv-9910 (S.D.N.Y.);
- *Hill v. Mercy Health Corp.*, No. 3:20-cv-50286 (N.D. Ill.);
- *In re M&T Bank Corp. ERISA Litig.*, No. 1:16-cv-00375 (W.D.N.Y.);
- *Intravaia v. Nat'l Rural Elec. Coop. Assoc.*, No. 1:19-cv-00973 (E.D. Va.);
- *Johnson v. Fujitsu Tech. & Bus. of America, Inc.*, No. 5:15-cv-03698 (N.D. Cal.);
- *Karpik v. Huntington Bancshares Inc.*, No. 2:17-cv-1153 (S.D. Ohio);
- *Kinder v. Koch Indus., Inc.*, No. 1:20-cv-02973 (N.D. Ga.);
- *Kirk v. Ret. Comm. of CHS/Community Health Sys., Inc.*, No. 3:19-cv-00689 (M.D. Tenn.);
- *Larson v. Allina Heath Sys.*, No. 0:17-cv-03835 (D. Minn.);
- *Main v. American Airlines, Inc.*, No. 3:16-cv-01033 (N.D. Tex.);
- *Mass v. Regents of the Univ. of California*, No. RG17-879223 (Alameda County Super. Ct.);
- *Moitoso v. FMR LLC*, No. 1:18-cv-12122 (D. Mass.);
- *Moreno v. Deutsche Bank Americas Holding Corp.*, No. 1:15-cv-09936 (S.D.N.Y.);
- *Reetz v. Lowe's Co.*, No. 5:18-CV-00075 (W.D.N.C.);
- *Sims v. BB&T Corp.*, No. 1:15-cv-00732 (M.D.N.C.);
- *Stevens v. SEI Invs. Co.*, No. 2:18-cv-04205 (E.D. Pa.);
- *Toomey v. Demoulas Super Markets, Inc.*, No. 1:19-cv-11633 (D. Mass);
- *Urakhchin v. Allianz Asset Mgmt. of America, L.P.*, No. 8:15-cv-01614 (C.D. Cal.);
- *Velazquez v. Massachusetts Fin. Servs. Co*., No. 1:17-cv-11249 (D. Mass.); and
- *Wildman v. American Century Servs., LLC*, No. 4:16-cv-00737 (W.D. Mo.).

19. Our firm took the *Putnam*, *American Century*, and *Lowe's* cases to trial. We received final court approval of settlements in *New York Life*, *John Hancock*, *JPMorgan Chase*,

McKinsey & Co., *Putnam*, *Oasis Outsourcing*, *Koch*, *M&T*, *Mercy Health*, *National Rural Electric Cooperative Association* ("*NRECA*"), *Fujitsu*, *Huntington Bank*, *CHS/Community Health Systems*, *Allina*, *American Airlines*, *FMR LLC* (also known as Fidelity), *Deutsche Bank*, *Lowe's* (partial settlement), *BB&T*, *SEI*, *Demoulas Super Markets*, *Allianz*, and *Massachusetts Financial Services*. We won contested class certification motions in *Goldman Sachs*, *JPMorgan Chase*, *Putnam*, *University of California*, *Deutsche Bank*, *BB&T*, *Allianz*, and *American Century*, and reached stipulations concerning class certification in our cases with *John Hancock*, *FirstGroup*, *Fidelity*, *Lowe's*, and *Massachusetts Financial Services*. We also defeated motions to dismiss in many of these cases in whole or in part, including *John Hancock*, *JPMorgan Chase*, *Putnam*, *M&T*, *NRECA*, *Fujitsu*, *Goldman Sachs*, *FirstGroup*, *Huntington Bank*, *American Airlines*, *University of California*, *Deutsche Bank*, *Lowe's*, *BB&T*, *Demoulas Super Markets*, *Allianz*, *Massachusetts Financial Services*, and *American Century*, as well as in *Morin v. Essentia Health*, 2017 WL 4083133 (D. Minn. Sept. 14, 2017), *report and recommendation affirmed*, 2017 WL 4876281 (D. Minn. Oct. 27, 2017), *Nelsen v. Principal Global Investors Trust Company*, 362 F. Supp. 3d 627 (S.D. Iowa 2019), *Davis v. Stadion Money Management*, 2020 WL 1248580 (D. Neb. March 16, 2020), *Falberg v. The Goldman Sachs Group*, 2020 WL 3893285 (S.D.N.Y. July 9, 2020), *McGinnes v. FirstGroup America, Inc.*, No. 1:18-cv-00326, *ECF No.* 59 (S.D. Ohio March 18, 2021), and *Stark v. Keycorp*, No. 1:20-cv-01254, *ECF No.* 24 (N.D. Ohio May 4, 2021).

20. The firm is viewed as a leader in ERISA 401(k) cases. According to a Bloomberg BNA article, "Nichols Kaster has been the driving force" behind 401(k) self-dealing litigation. *See* Jacklyn Wille, *Deutsche Bank Can't Shake 401(k) Fee Lawsuit*, Bloomberg BNA (Oct. 17, 2016). Attorneys from Nichols Kaster have been interviewed by National Public Radio's "All Things

Considered", the Wall Street Journal, Bloomberg, Financial Times, Investment News, Bankrate.com, and several trade publications in connection with their ERISA work.

Law Firm Overview

21. Nichols Kaster has been engaged in the practice of law for over 30 years, and is devoted to representing the interests of both consumers and employees. The firm has offices in Minneapolis and San Francisco, and currently employs 32 attorneys and a sizeable staff of paralegals, legal assistants, class action clerks, and information technology professionals.

22. Nichols Kaster has extensive class action and collective action experience. The firm has been appointed lead counsel or co-counsel on hundreds of class and collective actions, and has recovered over $750 million for its clients.

23. Nichols Kaster was named one of the top 50 elite trial firms by National Law Journal in September 2014, and also has been ranked as a Best Law Firm by U.S. News and World Report. In addition, Nichols Kaster has received praise from numerous courts for its work. The firm's lawyers have litigated dozens of cases through trial, and have managed discovery in cases involving millions of pages of documents. The firm is also well regarded for its appellate work, and has been involved in two successful appeals before the United States Supreme Court, *Perez v. Mortgage Bankers Ass'n*, 575 U.S. 92 (2015) and *Kasten v. Saint-Gobain Performance Plastics Corp.*, 563 U.S. 1 (2011).

24. Based on my personal experience and Nichols Kaster's firm-wide experience litigating ERISA cases, I believe that we were well-equipped to negotiate the Settlement that was reached in this case. For further background, a copy of our firm resume is attached as **Exhibit C**.

Settlement Administrator

25. Plaintiffs are currently soliciting bids from potential settlement administrators and will retain a settlement administrator prior to the Fairness Hearing.

Under 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: December 16, 2022

/*s/Brock J. Specht*
Brock J. Specht

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

Chris Carrigan, Michael Venti, and Sylvain Yelle, individually and as representatives of a class of similarly situated persons, and on behalf of the Xerox Corporation Savings Plan Plaintiffs, v. Xerox Corporation, the Xerox Corporation Plan Administrator Committee, and John Does 1-30 Defendants.	Civil Action No. 3:21-cv-01085-SVN **CLASS ACTION SETTLEMENT AGREEMENT**

This class action settlement agreement ("Settlement Agreement") is entered into between and among, on one hand, Class Representatives Chris Carrigan, Michael Venti, and Sylvian Yelle (the "Class Representatives"), on their own behalf and, subject to Court approval, on behalf of all putative Class Members (as defined below), and, on the other hand, Defendants Xerox Corporation and the Xerox Plan Administrator Committee (collectively, "Defendants," and together with the Class Representatives and Class Members, the "Settling Parties"), in consideration of the promises, covenants, and agreements herein described, and for other good and valuable consideration acknowledged by each of them to be satisfactory and adequate.

1. ARTICLE 1 – RECITALS

1.1. On August 11, 2021, the Class Representatives filed a class action complaint (the "Complaint") (ECF No. 1) in the United States District Court for the District of Connecticut, asserting claims against Defendants under the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001 *et. seq.*, in relation to the management of the Xerox Corporation Savings Plan (the "Plan").

1.2. On November 2, 2021, Defendants filed a motion to dismiss the Complaint. ECF No. 53.

1.3. On April 18, 2022, the Court entered an order denying Defendants' motion to dismiss the Complaint. ECF No. 78.

1.4. Following initial discovery, which included the production of essential documents and participant data related to the Plan, the Settling Parties requested a stay of certain deadlines in the Action pending mediation. ECF No. 84. On July 13, 2022, the Court granted in part and denied in part the requested stay, and allowed the Class Representatives and Defendants to engage in mediation. ECF. No. 85.

1.5. On October 11, 2022, the Class Representatives and Defendants engaged in a full-day, in-person mediation before David Geronemus in Westport, Connecticut. The mediation session enabled the Settling Parties to candidly exchange positions and supporting information concerning the claims and defenses in the Action and the alleged losses to the Plan. On the day of the mediation, the Class Representatives and Defendants reached an agreement in principle to resolve this Action. The entire terms of the settlement are memorialized in this Settlement Agreement.

1.6. The Class Representatives and Class Counsel consider it desirable and in the Class Members' best interests that the claims against Defendants be settled on the terms set forth below, and they have concluded that such terms are fair, reasonable, and adequate, and that this Settlement will result in significant benefits to the Class as defined herein.

1.7. Defendants deny all liability to the Class Representatives, deny all of the claims made in the Action, deny all allegations of wrongdoing made in the Complaint in this Action, and deny that the Class Representatives, the Plan, or any of the Plan's current or former participants

suffered any losses. Defendants further maintain that they acted prudently and loyally at all times when acting in any fiduciary capacity with respect to the Plan. This Settlement Agreement, and the discussions between the Settling Parties preceding it, shall in no event be construed as, or be deemed to be evidence of, and admission or concession Defendants' part (or the part of any officers or employees of Defendants with responsibility for the Plan) or any fault or liability whatsoever.

1.8. To avoid the risks and uncertainty of further litigation, and after consulting with counsel and considering the facts and applicable law, the Settling Parties wish to fully and finally resolve this Action upon the terms and conditions set forth in this Settlement Agreement.

1.9. Therefore, the Settling Parties, in consideration of the promises, covenants, and agreements herein described, acknowledged by each of them to be satisfactory and adequate, and intending to be legally bound, do hereby mutually agree to the terms of this Settlement Agreement.

2. ARTICLE 2 – DEFINITIONS

As used in this Settlement Agreement and the Exhibits hereto (as listed in Paragraph 13.16), unless otherwise defined, the following terms have the meanings as specified below:

2.1. "Action" means the action captioned *Chris Carrigan, et al. v. Xerox Corporation et al.*, No. 3:21-cv-01085-SVN, in the United States District Court for the District of Connecticut.

2.2. "Active Account" means an individual investment account in the Plan with a balance greater than $0.00 as of the date of the Preliminary Approval Order.

2.3. "Administrative Expenses" means expenses incurred in the administration of this Settlement Agreement, including (1) all fees, expenses, and costs associated with providing the Settlement Notices to the Class; (2) related tax expenses (including taxes and tax expenses as described in Paragraph 5.3); (3) all expenses and costs associated with the calculations pursuant to the Plan of Allocation and distribution of funds under the Plan of Allocation, including but not

limited to the fees of the Plan's recordkeeper associated with implementing this Settlement Agreement, facilitating the distribution of funds under the Plan of Allocation, and gathering the data necessary to prepare the Plan of Allocation; (4) all fees and expenses associated with the Settlement Website and telephone support line described in Article 12; (5) all other fees and expenses of the Settlement Administrator, Independent Fiduciar(ies), and the Escrow Agent; and (6) all fees, expenses, and costs associated with providing notices required by the Class Action Fairness Act of 2005, 28 U.S.C. §§ 1711–1715 ("CAFA"). Excluded from Administrative Expenses are Defendants' internal expenses, recordkeeping expenses, and the Settling Parties' respective legal expenses. Administrative Expenses shall be paid from the Gross Settlement Amount.

2.4. "Alternate Payee" means a person other than a Current Participant, Former Participant, or Beneficiary in the Plan who is entitled to a benefit under the Plan as a result of a Qualified Domestic Relations Order ("QDRO"), where the QDRO relates to a participant's account balance during the Class Period, and the relevant account was an Active Account in the Plan during the Class Period.

2.5. "Attorneys' Fees and Costs" means the amount awarded by the Court as compensation for the services provided by Class Counsel and the expenses incurred by Class Counsel in connection with the Action, which shall be recovered from the Gross Settlement Amount.

2.6. "Beneficiary" means a person who is entitled to receive a benefit under the Plan that is derivative of a deceased Current Participant's or Former Participant's interest in the Plan, other than an Alternate Payee. A Beneficiary includes, but is not limited to, a spouse, surviving spouse, domestic partner, child or other individual, entity, or trust designated by the Current

Participant or Former Participant as determined under the terms of the Plan who currently is entitled to a benefit.

2.7. "Business Days" refers to the days between Monday and Friday of each week, inclusive, and excludes the "Legal Holidays" specified in Federal Rule of Civil Procedure 6(a)(6).

2.8. "CAFA" means the Class Action Fairness Act of 2005, 28 U.S.C. §§ 1711–1715.

2.9. "Claims" means the claims asserted in the Action.

2.10. "Claims Deadline" means a date that is no later than ten (10) calendar days before the Fairness Hearing.

2.11. "Class" or "Class Members" means each of the individuals in the Settlement Class.

2.12. "Class Counsel" means Nichols Kaster, PLLP, 4700 IDS Center, 80 S. 8th Street, Minneapolis, MN 55402 and Garrison, Levin-Epstein, Fitzgerald & Pirrotti, P.C.,405 Orange Street, New Haven, CT 06511.

2.13. "Class Period" means the period from August 11, 2015, through (and including) December 31, 2020.

2.14. "Class Representatives" means Chris Carrigan, Michael Venti, and Sylvian Yelle.

2.15. "Class Representative Compensation" means the amount awarded by the Court as compensation for the services provided by the Class Representatives in the Action and the risks assumed by the Class Representatives in the Action.

2.16. "Confidentiality Order" means the stipulated protective order entered by the Court in this Action on February 1, 2022. ECF No. 70.

2.17. "Court" means the United States District Court for the District of Connecticut.

2.18. "Court of Appeals" means the United States Court of Appeals for the Second Circuit.

2.19. "Current Participant" means a Class Member who has an Active Account in the Plan as of the date of entry of the Preliminary Approval Order.

2.20. "Defendants" means Xerox Corporation and the Xerox Plan Administrator Committee.

2.21. "Defendants' Counsel" means counsel for Defendants, Morgan Lewis & Bockius LLP.

2.22. "Effective" means with respect to any judicial ruling, order, or judgment that the period for any motions for reconsideration, motions for rehearing, appeals, petitions for certiorari, or the like ("Review Proceeding") has expired without the initiation of a Review Proceeding, or, if a Review Proceeding has been timely initiated, that it has been fully and finally resolved, either by court action or by voluntary action of any party, without any possibility of a reversal, vacatur, or modification of any judicial ruling, order, or judgment, including the exhaustion of all proceedings in any remand or subsequent appeal and remand. The Settling Parties agree that absent an appeal or other attempted Review Proceeding, the Final Approval Order becomes Effective thirty-five (35) calendar days after its entry.

2.23. "Effective Approval Order" means the Final Approval Order once it becomes Effective.

2.24. "ERISA" means the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 *et seq.*, as amended.

2.25. "Escrow Agent" means the entity chosen and approved by the Settling Parties to act as escrow agent for any portion of the Settlement Amount deposited in or accruing in the Settlement Fund pursuant to this Settlement Agreement.

2.26. "Fairness Hearing" means the hearing scheduled by the Court to consider (1) any

objections from Class Members to the Settlement Agreement; (2) Class Counsel's request for Attorneys' Fees, Costs, and Administrative Expenses; and the Class Representatives' request for Class Representative Compensation; and (3) whether to finally approve the Settlement pursuant to Fed. R. Civ. P. 23.

2.27. "Final Approval" means the entry of the Final Approval Order.

2.28. "Final Approval Order" means the order and final judgment approving the Settlement Agreement, implementing the terms of this Settlement Agreement, and dismissing the Class Action with prejudice, to be proposed by the Settling Parties for approval by the Court, in substantially the form attached as Exhibit 4 hereto.

2.29. "Former Participant" means a Class Member who participated in the Plan during the Class Period but did not have an Active Account as of the date of entry of the Preliminary Approval Order.

2.30.

2.31. "Gross Settlement Amount" means the sum of four-million, one-hundred-thousand dollars ($4,100,000), contributed to the Qualified Settlement Fund pursuant to Article 5. The Gross Settlement Amount shall be the full and sole monetary payment made on behalf of Defendants in connection with the Settlement effectuated through this Settlement Agreement, pursuant to Paragraph 5.6.

2.32. "Independent Fiduciary" means the person or entity selected by Defendants to serve as an independent fiduciary to the Plan with respect to the Settlement Agreement for the purpose of rendering the determination described in Article 3 herein.

2.33. "Independent Fiduciary Fees and Costs" means all reasonable fees, costs, and expenses of the Independent Fiduciary. The Independent Fiduciary Fees and Costs shall be paid

from the Settlement Fund after such funds are deposited with the Escrow Agent and upon receipt of an invoice from the Independent Fiduciary.

2.34. "Mediator" means David Geronemus, Esq., 620 Eighth Avenue, 34th Floor, New York, New York 10018.

2.35. "Net Settlement Amount" means the Gross Settlement Amount minus: (1) all Attorneys' Fees and Costs approved by the Court; (2) all Class Representative Compensation approved by the Court; (3) all Administrative Expenses approved by the Court and all tax-related expenses pursuant to Paragraph 5.3.

2.36. The "Plan" means the Xerox Corporation Savings Plan.

2.37. "Plan of Allocation" means the framework for allocating the Settlement Fund that is approved by the Court, which shall be substantially the same in all material respects to the form attached to the Motion for Final Approval of the Settlement.

2.38. "Plan Recordkeeper" means the entity that maintains electronic records of the Plan's participants and their individual accounts.

2.39. "Preliminary Approval Order" means the order proposed by the Settling Parties and approved by the Court in connection with the Motion for Preliminary Approval of the Settlement, as described in Paragraph 3.2 and in substantially the form attached hereto as Exhibit 3.

2.40. "Qualified Settlement Fund" or "Settlement Fund" means the interest-bearing, settlement fund account to be established and maintained by the Escrow Agent pursuant to Article 5 herein as the Qualified Settlement Fund (within the meaning of Treas. Reg. § 1.468B-1).

2.41. "Released Claims" means any and all claims, actions, demands, rights, obligations, liabilities, damages, attorneys' fees, expenses, costs, and causes of action, including both known and unknown claims, whether class, derivative, or individual in nature against any of the Released

Parties and Defendants' Counsel:

2.41.1 That were asserted in the Action or that arise out of, relate to, are based on, or have any connection with any of the allegations, acts, omissions, purported conflicts, representations, misrepresentations, facts, events, matters, transactions, or occurrences that are alleged or asserted in the Action or could have been alleged or asserted based on the same factual predicate, whether or not pleaded in the Complaint, including but not limited to those that arise out of, relate to, are based on, or have any connection with: (1) the selection, monitoring, oversight, retention, fees, expenses, or performance of the Plan's service providers, including without limitation administrative and/or recordkeeping service providers, (2) the selection, nomination, appointment, monitoring, oversight, retention or removal of the Plan's fiduciaries, (3) fees, costs, or expenses charged to, paid, or reimbursed by the Plan or any Class Member, (4) the services provided to the Plan or the costs of those services; (5) any alleged breach of the duties of loyalty, care, prudence, diversification, or any other fiduciary duties relating to the Plan's service providers; (6) engaging in self-dealing or prohibited transactions in relation to the Plan's service providers; and/or (7) any assertions with respect to any fiduciaries of the Plan (or the selection or monitoring of those fiduciaries) in connection with the foregoing; or

2.41.2 That would be barred by res judicata based on entry by the Court of the Final Approval Order; or

2.41.3 That relate to the direction to calculate, the calculation of, and/or the method or manner of allocation of the Qualified Settlement Fund pursuant to the Plan of Allocation or to any action taken or not taken by the Settlement Administrator in the course of administering the Settlement; or

2.41.4 That relate to the approval by the Independent Fiduciary of the Settlement Agreement, unless brought against the Independent Fiduciary alone.

2.42. Released Claims" specifically exclude (a) those claims not related to 2.41.1 – 2.41.4 above; (b) claims of individual denial of benefits from the Plan under 29 U.S.C. § 1132(a)(1)(B) that do not fall within any of the categories identified in Paragraphs 2.41.1 – 2.41.4; (c) labor or employment claims unrelated to the Plan, including by way of example only, claims arising under Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Equal Pay Act, 42 U.S.C. § 1981, the Fair Labor Standards Act, the Family and Medical Leave Act, the National Labor Relations Act, the Sarbanes Oxley Act, the Dodd-Frank Wall Street Reform and Protection Act, state anti-discrimination and wage-payment laws, claims for wrongful termination under state common law and other state law claims of a similar nature to those set forth in this subpart; and (d) claims arising exclusively from conduct outside the Class Period.

2.43. "Released Parties" means (1) each Defendant; (2) each Defendant's past, present, and future parent corporation(s); (3) each Defendant's past, present, and future affiliates, subsidiaries, divisions, joint ventures, predecessors, successors, successors-in-interest, and assigns; (4) with respect to (1) through (3) above, all of their affiliates, subsidiaries, divisions, joint ventures, predecessors, successors, successors-in-interest, assigns, employee benefit plan fiduciaries, including but not limited to the Administrator Committee and the Xerox Retirement Investment Committee (and with the exception of the Independent Fiduciary), administrators, service providers (including their owners and employees), consultants, subcontractors, boards of trustees, boards of directors, officers, trustees, directors, partners, agents, managers, members, employees, representatives, attorneys, administrators, fiduciaries, insurers, co-insurers, reinsurers, accountants, auditors, advisors, personal representatives, heirs, executors, administrators,

associates, and all persons acting under, by, through, or in concert with any of them; and (5) the Plan and any and all administrators, fiduciaries, advisors, consultants, service providers, parties in interest, and trustees of the Plan.

2.44. "Settlement" or "Settlement Agreement" refers to the agreement embodied in this agreement and its exhibits.

2.45. "Settlement Administrator" means an independent contractor to be retained by Class Counsel and approved by the Court for purposes of sending the Settlement Notices to the Class, preparing and sending notices required by CAFA, establishing the Settlement Website and telephone support line, and administering the Settlement as provided in this Settlement Agreement.

2.46. "Settlement Agreement Execution Date" means that date on which the final signature is affixed to this Settlement Agreement.

2.47. "Settlement Class" or "Class" means the following class to be certified by the Court:

> All participants and beneficiaries of the Xerox Corporation Savings Plan at any time from August 11, 2015, until January 1, 2021 (the date that the Plan's current recordkeeper took over the recordkeeping function), excluding any persons with responsibility for the Plan's administrative functions or expenses.

2.48. "Settlement Effective Date" means the date on which the Final Approval Order becomes Effective, provided that by such date the Settlement has not been terminated pursuant to Article 11.

2.49. "Settlement Notices" means the Notices of Class Action Settlement and Fairness Hearing to be mailed by first-class mail by the Settlement Administrator to Class Members following the Court's issuance of the Preliminary Approval Order, in substantially the form attached hereto as Exhibits 1 and 2, including the Notice of Class Action Settlement and Fairness Hearing to Current Participants, and the Notice of Class Action Settlement and Fairness Hearing

to Former Participants, respectively. The Settlement Notices shall inform Class Members of all information required by Rule of Civil Procedure 23 and due process, including their right to object to the Settlement and to attend the Fairness Hearing to be held before the Court, on a date to be determined by the Court, at which hearing any Class Member satisfying the conditions set forth in the Preliminary Approval Order and the Settlement Notices may be heard regarding: (1) the terms of the Settlement Agreement; (2) Class Counsel's request for an award of Attorneys' Fees and Costs and Administrative Expenses; and (3) any requested Class Representative Compensation.

2.50. "Settlement Period" shall be from the Settlement Effective Date and continuing for a period of nine months thereafter.

2.51. "Settlement Website" means the internet website established pursuant to Paragraph 12.1.

2.52. "Settling Parties" means Defendants and the Class Representatives, on behalf of themselves, the Plan, and each of the Class Members.

3. ARTICLE 3 – REVIEW AND APPROVAL BY INDEPENDENT FIDUCIARY, PRELIMINARY SETTLEMENT APPROVAL, AND NOTICE TO THE CLASS

3.1. The Independent Fiduciary shall be retained by Defendants, on behalf of the Plan, to determine whether to approve and authorize the settlement of Released Claims on behalf of the Plan.

3.1.1. The Independent Fiduciary shall comply with all relevant conditions set forth in Prohibited Transaction Exemption 2003-39, "Class Exemption for the Release of Claims and Extensions of Credit in Connection with Litigation," issued December 31, 2003, by the United States Department of Labor, 68 Fed. Reg. 75,632, as amended ("PTE 2003-39"), in making its determination for the purpose of Defendants' reliance on PTE 2003-39.

3.1.2. The Independent Fiduciary shall notify Defendants of its determination in writing and in accordance with PTE 2003-39, which notification shall be delivered no later than thirty (30) calendar days before the Fairness Hearing.

3.1.3. All fees and expenses associated with the Independent Fiduciary's retention and determination will constitute Administrative Expenses to be deducted from the Gross Settlement Amount.

3.1.4. Defendants, Defendants' Counsel, and Class Counsel shall provide the Independent Fiduciary with sufficient information so that the Independent Fiduciary can review and evaluate the Settlement Agreement.

3.2. Promptly upon execution of this Settlement Agreement, the Class Representatives, through Class Counsel, shall file with the Court a motion seeking preliminary approval of this Settlement Agreement, and for entry of the Preliminary Approval Order in substantially the form attached hereto as Exhibit 3. The Preliminary Approval Order to be presented to the Court shall, among other things:

3.2.1. Certify the Settlement Class for settlement purposes under Rule 23(b)(1) of the Federal Rules of Civil Procedure;

3.2.2. Approve the text of the Settlement Notices for mailing to Class Members;

3.2.3. Order the Settlement Administrator to mail by first class mail a Settlement Notice to each Class Member identified by the Settlement Administrator based upon the data provided by the Plan's recordkeeper;

3.2.4. Hold that mailing the Settlement Notices constitutes the best notice practicable under the circumstances, provides due and sufficient notice of the Fairness Hearing and of the rights of all Class Members, and complies fully with the requirements

of Federal Rule of Civil Procedure 23 and due process;

3.2.5. Preliminarily enjoin each Class Member and their respective heirs, beneficiaries, executors, administrators, estates, past and present partners, officers, directors, agents, attorneys, predecessors, successors, and assigns, from suing Defendants, the Plan, or the Released Parties in any action or proceeding alleging any of the Released Claims, even if any Class Member may thereafter discover facts in addition to or different from those which the Class Members or Class Counsel now know or believe to be true with respect to the Action and the Released Claims;

3.2.6. Provide that, pending final determination of whether the Settlement Agreement should be approved, no Class Member may directly, through representatives, or in any other capacity, commence any action or proceeding in any court or tribunal asserting any of the Released Claims against the Defendants, the Released Parties, or the Plan;

3.2.7. Set the Fairness Hearing for no sooner than one hundred thirty (130) calendar days after the date of the Preliminary Approval Order, in order to determine whether (1) the Court should approve the Settlement as fair, reasonable, and adequate, (2) the Court should enter the Final Approval Order, and (3) the Court should approve the requested Attorneys' Fees and Costs, Administrative Expenses, and Class Representative Compensation;

3.2.8. Provide that any objections to any aspect of the Settlement Agreement shall be heard, and any papers submitted in support of said objections shall be considered, by the Court at the Fairness Hearing if they have been timely sent to Class Counsel and Defendants' Counsel. To be timely, the objection and any supporting documents must be

sent to Class Counsel and Defendants' Counsel at least twenty-eight (28) calendar days prior to the scheduled Fairness Hearing;

3.2.9. Provide that any party may file a response to an objection by a Class Member at least fourteen (14) calendar days before the Fairness Hearing;

3.2.10. Provide that the Fairness Hearing may, without further direct notice to the Class Members, other than by notice via the Court's docket or the Settlement Website, be adjourned or continued by order of the Court; and

3.2.11. Approve the form of the CAFA notices attached as Exhibit 5 and order that upon mailing of the CAFA notices by the Settlement Administrator, Defendants shall have fulfilled their obligations under CAFA.

3.3. Within forty-five (45) calendar days of the Preliminary Approval Order, or by such other deadline as specified by the Court, the Settlement Administrator shall:

3.3.1. Cause to be mailed to each Class Member a Settlement Notice in the form and manner to be approved by the Court, which shall be in substantially the form attached hereto as Exhibits 1 and 2, to Current Participants and Former Participants, respectively, or a form subsequently agreed to by the Settling Parties and the Court. The Settlement Notice shall be sent by first-class mail, postage prepaid, to the last known address of each Class Member provided by the Plan's recordkeeper (or its designee), unless an updated address is obtained by the Settlement Administrator through its efforts to verify the last known addresses provided by the Plan's recordkeeper (or its designee). The Settlement Administrator also shall post a copy of the Settlement Notice on the Settlement Website. The Settlement Administrator shall use commercially reasonable efforts to locate any Class Member whose Settlement Notice is returned and re-mail such documents one additional

time.

3.4. The Settlement Administrator shall also, within ten (10) calendar days of the Class Representatives' filing of the Settlement Agreement and proposed Preliminary Approval Order, have prepared and provided CAFA notices to the Attorney General of the United States and the Attorneys General of all states in which members of the Class reside, as specified by 28 U.S.C. § 1715. The costs of such notice shall be paid from the Qualified Settlement Fund and shall be considered Administrative Expenses. The Settlement Administrator shall provide the Settling Parties with notice in writing upon completion of the provision of CAFA notices to the above-referenced entities and/or persons.

3.5. Defendants shall cause the Plan's recordkeeper or its designee(s) to provide the Settlement Administrator with all information necessary to send the Settlement Notices no later than ten (10) Business Days before the Settlement Notices are to be distributed. Thereafter, Defendants and/or the Plan's recordkeeper shall respond timely to all written requests, including by e-mail, from the Settlement Administrator for readily accessible data that are reasonably necessary to implement the Plan of Allocation and disburse the Net Settlement amount to eligible members of the Settlement Class. The actual and reasonable expenses of any third party, including the Plan's recordkeeper, that are necessary to perform such work shall be Administrative Expenses to be deducted from the Gross Settlement Amount.

3.5.1. The Settlement Administrator shall be bound by the Confidentiality Order and any further non-disclosure or security protocol jointly required by the Settling Parties, set forth in writing to the Settlement Administrator.

3.5.2. The Settlement Administrator shall use the data provided by Defendants and the Plan's recordkeeper solely for the purpose of meeting its obligations as Settlement

Administrator, and for no other purpose.

3.5.3. The Settling Parties shall have the right to approve a written protocol to be provided by the Settlement Administrator concerning how the Settlement Administrator will maintain, store, and dispose of information provided to it in order to ensure that reasonable and necessary precautions are taken to safeguard the privacy and security of such information.

4. ARTICLE 4 – FINAL SETTLEMENT APPROVAL

4.1. No later than fourteen (14) calendar days before the Fairness Hearing, Class Counsel shall submit to the Court a motion for entry of the Final Approval Order (Exhibit 4) in the form approved by Class Counsel and Defendants, which shall request approval by the Court of the terms of this Settlement Agreement and entry of the Final Approval Order in accordance with this Settlement Agreement. The Final Approval Order as proposed by the Settling Parties shall provide for the following, among other things, as necessary to carry out the Settlement consistent with applicable law and governing Plan documents:

4.1.1. For approval of the Settlement and the release of the Released Claims covered by this Settlement Agreement, adjudging the terms of the Settlement Agreement to be fair, reasonable, and adequate to the Plan and the Class Members and directing the Settling Parties to take all necessary steps to effectuate the terms of the Settlement Agreement;

4.1.2. For a determination that mailing the Settlement Notices constituted the best notice practicable under the circumstances and that due and sufficient notice of the Fairness Hearing and the rights of all Class Members was provided, consistent with Federal Rules of Civil Procedure 23 and the requirements of due process;

4.1.3. For dismissal with prejudice of the Action and all Released Claims asserted therein whether asserted by the Class Representatives on their own behalf or on behalf of the Class Members, or derivatively to secure relief for the Plan, without costs to any of the Settling Parties other than as provided for in this Settlement Agreement;

4.1.4. That the Plan, the Class Representatives, and each Class Member and their respective heirs, beneficiaries, executors, administrators, estates, past and present partners, officers, directors, agents, attorneys, predecessors, successors, and assigns, shall be (1) conclusively deemed to have, and by operation of the Effective Approval Order shall have, fully, finally, and forever settled, released, relinquished, waived, and discharged Defendants, the Plan, and the Released Parties from all Released Claims, and (2) barred and enjoined from suing Defendants, the Plan, or the Released Parties in any action or proceeding alleging any of the Released Claims, even if any Class Member may thereafter discover facts in addition to or different from those which the Class Member or Class Counsel now know or believe to be true with respect to the Action and the Released Claims, whether or not a such Class Members actually received the Settlement Notices, whether or not such Class Members have filed an objection to the Settlement, and whether or not the objections or claims for distribution of such Class Members have been approved or allowed;

4.1.5. That the Plan and each Class Member (and their respective heirs, beneficiaries, executors, administrators, estates, past and present partners, officers, directors, agents, attorneys, predecessors, successors, and assigns) on behalf of the Plan shall be (1) conclusively deemed to have, and by operation of the Effective Approval Order shall have, fully, finally, and forever settled, released, relinquished, waived, and discharged

Defendants and the Released Parties from all Released Claims, and (2) barred and enjoined from suing Defendants or the Released Parties in any action or proceeding alleging any of the Released Claims, even if the Plan or any Class Member on behalf of the Plan may thereafter discover facts in addition to or different from those which the Plan or any Class Member now knows or believes to be true with respect to the Action and the Released Claims;

4.1.6. That the Class Representatives and each Class Member shall release Defendants, Defendants' Counsel, Class Counsel, the Released Parties, and the Plan from any claims, liabilities, and attorneys' fees and expenses arising from the allocation of the Gross Settlement Amount or Net Settlement Amount and for all tax liability and associated penalties and interest as well as related attorneys' fees and expenses;

4.1.7. That all applicable CAFA requirements have been satisfied;

4.1.8. That the Settlement Administrator shall have final authority to determine the share of the Net Settlement Amount to be allocated to each Current Participant and each Former Participant pursuant to the Plan of Allocation approved by the Court;

4.1.9. That, with respect to payments or distributions to Former Participants, all questions not resolved by the Settlement Agreement shall be resolved by the Settlement Administrator in its sole and exclusive discretion; and

4.1.10. That within twenty-eight (28) calendar days following the issuance of all settlement payments to Class Members as provided by the Plan of Allocation approved by the Court, the Settlement Administrator shall prepare and provide to Class Counsel and Defendants' Counsel a list of each person who received a settlement payment or contribution from the Qualified Settlement Fund and the amount of such payment or

contribution.

4.1.11. The Court shall retain jurisdiction to enforce and interpret the Settlement Agreement.

4.2. The Final Approval Order and judgment entered by the Court approving the Settlement Agreement shall provide that upon becoming Effective, all Settling Parties, the Settlement Class, and the Plan shall be bound by the Settlement Agreement and by the Final Approval Order.

5. ARTICLE 5 – ESTABLISHMENT OF QUALIFIED SETTLEMENT FUND

5.1. No later than ten (10) Business Days after entry of the Preliminary Approval Order, the Escrow Agent shall establish an escrow account. The Settling Parties agree that the escrow account is intended to be, and will be, an interest-bearing Qualified Settlement Fund within the meaning of Treas. Reg. § 1.468B-1. In addition, the Escrow Agent timely shall make such elections as necessary or advisable to carry out the provisions of this Paragraph 5.1, including the "relation-back election" (as defined in Treas. Reg. § 1.468B-1) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of the Escrow Agent to prepare and deliver, in a timely and proper manner, the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur.

5.2. For the purpose of § 468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, the "administrator" shall be the Escrow Agent. The Escrow Agent, or the Settlement Administrator on its behalf, shall timely and properly cause to be filed all informational and other tax returns necessary or advisable with respect to the Gross Settlement Amount (including without limitation applying for a Taxpayer Identification Number

for the Settlement Fund and filing the returns described in Treas. Reg. § 1.468B-2(k)). Such returns as well as the election described in Paragraph 5.1 shall be consistent with this Article 5 and, in all events, shall reflect that all taxes (as defined in Paragraph 5.3 below) (including any estimated taxes, interest, or penalties) on the income earned by the Gross Settlement Amount shall be deducted and paid from the Gross Settlement Amount as provided in Paragraph 5.3 hereof.

5.3. Taxes and tax expenses are Administrative Expenses to be deducted and paid from the Gross Settlement Amount, including but not limited to: (1) all taxes (including any estimated taxes, interest, or penalties) arising with respect to the income earned by the Gross Settlement Amount, including any taxes or tax detriments that may be imposed upon Defendants or Defendants' Counsel with respect to any income earned by the Gross Settlement Amount for any period during which the Gross Settlement Amount does not qualify as a "qualified settlement fund" for federal or state income tax purposes, and (2) all tax expenses and costs incurred in connection with the operation and implementation of this Article 5 (including, without limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses relating to filing (or failing to file) the returns described in this Article 5). Such taxes and tax expenses shall be Administrative Expenses and shall be paid timely by the Escrow Agent out of the Gross Settlement Amount without prior order from the Court. The Escrow Agent shall be obligated (notwithstanding anything herein to the contrary) to withhold from distribution to any Class Member any funds necessary to pay such amounts, including the establishment of adequate reserves for any taxes and tax expenses (as well as any amounts that may be required to be withheld under Treas. Reg. § 1.468B-2(1)(2)); neither Defendants, Defendants' Counsel, nor Class Counsel is responsible, nor shall they have any liability therefor. The Settling Parties agree to cooperate with the Escrow Agent, each other, and their tax attorneys and accountants to the extent reasonably

necessary to carry out the provisions of this Article 5.

5.4. Within thirty (30) Business Days after the Preliminary Approval Order is entered, Xerox or its insurers shall deposit one-hundred thousand dollars of the Gross Settlement Amount ($100,000.00) into the Qualified Settlement Fund.

5.5. Within thirty (30) Business Days after the Settlement Effective Date, Xerox or its insurers shall deposit the remainder of the Gross Settlement Amount ($4,000,000) into the Qualified Settlement Fund.

5.6. Notwithstanding anything to the contrary in this Settlement Agreement, in no event shall Xerox or any of the Defendants be required to make any payments or incur any expenses in excess of the Gross Settlement Amount. In no event shall any Defendant other than Xerox be required to make payments or incur expenses under this Settlement Agreement. The Gross Settlement Amount shall be the only amount paid by Xerox (or its insurers) under this Settlement Agreement, and Xerox shall not be obligated to make any other payments under this Settlement Agreement or in connection with this Settlement, including but not limited to any payments that the Class Representatives or Class Members may claim they are entitled to under the Plan as a result of this Settlement or any Class Representative's or Class member's recovery under this Settlement.

5.7. The Escrow Agent shall invest the Qualified Settlement Fund in short-term United States Agency or Treasury Securities or other instruments backed by the Full Faith and Credit of the United States Government or an Agency thereof, or fully insured by the United States Government or an Agency thereof, and shall reinvest the proceeds of these investments as they mature in similar instruments at their then-current market rates.

5.8. The Escrow Agent shall not disburse the Qualified Settlement Fund or any portion

except as provided in this Settlement Agreement, in an order of the Court, or in a subsequent written stipulation between Class Counsel and Defendants' Counsel. Subject to the orders of the Court, the Escrow Agent is authorized to execute such transactions as are consistent with the terms of this Settlement Agreement.

5.9. After the Settlement Effective Date, the Gross Settlement Amount will be distributed from the Qualified Settlement Fund as follows: First, within twenty-five (25) Business Days of the Settlement Effective Date, all Administrative Expenses approved by the Court shall be paid. Second, within sixty (60) calendar days of the Settlement Effective Date, (a) any Class Representative's Compensation approved by the Court shall be paid; (b) all Attorneys' Fees and Costs approved by the Court shall be paid to Class Counsel; and (c) the Net Settlement Amount will be distributed pursuant to the Plan of Allocation. Pending final distribution of the Net Settlement Amount in accordance with the Plan of Allocation, the Escrow Agent will maintain the Qualified Settlement Fund.

5.10. The Escrow Agent, or the Settlement Administrator on its behalf, shall be responsible for making provision for the payment from the Qualified Settlement Fund of all taxes and tax expenses, if any, owed with respect to the Qualified Settlement Fund and for all tax reporting, remittance, and/or withholding obligations, if any, for amounts distributed from it. Defendants, Defendants' Counsel, and Class Counsel have no responsibility or any liability for any taxes or tax expenses owed by, or any tax reporting or withholding obligations, if any, of the Qualified Settlement Fund.

5.11. No later than February 15 of the year following the calendar year in which Xerox, its insurers, or agents make a transfer to the Qualified Settlement Fund pursuant to the terms of this Article 5, Xerox, its insurers, or agents shall timely furnish a statement to the Escrow Agent,

or the Settlement Administrator on its behalf, that complies with Treas. Reg. § 1.468B-3(e)(2), which may be a combined statement under Treas. Reg. § 1.468B3(e)(2)(ii), and shall attach a copy of the statement to their federal income tax returns filed for the taxable year in which Xerox, its insurers, or agents make a transfer to the Qualified Settlement Fund.

6. ARTICLE 6 – PLAN OF ALLOCATION

6.1. After the Settlement Effective Date, the Settlement Administrator shall cause the Net Settlement Amount to be allocated and distributed to the Former Participants as set forth in Paragraph 6.6 below, and to the Plan for distribution to the accounts of Current Participants as set forth in Paragraph 6.5 below, both in accordance with the Plan of Allocation as ordered by the Court.

6.2. To be eligible for a distribution from the Net Settlement Amount, a person must be a Current Participant or a Former Participant, or a Beneficiary or Alternate Payee of such a person. Current Participants shall receive their settlement payments as contributions to the account in the Plan, as provided for in Paragraph 6.5 below, unless, as of the date of their settlement payments, they no longer have an Active Account in the Plan, in which case they shall be treated as Former Participants. Former Participants shall receive their settlement payments in the form of checks as provided in Paragraph 6.6 below.

6.3. Beneficiaries will receive settlement payments as described in this Article 6 in amounts corresponding to their entitlement as beneficiaries of the Current Participant or of the Former Participant with respect to which the payment is made. This includes settlement payments to Beneficiaries determined by the participant's Plan accounts during the Class Period and/or by the Beneficiary's own Plan accounts during the Class Period if an account was created in the Plan for the Participant's Beneficiary. Alternate Payees will receive settlement payments if and to the

extent they are entitled to receive a portion of a Current Participant's or Former Participant's allocation under this Article 6 pursuant to the terms of the applicable Qualified Domestic Relations Order. Beneficiaries and Alternate Payees with Active Accounts as of the date of the Motion for Preliminary Approval will receive payments by the method described in this Article 6 for Current Participants, subject to Paragraph 6.5.6 below. Beneficiaries and Alternate Payees who do not have Active Accounts as of the date of the Motion for Preliminary Approval will receive payments by the method described in this Article 6 for Former Participants. The Settlement Administrator shall have sole and final discretion to determine the amounts to be paid to Beneficiaries and Alternate Payees in accordance with the Plan of Allocation set forth in this Article 6 and as ordered by the Court.

6.4. Payments to Former Participants and Current Participants (including Beneficiaries and Alternate Payees) shall be calculated by the Settlement Administrator pursuant to the Plan of Allocation as follows:

6.4.1. In order to perform the calculations required under this Settlement Agreement, and pursuant to Paragraph 3.5, the Settlement Administrator shall obtain from the Plans' recordkeeper the quarterly account balances for all Class Members for each quarter of the Class Period. For each such Class Member, the Settlement Administrator shall determine an Average Settlement Allocation Score, as follows:

> Each Class Member's *Settlement Allocation Score* shall be computed quarterly throughout the Class Period based on such Class Member's quarter-ending account balances during the Class Period, such that each dollar invested in the Plan equals one (1) Point. A Participant's *Average Settlement Allocation Score* shall be the average of the Participant's quarterly *Settlement Allocation Scores* during the Class Period, weighted to account for partial quarters.

6.4.2. The Settlement Administrator shall determine the total settlement payment

available to each Former Participant and Current Participant by calculating each such Former Participant's and Current Participant's pro-rata share of the Net Settlement Fund based on his or her Average Settlement Allocation Score compared to the sum of the Average Settlement Allocation Scores for all Former Participants and Current Participants. If the dollar amount of the settlement payment to a Former Participant is calculated by the Settlement Administrator to be less than $5.00, then that Former Participant's pro-rata share shall be zero for all purposes, and his or her share shall be reallocated amongst the other Class Members.

6.4.3. The Settlement Administrator shall utilize the calculations required to be performed herein for (a) making the required payments to Former Participants under Paragraph 6.6 of the Settlement Agreement; and (b) instructing the Plans' recordkeeper as to the amount of the Net Settlement Fund to be allocated to Current Participants under Paragraph 6.5 of the Settlement Agreement and calculating the total amount to deposit in the Plans to fulfill this instruction.

6.4.4. The total amount of all checks to be written by the Settlement Administrator for Former Participants, plus the total amount of all allocations that the Plans' recordkeeper is instructed to make to Current Participants may not exceed the Net Settlement Amount. In the event that the Settlement Administrator determines that the Plan of Allocation total would otherwise exceed the Net Settlement Amount, the Settlement Administrator is authorized to make such pro-rata changes as are necessary to the Plan of Allocation such that said totals do not exceed the Net Settlement Amount.

6.5. Payments to Current Participants.

6.5.1. Current Participants will automatically receive a settlement payment to their

accounts in the Plan.

6.5.2. Within five (5) Business Days after the Settlement Administrator has completed all payment calculations for all Current Participants, the Settlement Administrator will provide Xerox or its designee (*i.e.*., the Plan's recordkeeper), in a format and via a delivery method mutually agreed upon by the Settlement Administrator and Xerox, with an Excel spreadsheet (or other format acceptable to the Plan's recordkeeper) containing the name, the amount of the settlement payment for each of the Current Participants, and any other information requested by Xerox or the Plan's recordkeeper as necessary to effectuate this provision.

6.5.3. Thereafter, upon giving ten (10) Business Days' written notice to Xerox (or its designee), the Settlement Administrator shall effect a transfer from the Qualified Settlement Fund to the Plan of the aggregate amount of all settlement payments payable to Current Participants, as reflected in a spreadsheet provided by the Settlement Administrator. The Plan's recordkeeper shall thereafter credit the individual Active Account of each Current Participant in an amount equal to that stated on the spreadsheet provided by the Settlement Administrator in relation to such Current Participant.

6.5.4. The settlement payment for each Current Participant will be invested in accordance with and proportionate to such Current Participant's investment elections then on file for new contributions. If the Current Participant does not have an investment election on file, then such Current Participant shall be deemed to have directed such payment to be invested in the Plan's "Qualified Default Investment Alternative," as defined in 29 C.F.R. § 2550.404c-5.

6.5.5. The Plan's recordkeeper shall process all Current Participant transactions

within forty-five (45) calendar days of receiving direction, including the completed settlement calculations for Current Participants and the transfer from the Qualified Settlement Fund to the Plan of the aggregate amount of all settlement payments payable to Current Participants, from the Settlement Administrator for any Current Participant.

6.5.6. The Plan may be amended, to the extent necessary, to reflect the settlement allocation to Current Participants' Active Account in accordance with this Article 6.

6.5.7. If, as of the date when distributions pursuant to this Settlement Agreement are made, a Current Participant no longer has an Active Account, they will be treated as a Former Participant for purposes of the settlement distribution only and will receive their payment from the Settlement Administrator in the form of a check as described in Paragraph 6.6.

6.6. Payments to Former Participants. Upon completing the calculation of each Class Member's pro-rata share of the Net Settlement Amount and no later than sixty (60) calendar days following the Settlement Effective Date, the Settlement Administrator shall issue a check from the Qualified Settlement Fund to each Former Participant in the amount equaling his or her pro-rata share of the Net Settlement Amount.

6.6.1. The Settlement Administrator will issue a check from the Qualified Settlement Fund to the Former Participant and mail the check to the address of such Former Participant or, in the case of ambiguity or uncertainty, to the address of such person as determined by the Settlement Administrator using commercially reasonable means.

6.6.2. For each check issued, the Settlement Administrator shall (1) calculate and withhold any applicable taxes associated with the payments allocable to the Former Participant; (2) report such payments and remit such tax withholdings to the Internal

Revenue Service and applicable state and local revenue agents; and (3) issue appropriate tax forms to the Former Participants.

6.6.3. Neither the Defendants, Defense Counsel, Class Counsel, the Class Representatives, nor the Released Parties shall have any responsibility for or liability whatsoever with respect to any tax advice given to the Former Participants or the Current Participants.

6.6.4. Class Members who receive a check from the Settlement Administrator must deposit or cash their checks within one-hundred-and-eighty (180) calendar days of issuance. If they do not do so, the checks will be void, and the Settlement Administrator shall be instructed to return any such funds to the Settlement Fund. This limitation shall be printed on the face of each check. Notwithstanding these requirements, the Settlement Administrator shall have the authority to reissue checks to Class Members where it determines there is good cause to do so, provided that doing so will not compromise the Settlement Administrator's ability to implement the Plan of Allocation. The voidance of checks shall have no effect on the Class Members' release of claims, obligations, representations, or warranties as provided herein, which shall remain in full effect.

6.7. Within ten (10) Business Days of completing all aspects of this Plan of Allocation, the Settlement Administrator shall send to Class Counsel, Defendants' Counsel, and Xerox one or more affidavits stating the following: (1) the name of each Class Member to whom the Settlement Administrator sent the Settlement Notice, and the address of such mailing; (2) the date(s) upon which the Settlement Administrator sent the Settlement Notice; (3) the name of each Class Member whose Settlement Notice was returned as undeliverable; (4) the efforts made by the Settlement Administrator to find the correct address and to deliver the Settlement Notice for each

such Class Member; (5) the efforts made by the Settlement Administrator to determine the correct address of each Former Participant and to deliver a check to that address; and (6) the name of each Class Member to whom the Settlement Administrator made a distribution from the Net Settlement Amount, together with the amount and form of the distribution, the name of the payee, the date of distribution, the amount of tax withholdings, if applicable, and the date of remittance of tax withholdings to the appropriate tax authority, if applicable.

6.8. The Settling Parties acknowledge that any payments to Class Members may be subject to applicable tax laws. Xerox, Defendants' Counsel, Class Counsel, and the Class Representatives will provide no tax advice to the Class Members and make no representation regarding the tax consequences of any of the settlement payments described in this Settlement Agreement. To the extent that any portion of any settlement payment is subject to income or other tax, the recipient of the payment shall be responsible for payment of such tax. Deductions will be made, and reporting will be performed by the Settlement Administrator, as required by law in respect of all payments made under the Settlement Agreement.

6.9. Each Class Member who receives a payment under this Settlement Agreement shall be fully and ultimately responsible for payment of any and all federal, state, or local taxes resulting from or attributable to the payment received by such person. Each Class Member shall hold Defendants, the Released Parties, Defendants' Counsel, Class Counsel, the Class Representatives, and the Settlement Administrator harmless from any tax liability, including penalties and interest, related in any way to payments under the Settlement Agreement, and shall hold Defendants, the Released Parties, Defendants' Counsel, Class Counsel, the Class Representatives, and the Settlement Administrator harmless from the costs (including, for example, attorneys' fees and disbursements) of any proceedings (including, for example, investigation and suit), related to such

tax liability.

6.10. Any funds associated with checks that are not cashed within one-hundred-and-eighty (180) calendar days of issuance and any funds that cannot be distributed to Class Members for any other reason, together with any interest earned on them, and any funds remaining after the payment of any applicable Taxes by the Escrow Agent, shall be returned to the Qualified Settlement Fund by the Settlement Administrator to be distributed as described in the Plan of Allocation.

7. ARTICLE 7 – PROSPECTIVE RELIEF

7.1. No later than five years from the Effective Date of the Settlement Agreement, Defendants will utilize the services of an independent consultant to assist with a request for proposal, fee benchmarking study, or other comparative analysis to ensure that the Plan's recordkeeping fees remain competitive.

8. ARTICLE 8 – ATTORNEYS' FEES AND COSTS, ADMINISTRATIVE EXPENSES, AND CLASS REPRESENTATIVE COMPENSATION

8.1. Class Counsel may file a motion for an award of Attorneys' Fees and Costs, and Administrative Expenses, at least thirty (30) days before the deadline set in the Preliminary Approval Order for objections to the proposed settlement, which may be supplemented thereafter. At the same time, the Class Representatives may also seek an award of Class Representative Compensation. Any such awards shall be paid from the Gross Settlement Amount. Defendants shall have no independent responsibility or liability for any amounts awarded by the Court.

8.2. The appropriate amount of any such awards shall be determined by the Court in its discretion. This Settlement Agreement does not purport to establish a presumptively reasonable amount, and Defendants will take no position with the Court regarding the requested Attorneys' Fees and Costs, Administrative Expenses, or Class Representative Compensation, so long as the

requested Attorneys' Fees do not exceed one third of the Gross Settlement Fund and the requested Class Representative Compensation does not exceed $5,000 for each Class Representative.

8.3. Notwithstanding any other provision of this Settlement Agreement to the contrary, the procedure for and the allowance or disallowance (in whole or in part) by the Court of the Motion for Attorneys' Fees and Costs, Administrative Expenses, or Class Representative Compensation to be paid out of the Gross Settlement Fund shall be considered by the Court separately from its consideration of the fairness, reasonableness, and adequacy of the Settlement, and any order or proceedings relating to the award of Attorneys' Fees and Expenses, or any appeal of any order relating thereto, shall not operate to terminate or cancel this Agreement or be deemed material thereto.

9. ARTICLE 9 – RELEASE AND COVENANT NOT TO SUE

9.1. As of the Settlement Effective Date, the Plan (subject to Independent Fiduciary approval as required by Paragraph 3.1) and all Class Members (and their respective heirs, beneficiaries, executors, administrators, estates, past and present partners, officers, directors, agents, attorneys, predecessors, successors, and assigns) shall be deemed to have fully, finally, and forever settled, released, relinquished, waived, and discharged Defendants, the Plan, and all Released Parties from the Released Claims, whether or not such Class Members have actually received or read the Settlement Notices, whether or not such Class Members have filed an objection to the Settlement or to any application by Class Counsel for an award of Attorneys' Fees and Costs, whether or not Former Participants have actually received checks for settlement payments following the Settlement Administrator's commercially reasonable efforts to determine each Former Participant's address and deliver a check to that address, and whether or not the objections or claims for distribution of such Class Members have been approved or allowed.

9.2. As of the Settlement Effective Date, the Class Members and the Plan (subject to Independent Fiduciary approval as required by Paragraph 3.1), acting individually or together, or in combination with others, shall not sue or seek to institute, maintain, prosecute, argue, or assert in any action or proceeding (including but not limited to an IRS determination letter proceeding, a Department of Labor proceeding, an arbitration, or a proceeding before any state insurance or other department or commission), any cause of action, demand, or claim adverse to the Released Parties on the basis of, connected with, or arising out of any of the Released Claims. Nothing herein shall preclude any action to enforce the terms of this Settlement Agreement pursuant to the procedures set forth in this Settlement Agreement.

9.3. The Class Representatives, Class Counsel, the Plan, or the Class Members may hereafter discover facts in addition to or different from those that they know or believe to be true with respect to the Released Claims. Such facts, if known by them, might have affected the decision to settle with respect to Defendants, the Plan, and the Released Parties, or the decision to release, relinquish, waive, and discharge the Released Claims, or the decision of a Class Member not to object to the Settlement. Notwithstanding the foregoing, each Class Member and the Plan shall expressly, upon the Effective Date of the Final Approval Order, be deemed to have, and by operation of the Final Approval Order, shall have, fully, finally, and forever settled, released, relinquished, waived, and discharged any and all Released Claims. The Class Members and the Plan acknowledge and shall be deemed by operation of the Effective Approval Order to have acknowledged that the foregoing waiver was bargained for separately and is a key element of the Settlement embodied in this Settlement Agreement of which this release is a part.

9.4. Upon the Effective Date of the Final Approval Order, the Class Representatives, Class Members, and the Plan shall be conclusively deemed to, and by operation of the Effective

Approval Order shall, settle, release, relinquish, waive and discharge any and all rights or benefits they may now have, or in the future may have, under any law relating to the releases of unknown claims pertaining specifically to Section 1542 of the California Civil Code, which provides:

> A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

Also, the Class Representatives and Class Members with respect to the Released Claims shall, upon the Effective Approval Order, waive any and all provisions, rights and benefits conferred by any law or of any State or territory within the United States or any foreign country, or any principle of common law, which is similar, comparable or equivalent in substance to Section 1542 of the California Civil Code.

10. ARTICLE 10 – REPRESENTATIONS AND WARRANTIES

10.1. The Settling Parties represent:

10.1.1. That they are voluntarily entering into this Settlement Agreement as a result of arm's length negotiations, and that in executing this Settlement Agreement they are relying solely upon their own judgment, belief, and knowledge, and upon the advice and recommendations of their own counsel, concerning the nature, extent, and duration of their rights and claims hereunder and regarding all matters that relate in any way to the subject matter hereof;

10.1.2. That they assume the risk of mistake as to facts or law;

10.1.3. That they recognize that additional evidence may have come to light, but that they nevertheless desire to avoid the expense and uncertainty of litigation by entering into the Settlement;

10.1.4. That they have read carefully the contents of this Settlement Agreement,

and this Settlement Agreement is signed freely by each individual executing this Settlement Agreement on behalf of each of the Settling Parties; and

10.1.5. That they have made such investigation of the facts pertaining to the Settlement and all matters pertaining thereto, as they deem necessary.

10.2. Each individual executing this Settlement Agreement on behalf of a Settling Party does hereby personally represent and warrant to the other Settling Parties that he/she has the authority to execute this Settlement Agreement on behalf of, and fully bind, each principal that each such individual represents or purports to represent.

11. ARTICLE 11 – TERMINATION, CONDITIONS OF SETTLEMENT, AND EFFECT OF DISAPPROVAL, CANCELLATION, OR TERMINATION

11.1. The Settlement Agreement shall automatically terminate, and thereby become null and void with no further force or effect, if:

11.1.1. Pursuant to Paragraph 3.1, (1) either the Independent Fiduciary does not approve the release or the Settlement Agreement, or disapproves the release or the Settlement Agreement for any reason whatsoever, or Xerox reasonably concludes that the Independent Fiduciary's approval does not include the determinations required by PTE 2003-39; and (2) the Settling Parties do not mutually agree to modify the terms of this Settlement Agreement to facilitate an approval by the Independent Fiduciary or the Independent Fiduciary's determinations required by PTE 2003-39;

11.1.2. This Settlement Agreement is disapproved by the Court or fails to become Effective for any reason whatsoever;

11.1.3. The Preliminary Approval Order and the Final Approval Order are not entered by the Court in substantially the form submitted by the Settling Parties or in a form which is otherwise agreed to by the Settling Parties; or

11.1.4. The Settlement Class is not certified as defined herein or in a form which is otherwise agreed to by the Settling Parties;

11.1.5. The Preliminary Approval Order or Final Approval Order is finally reversed on appeal, or is materially modified on appeal, and the Settling Parties do not mutually agree to any such material modifications.

11.2. If the Settlement Agreement is terminated, deemed null and void, or has no further force or effect, the Action and the Released Claims asserted by the Class Representatives and Class Members shall for all purposes revert to their status as though the Settling Parties never executed the Settlement Agreement. All funds deposited in the Qualified Settlement Fund, and any interest earned thereon, shall be returned to Xerox, its agents, or insurers pro rata based on their contributions to the Qualified Settlement Fund within thirty (30) calendar days after the Settlement Agreement is finally terminated or deemed null and void, except as provided for in Paragraph 11.4.

11.3. The Court's denial, in whole or in part, of Class Counsel's request for Attorneys' Fees and Costs and/or the Class Representative Compensation shall not be deemed a failure to approve the Settlement Agreement and shall not cause the Settlement Agreement to be terminated.

11.4. In the event that the Settlement Agreement is terminated, Administrative Expenses incurred prior to the termination shall be paid first from the interest earned, if any, on the Qualified Settlement Fund. Administrative Expenses in excess of the interest earned on the Qualified Settlement Fund shall be split evenly and paid by Class Counsel, on the one hand, and Xerox, on the other hand.

12. ARTICLE 12 – SETTLEMENT WEBSITE AND OTHER COMMUNICATIONS RELATED TO THE SETTLEMENT

12.1. On or before the date that the Settlement Notices are mailed, the Settlement Administrator will establish a Settlement Website on which it will post the following documents

or links to the following documents: the Complaint, Settlement Agreement and Exhibits thereto, Settlement Notices, Preliminary Approval Order and any other Court orders related to the Settlement, and any other documents or information mutually agreed upon by the Settling Parties ("Settlement Website Information") in writing. When filed, the Settlement Administrator will also post or include links to the Motion for Attorneys' Fees and Costs, Administrative Expenses, and Class Representative Compensation (and any documents submitted in support). No other information or documents will be posted on the Settlement Website unless agreed to in advance by the Settling Parties in writing. The Settlement Administrator will take down the Settlement Website at the conclusion of the Settlement Period.

12.2. On or before the date that the Settlement Notices are mailed, the Settlement Administrator also shall arrange for a toll-free telephone call center facility to be active during the period that the Settlement Website is active. The toll-free telephone call facility will employ an interactive voice response system ("IVR system") to answer calls, and will provide callers the option of speaking with a live operator if necessary.

12.3. The Class Representatives and Class Counsel agree that they will not at any time publicly disparage or encourage or induce others to publicly disparage any of the Defendants or Released Parties as to the Action or the Settlement.

13. ARTICLE 13 – GENERAL PROVISIONS

13.1. The undersigned counsel, on behalf of themselves and the Settling Parties, agree to cooperate fully with each other in seeking Court approvals of the Preliminary Approval Order and the Final Approval Order, and to do all things as may reasonably be required to effectuate preliminary and final approval and the implementation of this Settlement Agreement according to its terms.

13.2. Within sixty (60) calendar days after the close of the Settlement Period, the Settling Parties shall either return to the producing parties, or destroy, all documents, communications, or things produced in discovery under a claim of confidentiality pursuant to the Confidentiality Order entered in the Action, including but not limited to documents, communications, or things produced under a claim of privilege. Each Settling Party shall serve a written notice to each producing party certifying that the Settling Party has carried out the obligations imposed by this Paragraph 13.2. The Settling Parties, Class Counsel, and Defendants' Counsel agree that at all times they will honor the requirements of the Confidentiality Order, notwithstanding the settlement of the Action.

13.3. The Class Representatives, Class Counsel, and the Class Members agree that this Settlement Agreement, whether or not consummated, and any related negotiations or proceedings, are not, and shall not be construed as, deemed to be, or offered or received as evidence of an admission by or on the part of Defendants or Released Parties of any wrongdoing, fault, or liability whatsoever by any of Defendants or Released Parties, or give rise to any inference of any wrongdoing, fault, or liability or admission of any wrongdoing, fault, or liability in the Action or any other proceeding, and Defendants and Released Parties admit no wrongdoing or liability with respect to any of the allegations or claims in the Action. The Class Representatives, Class Counsel, and the Class Members agree that this Settlement Agreement, whether or not consummated, and any related negotiations or proceedings, shall not constitute admissions of any liability of any kind, whether legal or factual.

13.4. Neither the Defendants, the Released Parties, the Class Representatives, Class Counsel, nor Defendants' Counsel shall have any responsibility for or liability whatsoever with respect to (1) any act, omission, or determination of the Settlement Administrator, or any of its respective designees or agents, in connection with the administration of the Gross Settlement

Amount or otherwise; (2) the determination of the Independent Fiduciary; (3) the management, investment, or distribution of the Qualified Settlement Fund; (4) the Plan of Allocation as approved by the Court; (5) the determination, administration, calculation, or payment of any claims asserted against the Qualified Settlement Fund; (6) any losses suffered by, or fluctuations in the value of, the Qualified Settlement Fund; or (7) the payment or withholding of any taxes, expenses, and/or costs incurred in connection with the taxation of the Qualified Settlement Fund or tax reporting, or the filing of any returns. Further, neither Defendants nor Defendants' Counsel shall have any responsibility for, or liability whatsoever with respect to, any act, omission, or determination of Class Counsel in connection with the administration of the Gross Settlement Amount or otherwise.

13.5. Only Class Counsel shall have standing to seek enforcement of this Settlement Agreement on behalf of Class Representatives, Class Members, or the Plan. Any individual concerned about Defendants' compliance with this Settlement Agreement may so notify Class Counsel and direct any requests for enforcement to them. Class Counsel shall have the full and sole discretion to take whatever action they deem appropriate, or to refrain from taking any action, in response to such request. Any action by Class Counsel to monitor or enforce the Settlement Agreement shall be done without additional fee or reimbursement of expenses beyond the Attorneys' Fees and Costs determined by the Court.

13.6. This Settlement Agreement shall be interpreted, construed, and enforced in accordance with applicable federal law.

13.7. Class Counsel, Defendants' Counsel, and the Settling Parties agree that any and all disputes concerning compliance with the Settlement Agreement shall be exclusively resolved as follows:

13.7.1. If Class Counsel, Defendants' Counsel, or a Settling Party has reason to believe that a legitimate dispute exists concerning compliance with the Settlement Agreement, the party raising the dispute shall first promptly give written notice (also electronic notice by e-mail) under the Settlement Agreement to the other party, including in such notice: (1) a reference to all specific provisions of the Settlement Agreement that are involved; (2) a statement of the alleged non-compliance; (3) a statement of the remedial action sought; and (4) a brief statement of the specific facts, circumstances, and any other arguments supporting the position of the party raising the dispute;

13.7.2. Within ten (10) Business Days after receiving the notice described in Paragraph 13.7.1, the receiving party shall respond in writing with its position and the facts and arguments it relies on in support of its position;

13.7.3. For a period of not more than ten (10) Business Days following mailing and electronic notice of the response described in Paragraph 13.7.2, the Settling Parties shall undertake good-faith negotiations, which may include meeting in person or conferring by telephone, to attempt to resolve the dispute;

13.7.4. If the dispute is not resolved during the period described in Paragraph 13.7.3, either party may request that the Court resolve the dispute;

13.7.5. In connection with any disputes concerning compliance with the Settlement Agreement, the Settling Parties agree that each party shall bear its own fees and costs.

13.8. The Settling Parties agree that the Court has personal jurisdiction over the Class Representatives, Class Members, and Defendants, and shall retain that jurisdiction for purposes of enforcing the Settlement Agreement and resolving any disputes concerning compliance with the Settlement Agreement.

13.9. The Settlement Agreement may be executed by exchange of executed signature pages, and any signature transmitted by facsimile or e-mail attachment of scanned signature pages for the purpose of executing this Settlement Agreement shall be deemed an original signature for purposes of this Settlement Agreement. The Settlement Agreement may be executed in any number of counterparts, and each of such counterparts shall for all purposes be deemed an original, and all such counterparts shall together constitute the same instrument.

13.10. Each Settling Party to this Settlement Agreement hereby acknowledges that he, she, they, or it has consulted with and obtained the advice of counsel before executing this Settlement Agreement, and that this Settlement Agreement has been explained to that party by his, her, their, or its counsel.

13.11. Any headings included in this Settlement Agreement are for convenience only and do not in any way limit, alter, or affect the matters contained in this Settlement Agreement or the Articles or Paragraphs they caption. References to a person are also to the person's permitted successors and assigns, except as otherwise provided herein. Whenever the words "include," "includes," or "including" are used in this Settlement Agreement, they shall not be limiting but shall be deemed to be followed by the words "without limitation."

13.12. This Settlement Agreement may be modified or amended only by written agreement signed by or on behalf of all Settling Parties.

13.13. This Settlement Agreement and the exhibits attached hereto constitute the entire agreement among the Settling Parties and no representations, warranties, or inducements have been made to any party concerning the Settlement other than those contained in this Settlement Agreement and the exhibits thereto.

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

13.15. Each of the Settling Parties agrees, without further consideration, and as part of finalizing the Settlement hereunder, that it will in good faith execute and deliver such other documents and take such other actions as may be necessary to consummate and effectuate this Settlement Agreement.

13.16. All of the exhibits attached hereto are incorporated by reference as though fully set forth herein. The exhibits shall be: Exhibit 1 – Notice of Class Action Settlement and Fairness Hearing to Current Participants; Exhibit 2 – Notice of Class Action Settlement and Fairness Hearing to Former Participants; Exhibit 3 – Preliminary Approval Order; Exhibit 4 – Final Approval Order; Exhibit 5 – CAFA Notice.

13.17. No provision of the Settlement Agreement or of the exhibits attached hereto shall be construed against or interpreted to the disadvantage of any party to the Settlement Agreement because that party is deemed to have prepared, structured, drafted, or requested the provision.

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

IF TO THE CLASS REPRESENTATIVES:

Paul Lukas (lukas@nka.com)

Brock Specht (bspecht@nka.com)
Grace Chanin (gchanin@nka.com)
NICHOLS KASTER, PLLP
4700 IDS Center
80 South 8th Street
Minneapolis, MN 55402

IF TO DEFENDANTS:

Melissa Hill (melissa.hill@morganlewis.com)
Jared Killeen (jared.killeen@morganlewis.com)
MORGAN, LEWIS & BOCKIUS LLP
101 Park Avenue
New York, NY 10178

* * *

SIGNED ON BEHALF OF CLASS REPRESENTATIVES Chris Carrigan, Michael Venti, and Sylvian Yelle, Individually and as Representatives of the Class

Dated: December 16, 2022

Paul J. Lukas
NICHOLS KASTER, PLLP
4700 IDS Center
80 South 8th Street
Minneapolis, MN 55402
Telephone: (612) 256-3200
Facsimile: (612) 256-6870

Attorney for the Class Representatives and the Class

SIGNED ON BEHALF OF DEFENDANTS Xerox Corporation and the Xerox Plan Administrator Committee.

Dated: December 16, 2022

Melissa D. Hill
101 Park Avenue
New York, NY 10178
Phone: 212.309.6000
Fax: 212.309.6001
melissa.hill@morganlewis.com

Attorney for Xerox Corp. and the Xerox Plan Administrator Committee

EXHIBIT 1

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

Chris Carrigan, Michael Venti, and Sylvain Yelle, individually and as representatives of a class of similarly situated persons, and on behalf of the Xerox Corporation Savings Plan **Plaintiffs,** **v.** **Xerox Corporation, the Xerox Corporation Plan Administrator Committee, and John Does 1-30** **Defendants.**	Civil Action No. 3:21-cv-01085-SVN

NOTICE OF CLASS ACTION SETTLEMENT AND FAIRNESS HEARING

PLEASE READ THIS SETTLEMENT NOTICE CAREFULLY.
This is a notice of a proposed partial class action settlement in the above-referenced lawsuit. Your legal rights may be affected if you are a member of the following Settlement Class:

All participants and beneficiaries of the Xerox Corporation Savings Plan at any time from August 11, 2015, until January 1, 2021 (the date that the Plan's current recordkeeper took over the recordkeeping function), excluding any persons with responsibility for the Plan's administrative functions or expenses.

- The Court has given its preliminary approval to a proposed class action settlement ("Settlement"), in a lawsuit brought by certain participants in the Xerox Corporation Savings Plan ("Plan") against Xerox Corporation and the Xerox Corporation Plan Administrator Committee (collectively, "Defendants"), alleging violations of the Employee Retirement Income Security Act of 1974, as amended ("ERISA") in relation to the management of the Plan. Defendants deny all claims, and nothing in the Settlement is an admission or concession on Defendants' part of any fault or liability whatsoever. Defendants further maintain that they acted prudently and loyally at all times when acting in any fiduciary capacity with respect to the Plans.

- The Settlement will provide, among other things, for payment of a Gross Settlement Amount of $4,100,000 ("Gross Settlement Amount") to resolve the claims against Defendants. Class Members are eligible to receive a *pro rata* share of the Net Settlement Amount remaining after payment of any Attorneys' Fees and Costs, Administrative Expenses, and Class Representative

Compensation to the Class Representatives. The Net Settlement Amount will be allocated to Settlement Class Members according to a Plan of Allocation to be approved by the Court and further described below.

- Class Members with a positive balance in any of the Plans as of September 30, 2021 ("Current Participants") will automatically receive allocations directly to their Plan accounts so long as they maintain a positive balance through the time Settlement monies are distributed. Class Members who participated in the Plans during the Class Period but who do not have an Active Account in any of the Plans as of September 30, 2021 ("Former Participants") will receive their settlement payment in the form of a check.

- The terms and conditions of the Settlement are set forth in the Settlement Agreement dated [DATE]. Capitalized terms used in this Notice but not defined in this Notice have the meanings assigned to them in the Settlement Agreement. The Settlement Agreement is available at [www.settlementwebsite.com]. Certain other documents also will be posted on that website. You should visit that website if you would like more information about the Settlement or the lawsuit. All papers filed in this lawsuit are also available for review via the Public Access to Court Electronic Records System (PACER), at http://www.pacer.gov, or by appearing in person during regular business hours at the Office of the Clerk of the United States District Court for the District of Connecticut, ABRAHAM RIBICOFF FEDERAL BUILDING, United States Courthouse, located at 450 Main Street, Hartford, Connecticut 06103.

- Your rights and the choices available to you—and the applicable deadlines to act—are explained in this Notice. Please note that neither the Defendants nor any employees, attorneys, or representatives of the Defendants may advise you as to what the best choice is for you or how you should proceed.

- The Court still has to decide whether to give its final approval to the Settlement. Payments under the Settlement will be made only if the Court finally approves the Settlement, and that final approval is upheld in the event of any appeal.

- A Fairness Hearing will take place on [DATE], at [TIME], before the Honorable Sarala V. Nagala, in Courtroom 1 of the United States Courthouse located at 450 Main Street – Suite 108, Hartford, CT 06103, to determine whether to grant final approval of the Settlement and approve the requested Attorneys' Fees and Costs, Administrative Expenses, and Class Representative Compensation. If the Fairness Hearing is rescheduled, or if it is held by video conference or telephone, a notice will be posted on the Settlement Website at [www.settlementwebsite.com].

- Any objections to the Settlement, or to the requested Attorneys' Fees and Costs, Administrative Expenses, or Class Representative Compensation, must be served in writing on Class Counsel and the Defendants' Counsel, as identified on page 8 of this Settlement Notice, at least 28 calendar days before the Fairness Hearing.

YOUR LEGAL RIGHTS AND OPTIONS UNDER THE SETTLEMENT:	
OUR RECORDS INDICATE YOU ARE A CURRENT PARTICIPANT. IF SO, YOU DO NOT NEED TO DO ANYTHING TO RECEIVE YOUR SHARE OF THE SETTLEMENT.	Our records indicate that you are a Current Participant. You do not need to do anything to receive your share of the Net Settlement Amount. If, however, you are a Former Participant who no longer has a Plan account with a positive balance, or are the Beneficiary or Alternate Payee of a Former Participant, then the Settlement Administrator will mail you a check for your share of the Net Settlement Amount to your last known address. You may contact the Settlement Administrator to confirm or update your mailing address. The Settlement Administrator may be contacted by phone at [telephone number] or by mail at [mailing address].
YOU CAN OBJECT (NO LATER THAN [DATE])	You cannot opt out of this Settlement. But, if you wish to object to any part of the Settlement, or to the requested Attorneys' Fees and Costs, Administrative Expenses, or Class Representative Compensation, you may do so. You must submit your objection and any supporting documents to Class Counsel and the Defendants' Counsel (as identified on page 8 below) at least 28 calendar days before the Fairness Hearing.
YOU CAN ATTEND A HEARING ON [DATE]	You may also attend the Fairness Hearing and speak at the Fairness Hearing on [DATE]. Please note that you will not be permitted to make an objection to the Settlement at the hearing if you do not comply with the requirements for making objections.

The Class Action

The above-referenced lawsuit, *Chris Carrigan, et al. v. Xerox Corporation, et al.*, No. 3:21-cv-01085 (D. Conn.) (the "Action" or "lawsuit"), has been pending since August 11, 2021. The Court supervising the case is the United States District Court for the District of Connecticut. The individuals who brought this lawsuit are called the Class Representatives, and the persons that were sued are called the Defendants. The Class Representatives (Chris Carrigan, Michael Venti, and Sylvain Yelle) are current and former participants in the Plans. The Defendants are Xerox Corporation and the Xerox Corporation Plan Administrator Committee. The claims in the lawsuit are described below on page 5, and additional information about them, including a copy of the operative Complaint, is available at [www.settlementwebsite.com].

The Settlement

Following mediation before an experienced, neutral mediator, and negotiations between Class Counsel and Defendants' Counsel, the parties to this lawsuit reached a Settlement. The Settlement will provide, among other things, for a combined Gross Settlement Amount of $4,100,000 to be paid to resolve the claims against the Defendants. Class Members are eligible to receive a *pro rata* share of the Net Settlement Amount remaining after payment of any Administrative Expenses, any Attorneys' Fees and Costs that the Court awards to Class Counsel, and any compensation that the Court awards to the Class Representatives. The Net Settlement Amount will be allocated to Settlement Class Members according to a Plan of Allocation to be approved by the Court and further described below.

In addition, the Settlement provides that no later than five years from the effective date of the Settlement Agreement, Defendants will utilize the services of an independent consultant to assist with a request for proposal, fee benchmarking study, or other comparative analysis to ensure that the Plan's recordkeeping fees remain competitive.

Statement of Attorneys' Fees and Costs, Administrative Expenses, and Class Representative Compensation Sought in the Class Action

Class Counsel has devoted substantial time and effort to investigating the facts, prosecuting the lawsuit, reviewing documents obtained from Defendants, and negotiating the Settlement. During that time, they also have advanced costs necessary to pursue the case. Class Counsel took the risk of litigation and have not been paid for any of their time or for any of these costs throughout the time this case has been pending.

Class Counsel will apply to the Court for payment of Attorneys' Fees for their work in the case. The amount of fees that Class Counsel will request will not exceed one-third of the Gross Settlement Amount ($1,366,66.67). In addition, Class Counsel also will seek to recover their litigation costs and recoverable administrative expenses associated with the Settlement. Any Attorneys' Fees and Costs and Administrative Expenses awarded by the Court will be paid from the Gross Settlement Amount. Class Counsel also will ask the Court to approve a payment, not to exceed $5,000, for each of the Class Representatives who took on the risk of litigation and committed to spend the time necessary to bring the case against the Defendants to a conclusion. Any Class Representative Compensation approved by the Court will also be paid from the Gross Settlement Amount.

A full and formal application for Attorneys' Fees and Costs, Administrative Expenses, and Class Representative Compensation will be filed with the Court on or before [DATE]. This application will be made available at [www.settlementwebsite.com]. You may also obtain a copy of this application through the Public Access to Court Electronic Records System (PACER) at http://www.pacer.gov, or by appearing in person during regular business hours at the Office of the Clerk of the United States District Court for the District of Connecticut, ABRAHAM RIBICOFF FEDERAL BUILDING, United States Courthouse, located at 450 Main Street, Hartford, Connecticut 06103.

1. Why Did I Receive This Settlement Notice?

The Settlement Administrator has caused this Notice to be sent to you because its records indicate that you may be a Current Participant Class Member. If you fall within the definition of the Settlement Class, you have a right to know about the Settlement and about all the options available to you before the Court decides whether to give its final approval to the Settlement.

2. What Is the Class Action About?

In the Class Action, the Class Representatives claim that the Defendants failed to prudently monitor and control the Plan's recordkeeping expenses and allowed class members to be charged amounts in excess of what similarly sized plans would have paid for such services. A more complete description of what Plaintiffs allege is in the Complaint, which is available on the Settlement Website at [www.settlementwebsite.com].

The Defendants have denied and continue to deny liability as to all claims and assert that they have always acted prudently and in keeping with their fiduciary duties under ERISA by monitoring, reviewing, and evaluating the recordkeeping expenses paid by the Plan and by ensuring the Plan and Plan participants paid reasonable fees for all recordkeeping services provided to the Plan.

3. Why Is There A Settlement?

The Court has not reached a final decision as to the Class Representatives' claims. Instead, the Class Representatives and the Defendants have agreed to the Settlement. The Settlement is the product of arm's-length negotiations between the Class Representatives, the Defendants, and their counsel, who were assisted in their negotiations by a neutral, experienced mediator. The parties to the Settlement have taken into account the uncertainty, risks, and costs of litigation, and have concluded that it is desirable to settle on the terms and conditions set forth in the Settlement Agreement. The Class Representatives and Class Counsel believe that the Settlement is best for the Settlement Class. Nothing in the Settlement Agreement is an admission or concession on the Defendants' part of any fault or liability whatsoever. They have entered into the Settlement Agreement to avoid the uncertainty, expense, and burden of additional litigation.

4. What Does the Settlement Provide?

As part of the Settlement, a Gross Settlement Amount of $4,100,000 is being paid to resolve the claims in the Action. Class Members are eligible to receive a *pro rata* share of the Net Settlement Amount remaining after payment of Administrative Expenses, any Attorneys' Fees and Costs that the Court awards to Class Counsel, and any compensation that the Court awards to the Class Representatives. Allocations to Current Participants who are entitled to a distribution under the Plan of Allocation will be made into their existing accounts in the Plans. Former Participants who are entitled to a distribution will receive their distribution as a check sent to their last known address.

In addition, the Settlement provides that no later than five years from the effective date of the Settlement Agreement, Defendants will utilize the services of an independent consultant to assist with a request for proposal, fee benchmarking study, or other comparative analysis to ensure that the Plan's recordkeeping fees remain competitive.

In exchange for the foregoing monetary and prospective relief, all Settlement Class Members and anyone claiming through them will fully release the Defendants and other Released Parties from the Released Claims, as defined in the Settlement Agreement, which is available at [www.settlementwebsite.com]. Generally, the release means that Class Members will not have the right to sue the Plan, Defendants, or related parties for conduct during the Class Period arising out of or related to the allegations in the Action.

5. How Much Will My Distribution Be?

The amount, if any, that will be allocated to you will be based upon records maintained by the Plans' recordkeeper. Calculations regarding individual distributions will be performed by the

Settlement Administrator, whose determinations will be final and binding, pursuant to the Court-approved Plan of Allocation.

To receive a distribution from the Net Settlement Amount, you must either be a (1) "Current Participant" as described on page 3; or (2) a "Former Participant" as described on page 3; or (3) a Beneficiary or Alternate Payee of a person identified in (1) or (2).

There are approximately 36,000 Settlement Class Members. The Net Settlement Amount will be divided *pro rata* among Settlement Class Members (and eligible Beneficiaries and Alternate Payees) based on their Average Settlement Allocation Score in relation to other Class Members. To calculate the Average Settlement Allocation Score, the Settlement Administrator will review Class Members' account balances in the Plans for each quarter during the Class Period, and will award one point for each dollar invested in the in the Plan, at the end of each quarter. A Settlement Class Member's Average Settlement Allocation Score shall be the average of the quarterly scores during the Class Period, weighted to account for partial quarters.

A more complete description regarding the Plan of Allocation can be found in Article 6 of the Settlement Agreement, available at [www.settlementwebsite.com].

6. How Can I Receive My Distribution?

According to our records, you are a Current Participant. Therefore, you do not need to do anything to receive your share of the Net Settlement Amount. You will automatically receive your distribution directly to your Plan account so long as you maintain a positive balance through the time Settlement monies are distributed.

If you are considered a Current Participant because you had a Plan account with a balance greater than $0.00 as of September 30, 2021, but it is determined that you no longer have a Plan account balance greater than $0.00 when the Settlement proceeds are distributed to Settlement Class Members, the Settlement Administrator will mail you a check for your share of the Net Settlement Amount to your last known address. You may contact the Settlement Administrator to confirm or update your mailing address. The Settlement Administrator may be contacted by phone at [telephone number] or by mail at [mailing address].

7. When Will I Receive My Distribution?

The timing of the distribution of the Net Settlement Amount is conditioned on several matters, including the Court's final approval of the Settlement and any approval becoming final and no longer subject to any appeals in any court. An appeal of the final approval order may take several years. If the Settlement is approved by the Court and there are no appeals, the Settlement distribution likely will occur within approximately six months of the Court's Final Approval Order, unless there are unforeseen circumstances. There will be no payments under the Settlement if the Settlement Agreement is terminated.

8. Can I Get Out of The Settlement?

No. The Settlement Class has been certified for settlement purposes under Federal Rule of Civil Procedure 23(b)(1). Therefore, as a Settlement Class Member, you are bound by the Settlement (if it receives final Court approval) and any judgments or orders that are entered in the Action. If you wish to object to any part of the Settlement, you may write to Class Counsel and the Defendants' Counsel about why you object to the Settlement, as discussed below.

9. Who Represents the Settlement Class?

For purposes of the Settlement, the Court has appointed Nichols Kaster, PLLP and Garrison, Levin-Epstein, Fitzgerald & Pirotti, P.C., as Class Counsel in the Class Action. If you want to be represented by your own lawyer, you may hire one at your own expense. In addition, the Court appointed Chris Carrigan, Michael Venti, and Sylvain Yelle (the named Plaintiffs) to serve as the Class Representatives. They are also Class Members.

10. How Will the Lawyers Be Paid?

Class Counsel will file a motion for an award of Attorneys' Fees and Costs, Administrative Expenses, and Class Representative Compensation at least 30 days prior to the objection deadline. This motion will be considered at the Fairness Hearing. Class Counsel will limit their application for attorneys' fees to not more than one-third of the Gross Settlement Amount. Class Counsel also will seek to recover all actual and anticipated litigation costs and recoverable administrative expenses associated with the Settlement. In addition, Class Counsel will seek compensation for the Class Representatives of no more than $5,000 each. The Court will determine the amount of Attorneys' Fees and Costs, Administrative Expenses, and Class Representative Compensation that will be awarded, if any. Class Counsel's motion for Attorneys' Fees and Costs, Administrative Expenses, and Class Representative Compensation, will be posted on the Settlement Website at www.settlementwebsite.com, will also be available for review via the Public Access to Court Electronic Records System (PACER), at http://www.pacer.gov, and can be obtained in person during regular business hours at the Office of the Clerk of the United States District Court for the District of Connecticut, ABRAHAM RIBICOFF FEDERAL BUILDING, United States Courthouse, located at 450 Main Street, Hartford, Connecticut 06103.

11. How Do I Tell the Court If I Don't Like the Settlement?

If you are a Settlement Class Member, you can object to the Settlement by mailing a written objection to Class Counsel and to the Defendants' Counsel (as identified below) that explains why you object.

Your written objection must: (1) clearly identify the case name and number: *Chris Carrigan, et al. v. Xerox Corporation, et al.*, No. 3:21-cv-01085 (D. Conn.); (2) include your full name, current address, and telephone number; (3) describe the basis for your objection; and (4) include your signature.

Your written objection and supporting documents must be personally delivered, or sent by U.S. mail or courier, to Class Counsel and the Defendants' Counsel as set forth below **no later than [28 days prior to Fairness Hearing]** to be considered. Class Counsel and the Defendants will have an opportunity to respond to your objection.

CLASS COUNSEL	DEFENDANTS' COUNSEL
Brock Specht Paul Lukas Grace Chanin NICHOLS KASTER, PLLP 4700 IDS Center 80 South 8th Street Minneapolis, MN 55402	Melissa Hill MORGAN, LEWIS & BOCKIUS LLP 101 Park Ave. New York, NY 10178 Jeremy Blumenfeld Jared Killeen MORGAN, LEWIS & BOCKIUS LLP 1701 Market Street Philadelphia, PA 19103 Michael D'Agostino MORGAN, LEWIS & BOCKIUS LLP One State St., 22nd Floor Hartford, CT 06103

12. When and Where Will the Court Decide Whether to Approve the Settlement?

The Court will hold a Fairness Hearing at **[TIME]** on **[DATE]**, at the United States District Court for the District of Connecticut, ABRAHAM RIBICOFF FEDERAL BUILDING, United States Courthouse, located at 450 Main Street, Hartford, Connecticut 06103, in Courtroom 1. At the Fairness Hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. The Court also will consider the motion for Attorneys' Fees and Costs, Administrative Expenses, and Class Representative Compensation. If there are objections, the Court will consider them then. Please note that if the Fairness Hearing is rescheduled, or if it is held by video conference or telephone, a notice will be posted on the Settlement Website at [www.settlementwebsite.com].

13. Do I Have to Attend the Fairness Hearing?

No, but you are welcome to come at your own expense. You may also make an appearance through an attorney. If you send an objection, you do not have to come to the Court to talk about it. As long as you mailed your written objection on time, the Court will consider it.

14. May I Speak at The Fairness Hearing?

Yes, but you must comply with the requirements for making an objection (described above) if you wish to object to the Settlement. If you do not comply with the requirements for making an objection, you will not be permitted to object at the Fairness Hearing.

15. What Happens If I Do Nothing at All?

If you are a "Current Participant" as described on page 3, and you do nothing, you will receive your *pro rata* share of the Net Settlement Amount as a deposit to your Plan account if the Settlement is finally approved. If you are a "Former Participant" as described on page 3, and you do nothing, and the Settlement is finally approved, you will receive your *pro rata* share of the Net Settlement Amount via check.

16. How Do I Get More Information?

If you have questions regarding the Settlement, you can visit [www.settlementwebsite.com], call [phone number], or write to the Settlement Administrator at [mailing address]. All papers filed in this lawsuit are also available for review via the Public Access to Court Electronic Records System (PACER), at http://www.pacer.gov, or by appearing in person during regular business hours at the Office of the Clerk of the United States District Court for the District of Connecticut, ABRAHAM RIBICOFF FEDERAL BUILDING, United States Courthouse, located at 450 Main Street, Hartford, Connecticut 06103. Please note that none of the Defendants nor any employees, attorneys, or representatives of Defendants may advise you regarding the Settlement or how you should proceed.

EXHIBIT 2

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

Chris Carrigan, Michael Venti, and Sylvain Yelle, individually and as representatives of a class of similarly situated persons, and on behalf of the Xerox Corporation Savings Plan **Plaintiffs,** **v.** **Xerox Corporation, the Xerox Corporation Plan Administrator Committee, and John Does 1-30** **Defendants.**	Civil Action No. 3:21-cv-01085-SVN

NOTICE OF CLASS ACTION SETTLEMENT AND FAIRNESS HEARING

PLEASE READ THIS SETTLEMENT NOTICE CAREFULLY.
This is a notice of a proposed partial class action settlement in the above-referenced lawsuit. Your legal rights may be affected if you are a member of the following Settlement Class:

All participants and beneficiaries of the Xerox Corporation Savings Plan at any time from August 11, 2015, until January 1, 2021 (the date that the Plan's current recordkeeper took over the recordkeeping function), excluding any persons with responsibility for the Plan's administrative functions or expenses.

- The Court has given its preliminary approval to a proposed class action settlement ("Settlement"), in a lawsuit brought by certain participants in the Xerox Corporation Savings Plan ("Plan") against Xerox Corporation and the Xerox Corporation Plan Administrator Committee (collectively, "Defendants"), alleging violations of the Employee Retirement Income Security Act of 1974, as amended ("ERISA") in relation to the management of the Plans. Defendants deny all claims, and nothing in the Settlement is an admission or concession on Defendants' part of any fault or liability whatsoever. Defendants further maintain that they acted prudently and loyally at all times when acting in any fiduciary capacity with respect to the Plans.

- The Settlement will provide, among other things, for payment of a Gross Settlement Amount of $4,100,000 ("Gross Settlement Amount") to resolve the claims against Defendants. Class

Members are eligible to receive a *pro rata* share of the Net Settlement Amount remaining after payment of any Attorneys' Fees and Costs, Administrative Expenses, and Class Representative Compensation to the Class Representatives. The Net Settlement Amount will be allocated to Settlement Class Members according to a Plan of Allocation to be approved by the Court and further described below.

- Class Members with a positive balance in any of the Plans as of September 30, 2021 ("Current Participants") will automatically receive allocations directly to their Plan accounts so long as they maintain a positive balance through the time Settlement monies are distributed. Class Members who participated in the Plans during the Class Period but who do not have an Active Account in any of the Plans as of September 30, 2021 ("Former Participants") will receive their settlement payment in the form of a check.

- The terms and conditions of the Settlement are set forth in the Settlement Agreement dated [DATE]. Capitalized terms used in this Notice but not defined in this Notice have the meanings assigned to them in the Settlement Agreement. The Settlement Agreement is available at [www.settlementwebsite.com]. Certain other documents also will be posted on that website. You should visit that website if you would like more information about the Settlement or the lawsuit. All papers filed in this lawsuit are also available for review via the Public Access to Court Electronic Records System (PACER), at http://www.pacer.gov, or by appearing in person during regular business hours at the Office of the Clerk of the United States District Court for the District of Connecticut, ABRAHAM RIBICOFF FEDERAL BUILDING, United States Courthouse, located at 450 Main Street, Hartford, Connecticut 06103.

- Your rights and the choices available to you—and the applicable deadlines to act—are explained in this Notice. Please note that neither the Defendants nor any employees, attorneys, or representatives of the Defendants may advise you as to what the best choice is for you or how you should proceed.

- The Court still has to decide whether to give its final approval to the Settlement. Payments under the Settlement will be made only if the Court finally approves the Settlement, and that final approval is upheld in the event of any appeal.

- A Fairness Hearing will take place on [DATE], at [TIME], before the Honorable Sarala V. Nagala, in Courtroom 1 of the United States Courthouse located at 450 Main Street – Suite 108, Hartford, CT 06103, to determine whether to grant final approval of the Settlement and approve the requested Attorneys' Fees and Costs, Administrative Expenses, and Class Representative Compensation. If the Fairness Hearing is rescheduled, or if it is held by video conference or telephone, a notice will be posted on the Settlement Website at [www.settlementwebsite.com].

- Any objections to the Settlement, or to the requested Attorneys' Fees and Costs, Administrative Expenses, or Class Representative Compensation, must be served in writing

on Class Counsel and the Defendants' Counsel, as identified on page 8 of this Settlement Notice, at least 28 calendar days before the Fairness Hearing.

YOUR LEGAL RIGHTS AND OPTIONS UNDER THE SETTLEMENT:	
OUR RECORDS INDICATE YOU ARE A FORMER PARTICIPANT. IF SO, YOU DO NOT NEED TO DO ANYTHING TO RECEIVE YOUR SHARE OF THE SETTLEMENT.	Our records indicate that you are a Former Participant. You do not need to do anything to receive your share of the Net Settlement Amount by check. The Settlement Administrator will mail you a check for your share of the Net Settlement Amount to your last known address. You may contact the Settlement Administrator to confirm or update your mailing address. The Settlement Administrator may be contacted by phone at [telephone number] or by mail at [mailing address].
YOU CAN OBJECT (NO LATER THAN [DATE])	You cannot opt out of this Settlement. But, if you wish to object to any part of the Settlement, or to the requested Attorneys' Fees and Costs, Administrative Expenses, or Class Representative Compensation, you may do so. You must submit your objection and any supporting documents to Class Counsel and the Defendants' Counsel (as identified on page 8 below) at least 28 calendar days before the Fairness Hearing.
YOU CAN ATTEND A HEARING ON [DATE]	You may also attend the Fairness Hearing and speak at the Fairness Hearing on [DATE]. Please note that you will not be permitted to make an objection to the Settlement at the hearing if you do not comply with the requirements for making objections.

The Class Action

The above-referenced lawsuit, *Chris Carrigan, et al. v. Xerox Corporation, et al.*, No. 3:21-cv-01085 (D. Conn.) (the "Action" or "lawsuit"), has been pending since August 11, 2021. The Court supervising the case is the United States District Court for the District of Connecticut. The individuals who brought this lawsuit are called the Class Representatives, and the persons that were sued are called the Defendants. The Class Representatives (Chris Carrigan, Michael Venti, and Sylvain Yelle) are current and former participants in the Plans. The Defendants are Xerox Corporation and the Xerox Corporation Plan Administrator Committee. The claims in the lawsuit are described below on page 5, and additional information about them, including a copy of the operative Amended Complaint, is available at [www.settlementwebsite.com].

The Settlement

Following mediation before an experienced, neutral mediator, and negotiations between Class Counsel and Defendants' Counsel, the parties to this lawsuit reached a Settlement. The Settlement will provide, among other things, for a combined Gross Settlement Amount of $4,100,000 to be paid to resolve the claims against the Defendants. Class Members are eligible to receive a *pro rata* share of the Net Settlement Amount remaining after payment of any Administrative Expenses, any Attorneys' Fees and Costs that the Court awards to Class Counsel, and any compensation that the Court awards to the Class Representatives. The Net Settlement Amount will be allocated to Settlement Class Members according to a Plan of Allocation to be approved by the Court and further described below.

In addition, the Settlement provides that no later than five years from the effective date of the Settlement Agreement, Defendants will utilize the services of an independent consultant to assist with a request for proposal, fee benchmarking study, or other comparative analysis to ensure that the Plan's recordkeeping fees remain competitive.

Statement of Attorneys' Fees and Costs, Administrative Expenses, and Class Representative Compensation Sought in the Class Action

Class Counsel has devoted substantial time and effort to investigating the facts, prosecuting the lawsuit, reviewing documents obtained from Defendants, and negotiating the Settlement. During that time, they also have advanced costs necessary to pursue the case. Class Counsel took the risk of litigation and have not been paid for any of their time or for any of these costs throughout the time this case has been pending.

Class Counsel will apply to the Court for payment of Attorneys' Fees for their work in the case. The amount of fees that Class Counsel will request will not exceed one-third of the Gross Settlement Amount ($1,366,66.67). In addition, Class Counsel also will seek to recover their litigation costs and recoverable administrative expenses associated with the Settlement. Any Attorneys' Fees and Costs and Administrative Expenses awarded by the Court will be paid from the Gross Settlement Amount. Class Counsel also will ask the Court to approve a payment, not to exceed $5,000, for each of the Class Representatives who took on the risk of litigation and committed to spend the time necessary to bring the case against the Defendants to a conclusion. Any Class Representative Compensation approved by the Court will also be paid from the Gross Settlement Amount.

A full and formal application for Attorneys' Fees and Costs, Administrative Expenses, and Class Representative Compensation will be filed with the Court on or before [DATE]. This application will be made available at [www.settlementwebsite.com]. You may also obtain a copy of this application through the Public Access to Court Electronic Records System (PACER) at http://www.pacer.gov, or by appearing in person during regular business hours at the Office of the Clerk of the United States District Court for the District of Connecticut, ABRAHAM RIBICOFF FEDERAL BUILDING, United States Courthouse, located at 450 Main Street, Hartford, Connecticut 06103.

1. Why Did I Receive This Settlement Notice?

The Settlement Administrator has caused this Notice to be sent to you because its records indicate that you may be a Former Participant Class Member. If you fall within the definition of the Settlement Class, you have a right to know about the Settlement and about all of the options available to you before the Court decides whether to give its final approval to the Settlement.

2. What Is the Class Action About?

In the Class Action, the Class Representatives claim that the Defendants failed to prudently monitor and control the Plan's recordkeeping expenses and allowed class members to be charged amounts in excess of what similarly sized plans would have paid for such services. A more complete description of what Plaintiffs allege is in the Complaint, which is available on the Settlement Website at [www.settlementwebsite.com].

The Defendants have denied and continue to deny liability as to all claims and assert that they have always acted prudently and in keeping with their fiduciary duties under ERISA by monitoring, reviewing, and evaluating the recordkeeping expenses paid by the Plan and by ensuring the Plan and Plan participants paid reasonable fees for all recordkeeping services provided to the Plan.

3. Why Is There A Settlement?

The Court has not reached a final decision as to the Class Representatives' claims. Instead, the Class Representatives and the Defendants have agreed to the Settlement. The Settlement is the product of arm's-length negotiations between the Class Representatives, the Defendants, and their counsel, who were assisted in their negotiations by a neutral, experienced mediator. The parties to the Settlement have taken into account the uncertainty, risks, and costs of litigation, and have concluded that it is desirable to settle on the terms and conditions set forth in the Settlement Agreement. The Class Representatives and Class Counsel believe that the Settlement is best for the Settlement Class. Nothing in the Settlement Agreement is an admission or concession on the Defendants' part of any fault or liability whatsoever. They have entered into the Settlement Agreement to avoid the uncertainty, expense, and burden of additional litigation.

4. What Does the Settlement Provide?

As part of the Settlement, a Gross Settlement Amount of $4,100,000 is being paid to resolve the claims in the Action. Class Members are eligible to receive a *pro rata* share of the Net Settlement Amount remaining after payment of Administrative Expenses, any Attorneys' Fees and Costs that the Court awards to Class Counsel, and any compensation that the Court awards to the Class Representatives. Allocations to Current Participants who are entitled to a distribution under the Plan of Allocation will be made into their existing accounts in the Plan. Former Participants who are entitled to a distribution will receive their distribution as a check sent to their last known address.

In addition, the Settlement provides that no later than five years from the effective date of the Settlement Agreement, Defendants will utilize the services of an independent consultant to assist

with a request for proposal, fee benchmarking study, or other comparative analysis to ensure that the Plan's recordkeeping fees remain competitive.

In exchange for the foregoing monetary and prospective relief, all Settlement Class Members and anyone claiming through them will fully release the Defendants and other Released Parties from the Released Claims, as defined in the Settlement Agreement, which is available at [www.settlementwebsite.com]. Generally, the release means that Class Members will not have the right to sue the Plans, Defendants, or related parties for conduct during the Class Period arising out of or related to the allegations in the Action.

5. How Much Will My Distribution Be?

The amount, if any, that will be allocated to you will be based upon records maintained by the Plans' recordkeeper. Calculations regarding individual distributions will be performed by the Settlement Administrator, whose determinations will be final and binding, pursuant to the Court-approved Plan of Allocation.

To receive a distribution from the Net Settlement Amount, you must either be a (1) "Current Participant" as described on page 3; or (2) a "Former Participant" as described on page 3; or (3) a Beneficiary or Alternate Payee of a person identified in (1) or (2).

There are approximately 36,000 Settlement Class Members. The Net Settlement Amount will be divided *pro rata* among Settlement Class Members (and eligible Beneficiaries and Alternate Payees) based on their Average Settlement Allocation Score in relation to other Class Members. To calculate the Average Settlement Allocation Score, the Settlement Administrator will review Class Members' account balances in the Plans for each quarter during the Class Period, and will award one point for each dollar invested in the in the Plan, at the end of each quarter. A Settlement Class Member's Average Settlement Allocation Score shall be the average of the quarterly scores during the Class Period, weighted to account for partial quarters.

A more complete description regarding the Plan of Allocation can be found in Article 6 of the Settlement Agreement, available at [www.settlementwebsite.com].

6. How Can I Receive My Distribution?

According to our records, you are a Former Participant. Therefore, you do not need to do anything to receive your share of the Net Settlement Amount. The Settlement Administrator will mail you a check for your share of the Net Settlement Amount to your last known address. You may contact the Settlement Administrator to confirm or update your mailing address. The Settlement Administrator may be contacted by phone at [telephone number] or by mail at [mailing address].

7. When Will I Receive My Distribution?

The timing of the distribution of the Net Settlement Amount is conditioned on several matters, including the Court's final approval of the Settlement and any approval becoming final and no longer subject to any appeals in any court. An appeal of the final approval order may take several years. If the Settlement is approved by the Court and there are no appeals, the Settlement

distribution likely will occur within approximately six months of the Court's Final Approval Order, unless there are unforeseen circumstances. There will be no payments under the Settlement if the Settlement Agreement is terminated.

8. Can I Get Out of The Settlement?

No. The Settlement Class has been certified for settlement purposes under Federal Rule of Civil Procedure 23(b)(1). Therefore, as a Settlement Class Member, you are bound by the Settlement (if it receives final Court approval) and any judgments or orders that are entered in the Action. If you wish to object to any part of the Settlement, you may write to Class Counsel and the Defendants' Counsel about why you object to the Settlement, as discussed below.

9. Who Represents the Settlement Class?

For purposes of the Settlement, the Court has appointed Nichols Kaster, PLLP and Garrison, Levin-Epstein, Fitzgerald & Pirotti, P.C., as Class Counsel in the Class Action. If you want to be represented by your own lawyer, you may hire one at your own expense. In addition, the Court appointed Chris Carrigan, Michael Venti, and Sylvain Yelle (the named Plaintiffs) to serve as the Class Representatives. They are also Class Members.

10. How Will the Lawyers Be Paid?

Class Counsel will file a motion for an award of Attorneys' Fees and Costs, Administrative Expenses, and Class Representative Compensation at least 30 days prior to the objection deadline. This motion will be considered at the Fairness Hearing. Class Counsel will limit their application for attorneys' fees to not more than one-third of the Gross Settlement Amount. Class Counsel also will seek to recover all actual and anticipated litigation costs and recoverable administrative expenses associated with the Settlement. In addition, Class Counsel will seek compensation for the Class Representatives of no more than $5,000 each. The Court will determine the amount of Attorneys' Fees and Costs, Administrative Expenses, and Class Representative Compensation that will be awarded, if any. Class Counsel's motion for Attorneys' Fees and Costs, Administrative Expenses, and Class Representative Compensation, will be posted on the Settlement Website at www.settlementwebsite.com, will also be available for review via the Public Access to Court Electronic Records System (PACER), at http://www.pacer.gov, and can be obtained in person during regular business hours at the Office of the Clerk of the United States District Court for the District of Connecticut, ABRAHAM RIBICOFF FEDERAL BUILDING, United States Courthouse, located at 450 Main Street, Hartford, Connecticut 06103.

11. How Do I Tell the Court If I Don't Like the Settlement?

If you are a Settlement Class Member, you can object to the Settlement by mailing a written objection to Class Counsel and to the Defendants' Counsel (as identified below) that explains why you object.

Your written objection must: (1) clearly identify the case name and number: *Chris Carrigan, et al. v. Xerox Corporation, et al.*, No. 3:21-cv-01085 (D. Conn.); (2) include your full name, current

address, and telephone number; (3) describe the basis for your objection; and (4) include your signature.

Your written objection and supporting documents must be personally delivered, or sent by U.S. mail or courier, to Class Counsel and the Defendants' Counsel as set forth below **no later than [28 days prior to Fairness Hearing]** to be considered. Class Counsel and the Defendants will have an opportunity to respond to your objection.

CLASS COUNSEL	DEFENDANTS' COUNSEL
Brock Specht Paul Lukas Grace Chanin NICHOLS KASTER, PLLP 4700 IDS Center 80 South 8th Street Minneapolis, MN 55402	Melissa Hill MORGAN, LEWIS & BOCKIUS LLP 101 Park Ave. New York, NY 10178 Jeremy Blumenfeld Jared Killeen MORGAN, LEWIS & BOCKIUS LLP 1701 Market Street Philadelphia, PA 19103 Michael D'Agostino MORGAN, LEWIS & BOCKIUS LLP One State St., 22nd Floor Hartford, CT 06103

12. When and Where Will the Court Decide Whether to Approve the Settlement?

The Court will hold a Fairness Hearing at **[TIME]** on **[DATE]**, at the United States District Court for the District of Connecticut, ABRAHAM RIBICOFF FEDERAL BUILDING, United States Courthouse, located at 450 Main Street, Hartford, Connecticut 06103, in Courtroom 1. At the Fairness Hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. The Court also will consider the motion for Attorneys' Fees and Costs, Administrative Expenses, and Class Representative Compensation. If there are objections, the Court will consider them then. Please note that if the Fairness Hearing is rescheduled, or if it is held by video conference or telephone, a notice will be posted on the Settlement Website at [www.settlementwebsite.com].

13. Do I Have to Attend the Fairness Hearing?

No, but you are welcome to come at your own expense. You may also make an appearance through an attorney. If you send an objection, you do not have to come to the Court to talk about it. As long as you mailed your written objection on time, the Court will consider it.

14. May I Speak at The Fairness Hearing?

Yes, but you must comply with the requirements for making an objection (described above) if you wish to object to the Settlement. If you do not comply with the requirements for making an objection, you will not be permitted to object at the Fairness Hearing.

15. What Happens If I Do Nothing at All?

If you are a "Former Participant" as described on page 3, and you do nothing, and the Settlement is finally approved, you will receive your *pro rata* share of the Net Settlement Amount via check. If you are a "Current Participant" as described on page 3, and you do nothing, you will receive your *pro rata* share of the Net Settlement Amount as a deposit to your Plan account if the Settlement is finally approved.

16. How Do I Get More Information?

If you have questions regarding the Settlement, you can visit [www.settlementwebsite.com], call [phone number], or write to the Settlement Administrator at [mailing address]. All papers filed in this lawsuit are also available for review via the Public Access to Court Electronic Records System (PACER), at http://www.pacer.gov, or by appearing in person during regular business hours at the Office of the Clerk of the United States District Court for the District of Connecticut, ABRAHAM RIBICOFF FEDERAL BUILDING, United States Courthouse, located at 450 Main Street, Hartford, Connecticut 06103. Please note that none of the Defendants nor any employees, attorneys, or representatives of Defendants may advise you regarding the Settlement or how you should proceed.

EXHIBIT 3

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

Chris Carrigan, Michael Venti, and Sylvain Yelle, individually and as representatives of a class of similarly situated persons, and on behalf of the Xerox Corporation Savings Plan **Plaintiffs,** **v.** **Xerox Corporation, the Xerox Corporation Plan Administrator Committee, and John Does 1-30** **Defendants.**	Civil Action No. 3:21-cv-01085-SVN **[Proposed] Order on Plaintiffs' Motion for Preliminary Approval of Class Action Settlement**

This litigation arose out of claims of alleged breaches of fiduciary duties in violation of the Employee Retirement Income Security Act of 1974 ("ERISA"), asserted against Defendants Xerox Corporation and the Xerox Corporation Plan Administrator Committee in connection with the management of the Xerox Corporation Savings Plan ("Plan").

Presented to the Court for preliminary approval is a settlement of the litigation as against all Defendants. The terms of the Settlement are set out in a Class Action Settlement Agreement dated December 16, 2022, executed by Class Counsel and Defendants' Counsel. Except as otherwise defined herein, all capitalized terms used herein shall have the same meaning as ascribed to them in the Settlement Agreement.

Upon reviewing the Settlement Agreement and the papers submitted in connection with the Motion for Preliminary Approval, and good cause appearing therefore,

It is hereby ORDERED as follows:

1. Preliminary Findings Regarding Proposed Settlement: The Court preliminarily finds that:

A. The proposed Settlement resulted from arm's-length negotiations by experienced and competent counsel overseen by a neutral mediator;

B. The Settlement was negotiated only after Class Counsel had received pertinent information and documents from Defendants;

C. Class Counsel and the Class Representatives have submitted declarations in support of the Settlement; and

D. Considering the relevant Second Circuit factors, the Settlement is sufficiently fair, reasonable, and adequate to warrant sending notice of the Settlement to the Settlement Class.

2. Fairness Hearing: A hearing will be held on [a date no sooner than one-hundred-thirty (130) calendar days after the date of the Preliminary Approval Order]_____, 2023, at ____ _____.m., in Courtroom XXX of the United States District Court for the District of Connecticut, before the undersigned United States Judge, to determine, among other issues:

A. Whether the Court should approve the Settlement as fair, reasonable, and adequate;

B. Whether the Court should enter the Final Approval Order, and

C. Whether the Court should approve any motion for Attorneys' Fees and Costs, Administrative Expenses, and Class Representative Compensation.

3. Settlement Administrator: The Court approves and orders that the Settlement Administrator selected through Plaintiffs' competitive bidding process will be responsible for carrying out the responsibilities set forth in the Settlement Agreement.

A. The Settlement Administrator shall be bound by the Confidentiality Order and any further non-disclosure or security protocol jointly required by the Settling Parties, set forth in writing to the Settlement Administrator.

B. The Settlement Administrator shall use the data provided by Defendants and the Plan's recordkeeper solely for the purpose of meeting its obligations as Settlement Administrator, and for no other purpose.

C. The Settling Parties shall have the right to approve a written protocol to be provided by the Settlement Administrator concerning how the Settlement Administrator will maintain, store, and dispose of information provided to it in order to ensure that reasonable and necessary precautions are taken to safeguard the privacy and security of such information.

4. Class Certification: The following Settlement Class is preliminarily certified for settlement purposes only pursuant to Fed. R. Civ. P. 23(b)(1):

> All participants and beneficiaries of the Xerox Corporation Savings Plan at any time from August 11, 2015, until January 1, 2021 (the date that the Plan's current recordkeeper took over the recordkeeping function), excluding any persons with responsibility for the Plan's administrative functions or expenses.

The Court appoints Chris Carrigan, Michael Venti, and Sylvain Yelle as representatives for the Settlement Class. Further, the Court appoints Nichols Kaster, PLLP and Garrison, Levin-Epstein, Fitzgerald & Pirotti, P.C. as counsel for the Settlement Class.

5. Class Notice: The Settling Parties have presented to the Court the Settlement Notices, which are the proposed forms of notice regarding the Settlement for mailing to Class Members.

A. The Court approves the text of the Settlement Notices and finds that the proposed forms and content therein fairly and adequately:

i. Summarize the claims asserted;

ii. Describe the terms and effect of the Settlement;

iii. Notify the Settlement Class that Class Counsel will seek compensation from the Qualified Settlement Fund for Attorneys' Fees and Costs, Administrative Expenses, and Class Representative Compensation;

iv. Give notice to the Settlement Class of the time and place of the Fairness Hearing, and Class Members' right to appear; and

v. Describe how the recipients of the Class Notice may object to the Settlement, or any requested Attorneys' Fees and Costs, Administrative Expenses, or Class Representative Compensation.

B. Under Rules 23(c)(2) and (e) of the Federal Rules of Civil Procedure, the contents of the Settlement Notices and mailing the Settlement Notices constitutes the best notice practicable under the circumstances, provides due and sufficient notice of the Fairness Hearing and of the rights of all Class Members, and complies fully with the requirements of Federal Rule of Civil Procedure 23 and due process.

C. The Settlement Administrator shall send by first class mail the appropriate Settlement Notice to each Class Member within forty-five (45) calendar days of the date of this Order, as specified in the Settlement Agreement, based on data provided by the Plan's recordkeeper. The Settlement Notices shall be mailed by first-class mail, postage prepaid, to the last known address of each Class Member provided by the Plan's recordkeeper (or its designee), unless an updated address is obtained by the Settlement Administrator through its efforts to verify the last known addresses provided by the Plan's recordkeeper (or its designee). The Settlement

Administrator shall use commercially reasonable efforts to locate any Class Member whose Settlement Notice is returned and re-mail such documents one additional time.

D. On or before the date that Settlement Notices are sent to the Settlement Class, the Settlement Administrator shall establish a Settlement Website and telephone support line as provided by the Settlement Agreement. The Settlement Administrator shall post a copy of the Settlement Notices on the Settlement Website.

6. Preliminary Injunction: Each Class Member and their respective heirs, beneficiaries, executors, administrators, estates, past and present partners, officers, directors, agents, attorneys, predecessors, successors, and assigns, is preliminarily enjoined from suing Defendants, the Plan, or the Released Parties in any action or proceeding alleging any of the Released Claims, even if any Class Member may thereafter discover facts in addition to or different from those which the Class Members or Class Counsel now know or believe to be true with respect to the Action and the Released Claims. Further, pending final determination of whether the Settlement Agreement should be approved, no Class Member may directly, through representatives, or in any other capacity, commence any action or proceeding in any court or tribunal asserting any of the Released Claims against the Defendants, the Plan, or the Released Parties.

7. Objections to Settlement: Any objections to any aspect of the Settlement shall be heard, and any papers submitted in support of said objections shall be considered, by the Court at the Fairness Hearing if they have been timely sent to Class Counsel and Defendants' Counsel. To be timely, the objection and any supporting documents must be sent to Class Counsel and Defendants' Counsel at least twenty-eight (28) calendar days prior to the scheduled Fairness Hearing.

8. Responses to Objections and Final Approval Motion: Any party may file a response to an objection by a Class Member at least fourteen (14) calendar days before the Fairness Hearing, and Plaintiffs shall file their Final Approval Motion at least fourteen (14) calendar days before the Fairness Hearing.

9. Continuance of Hearing: The Court may adjourn, modify, or continue the Fairness Hearing without further direct notice to the Class Members, other than by notice via the Court's docket or the Settlement Website.

10. CAFA Notices: The Court approves the form of the CAFA notices attached as Exhibit 5 to the Settlement Agreement and orders that upon the mailing of the CAFA notices, Defendants shall have fulfilled their obligations under the Class Action Fairness Act, 28 U.S.C. §§ 1711, *et seq*.

IT IS SO ORDERED.

Dated: _____ _____

Hon. Sarala V. Nagala
United States District Judge

EXHIBIT 4

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

Chris Carrigan, Michael Venti, and Sylvain Yelle, individually and as representatives of a class of similarly situated persons, and on behalf of the Xerox Corporation Savings Plan **Plaintiffs,** **v.** **Xerox Corporation, the Xerox Corporation Plan Administrator Committee, and John Does 1-30** **Defendants.**	Civil Action No. 3:21-cv-01085-SVN **[Proposed] Order on Plaintiffs' Motion for Final Approval of Class Action Settlement**

Wherefore, this ___ day of _____ 2023, upon consideration of Plaintiffs' Motion for Final Approval of the Class Action Settlement Agreement dated December 16, 2022, in the above matter, the Court hereby orders and adjudges as follows:

1. For purposes of this Final Approval Order and Judgment, except as otherwise defined herein, all capitalized terms used herein shall have the same meaning as are ascribed to them in the Settlement Agreement.

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

3. The following Settlement Class is certified under Rule 23(b)(1) of the Federal Rules of Civil Procedure for purposes of the Settlement only:

> All participants and beneficiaries of the Xerox Corporation Savings Plan at any time from August 11, 2015, until January 1, 2021 (the date that the Plan's current

recordkeeper took over the recordkeeping function), excluding any persons with responsibility for the Plan's administrative functions or expenses.

The Court finds that this Settlement Class meets all the requirements of Rule 23(a) and 23(b)(1).

4. Under Rules 23(e)(1)(A) and (C), the Court hereby approves and confirms the Settlement and the terms therein as being fair, reasonable, and adequate to the Plan and the Class Members.

5. The Court hereby approves the Settlement and orders that the Settling Parties take all necessary steps to effectuate the terms of the Settlement Agreement.

6. In accordance with the Court's Orders, and as reflected in the information from the Settlement Administrator, [Name of Settlement Administrator], the Settlement Notices were timely distributed by first-class mail to all Class Members who could be identified with reasonable effort. The Settlement Administrator searched for updated address information for those returned as undeliverable, and re-mailed notices to those Class Members. In addition, under the Class Action Fairness Act, 28 U.S.C. § 1711, *et seq.* ("CAFA"), notice was provided to the Attorneys General for each of the states in which a Class Member resides and the Attorney General of the United States.

7. The form and methods of notifying the Class Members of the terms and conditions of the proposed Settlement Agreement met the requirements of Rules 23(c)(2) and (e), and due process, and constituted the best notice practicable under the circumstances; and due and sufficient notices of the Fairness Hearing and the rights of all Class Members have been provided to all people, powers and entities entitled thereto, consistent with Rule 23 and due process.

8. The Court finds that the Settlement is fair, reasonable, and adequate, based on the following findings of fact, conclusions of law, and determinations of mixed fact/law questions:

A. The Settlement resulted from arm's-length negotiations by experienced and competent counsel overseen by a neutral mediator;

B. The Settlement was negotiated only after Class Counsel had received pertinent information and documents from Defendants;

C. The Settling Parties were well positioned to evaluate the value of the Class Action;

D. If the Settlement had not been achieved, both Plaintiffs and Defendants faced the expense, risk, and uncertainty of extended litigation;

E. The amount of the Settlement ($4,100,000.00) is fair, reasonable, and adequate. The Settlement amount is within the range of reasonable settlements that would have been appropriate in this case, based on the nature of the claims, the potential recovery, the risks of litigation, and settlements that have been approved in other similar cases;

F. The Class Representatives and Class Counsel have concluded that the Settlement Agreement is fair, reasonable and adequate;

G. Class Members had the opportunity to be heard on all issues regarding the Settlement and release of claims by submitting objections to the Settlement Agreement to the Court;

H. There were no objections to the Settlement; and

I. The Settlement was reviewed by an independent fiduciary, Gallagher Fiduciary Advisors, LLC, who has approved the Settlement.

9. The Motion for Final Approval of the Settlement Agreement is hereby GRANTED, the Settlement of the Class Action is APPROVED as fair, reasonable and adequate to the Plan and the Settlement Class.

10. This Action and all Released Claims asserted therein, whether asserted by the Class Representatives on their own behalf or on behalf of the Class Members, or derivatively to secure relief for the Plan, are dismissed with prejudice, without costs to any of the Settling Parties other than as provided for in the Settlement Agreement.

11. That the Plan, the Class Representatives, and each Class Member and their respective heirs, beneficiaries, executors, administrators, estates, past and present partners, officers, directors, agents, attorneys, predecessors, successors, and assigns, shall be (1) conclusively deemed to have, and by operation of the Effective Approval Order shall have, fully, finally, and forever settled, released, relinquished, waived, and discharged Defendants, the Plan, and the Released Parties from all Released Claims, and (2) barred and enjoined from suing Defendants, the Plan, or the Released Parties in any action or proceeding alleging any of the Released Claims, even if any Class Member may thereafter discover facts in addition to or different from those which the Class Member or Class Counsel now know or believe to be true with respect to the Action and the Released Claims, whether or not a such Class Members actually received the Settlement Notices, whether or not such Class Members have filed an objection to the Settlement, and whether or not the objections or claims for distribution of such Class Members have been approved or allowed.

12. The Plan and each Class Member (and their respective heirs, beneficiaries, executors, administrators, estates, past and present partners, officers, directors, agents, attorneys, predecessors, successors, and assigns) on behalf of the Plan shall be (1) conclusively deemed to have, and by operation of the Effective Approval Order shall have, fully, finally, and forever settled, released, relinquished, waived, and discharged Defendants, the Plan, and the Released Parties from all Released Claims, and (2) barred and enjoined from suing Defendants, the Plan,

or the Released Parties in any action or proceeding alleging any of the Released Claims, even if any Class Member may thereafter discover facts in addition to or different from those which the Class Member or Class Counsel now know or believe to be true with respect to the Action and the Released Claims, whether or not a such Class Members actually received the Settlement Notices, whether or not such Class Members have filed an objection to the Settlement, and whether or not the objections or claims for distribution of such Class Members have been approved or allowed.

13. The Class Representatives and each Class Member shall release Defendants, Defendants' Counsel, Class Counsel, the Released Parties, and the Plan from any claims, liabilities, and attorneys' fees and expenses arising from the allocation of the Gross Settlement Amount or Net Settlement Amount and from all tax liability and associated penalties and interest as well as related attorneys' fees and expenses.

14. The Court finds that it has subject matter jurisdiction over the claims herein and personal jurisdiction over the Defendants and the Class Members pursuant to the provisions of ERISA, and expressly retains that jurisdiction for purposes of enforcing and interpreting this Final Approval Order and/or the Settlement Agreement.

15. The Court finds that all applicable CAFA requirements have been satisfied.

16. The Settlement Administrator shall have final authority to determine the share of the Net Settlement Amount to be allocated to each eligible Current Participant and Former Participant under the Plan of Allocation approved by the Court.

17. With respect to payments or distributions to Former Participants, all questions not resolved by the Settlement Agreement shall be resolved by the Settlement Administrator in its sole and exclusive discretion.

18. Within twenty-eight (28) calendar days following the issuance of all Settlement payments to Class Members as provided by the Plan of Allocation approved by the Court, the Settlement Administrator shall prepare and provide to Class Counsel and Defendants' Counsel a list of each person who received a Settlement payment or contribution from the Qualified Settlement Fund and the amount of such payment or contribution.

19. Upon the Effective Date of this Order under the Settlement Agreement, all Settling Parties, the Settlement Class, and the Plan shall be bound by the Settlement Agreement and by this Final Approval Order.

IT IS SO ORDERED.

Dated: _____

_____
Hon. Sarala V. Nagala
United States District Judge

EXHIBIT 5

[Settlement Administrator Letterhead]

_____, 2022

«Name1»
«Name2»
«Address1»
«Address2»
«Address3»
«City», «St» «Zip»

Re: *Carrigan, et al. v. Xerox Corporation, et al.*
Case No. 3:21-cv-01085 (D. Conn.)
Notice Pursuant to 28 U.S.C. § 1715

Dear Sir or Madam:

[_____], settlement administrator, on behalf of Defendants Xerox Corporation and the Xerox Corporation Plan Administrator Committee ("Defendants") in the above-captioned action (the "*Carrigan* Action"), hereby provides your office with this notice under the provisions of the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1711, et seq. Under 28 U.S.C. § 1715, this notice is to inform you of a proposed class action settlement for the *Carrigan* Action, a lawsuit currently pending in the United States District Court for the District of Connecticut, in which Plaintiffs alleged that Defendants breached their fiduciary duties under the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §1001, et seq., in connection to the management of the Xerox Corporation Savings Plan ("Plan").

Plaintiffs filed a motion with the United States District Court for the District of Connecticut on December 16, 2022, requesting preliminary approval of the proposed settlement. The court has not granted preliminary approval of the proposed settlement yet, nor has it scheduled a hearing for preliminary approval or final approval of the settlement.

In accordance with 28 U.S.C. § 1715(b), Defendants state as follows:

(1) The operative Complaint and any materials filed with the Complaint.

The operative complaint in the *Carrigan* Action, as well as all attachments thereto, is contained on the enclosed CD in the folder labeled Tab 1. In addition, the complaint and all other pleadings and records filed in the *Carrigan* Action are available on the internet through the federal government's PACER service at https://ecf.ctd.uscourts.gov/cgi-bin/login.pl. Additional information about the PACER service may be found at https://www.pacer.gov.

(2) Notice of any scheduled judicial hearing in the class action.

As of the time and date of the transmittal of this notice, no judicial hearings are presently scheduled. Plaintiffs in the *Carrigan* Action filed an unopposed motion for preliminary approval of the proposed class action settlement on December 16, 2022. The court has not yet acted on the motion or set a hearing date. If any hearings are scheduled,

information concerning the date, time, and location of those hearings will be available through PACER and can be accessed as described in section (1) above.

(3) Any proposed or final notification to class members.

The proposed forms of direct notice to class members, which provide notice of the proposed settlement and each class member's right to object to the class action, are included on the enclosed CD in the folder labeled Tab 2. The court has not yet approved the proposed forms of notice. Because the proposed settlement class would likely be certified under Rule 23(b)(1) of the Federal Rules of Civil Procedure, the notices explain that there is no right to request exclusion from the settlement.

(4) Any proposed or final class action settlement.

The parties' proposed class action settlement agreement dated as of December 16, 2022 ("Settlement Agreement"), is included on the enclosed CD in the folder labeled Tab 3. The court has not yet granted preliminary or final approval of the settlement.

(5) Any settlement or other agreement contemporaneously made between class counsel and counsel for Defendants.

There are no additional agreements between class counsel and counsel for Defendants, other than those reflected in the Settlement Agreement.

(6) A final judgment or notice of dismissal.

No final judgment or notice of dismissal has yet been entered in the *Carrigan* Action. Upon entry, a copy of the Final Order and Judgment will be available through PACER and can be accessed as described in section (1) above.

(7) Names of class members who reside in each state and the estimated proportionate share of the claims of such members to the entire settlement.

A list of the names of class members who reside in each state, based on the last mailing address known to Defendants, is included in Tab 4 of the enclosed CD. The specific settlement allocation to each class member will be determined by the Settlement Administrator according to a court-approved formula. As a result, we do not yet know how much each class member will receive, and it is not feasible to determine the estimated proportionate share of the claims of the class members who reside in each state to the entire settlement. Upon final approval of the court, the settlement proceeds will be distributed among the class members according to the Plan of Allocation set forth in the Settlement Agreement.

(8) Any written judicial opinion relating to the materials described in sections (3) through (6).

No written judicial opinions have been issued relating to the proposed settlement as of this time.

Inasmuch as certain documents on the enclosed CD contain confidential information, it has been encrypted and password protected. Decryption instructions and the password will be sent under separate cover.

Thank you for your attention to this matter.

Sincerely,

[Name]
[Title]

Enclosures

EXHIBIT B

JAMS® Local Solutions. Global Reach.®

David Geronemus, Esq.

JAMS Mediator, Arbitrator and Referee/Special Master

Case Manager

Christiane Catoe
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620 Eighth Avenue, 34th Floor, New York, New York 10018
CCatoe@JAMSADR.com

Biography

David Geronemus, Esq. is one of the most respected and sought after dispute resolution professionals. He has been a full-time neutral with JAMS since 1994. A former law clerk to Supreme Court Justice Potter Stewart, Mr. Geronemus has taught negotiation and alternative dispute resolution on an adjunct basis at Yale and Columbia Law Schools.

ADR Experience and Qualifications

- Mr. Geronemus has mediated disputes involving a wide variety of subject matters including environmental, asbestos, and other insurance coverage matters, contract disputes, employment law, trade secrets, libel, directors and officers liability, products liability, construction law, franchising, legal and accounting malpractice, corporate dissolution, securities law, personal injury, unfair competition, intellectual property, partnership, and other business disputes
- His extensive mediation experience includes both two-party cases and multi-party, complex

mediations

Representative Matters

- Mediated to settlement a complex insurance coverage case arising out of the sale of certain prescription drugs; case involved approximately 18 parties
- Successfully mediated a dispute between two public companies both in Chapter 11 proceedings, involving allegations of securities fraud as well as preference claims
- Facilitated settlement of numerous employment disputes ranging from disputes under executive employment agreements to discrimination claims
- Successfully mediated class actions, including a case alleging improper charges by an HMO to its members
- Successfully mediated numerous environmental insurance coverage cases, including one case that involved over 250 sites, multiple insurers and over seven hundred million dollars in estimated investigation and remediation costs
- Mediated to settlement a number of cases involving disputes arising out of the operations of closely held and family businesses
- Mediated numerous disputes arising out of commercial and financial transactions, including a multimillion dollar dispute arising out of the sale of a portfolio of mortgage servicing rights
- Mediated several disputes involving insurance coverage for asbestos liabilities. These cases have arisen in both bankruptcy and non-bankruptcy settings. One case involved two insureds and over 30 insurers.
- Successfully mediated a dispute alleging breaches of various representations and warranties in connection with the sale of a billion-dollar portfolio of home equity loans
- Mediated a dispute between an HMO and a provider organization
- Mediation of actions by bankruptcy trustees against directors and officers of failed companies
- Successful mediation of a case involving a breach of a contract to build a website

Honors, Memberships, and Professional Activities

- Recognized as Best Lawyers' New York City "Lawyer of the Year" for Mediation, 2022
- Designated with the highest level ranking (Band 1) in Mediation, *Chambers USA America's Leading Lawyers for Business*, 2016-2022
- Recognized in *Who's Who Legal* in the practice area of Mediation, 2016-2019
- Recognized as one of seven most highly regarded individuals in the U.S. of *Who's Who Legal* in the practice area of Insurance and Reinsurance, 2015
- Recognized as a Best Lawyer, ADR Category, *Best Lawyers in America*, 2007-2022
- Recognized as a *New York Super Lawyer* by *Law & Politics* every year since 2007
- Registered Mediator, United States Bankruptcy Court for the Southern District of New York

ADR Profiles

- "David Geronemus," 2018 ADR Champions, *The National Law Journal*, June, 2018

Background and Education

- Mediator, JAMS, 1994-present
- Partner, Donovan, Leisure, Newton & Irvine, Washington, D.C. and New York, 1990-1994
- Associate and Partner, Rogovin, Huge & Schiller, Washington, D.C., 1984-1989
- Law Clerk, Supreme Court Justice Potter Stewart, 1983-1984
- Law Clerk, Chief Judge Collins Seitz, U.S. Court of Appeals, 3rd Circuit, 1982-1983
- J.D., New York University Law School, 1982 (Senior Articles Editor, *N.Y.U. Law Review*; N.Y.U. Alumni Association Award; John Norton Pomeroy Prize, the Leonard M. Henkin Prize; Member, *Order of the Coif*)
- M.B.A., Columbia University Graduate School of Business, 1980 (Roswell C. McCrea Prize, Beta Gamma Sigma Honor Society)
- B.A., Wesleyan, 1975

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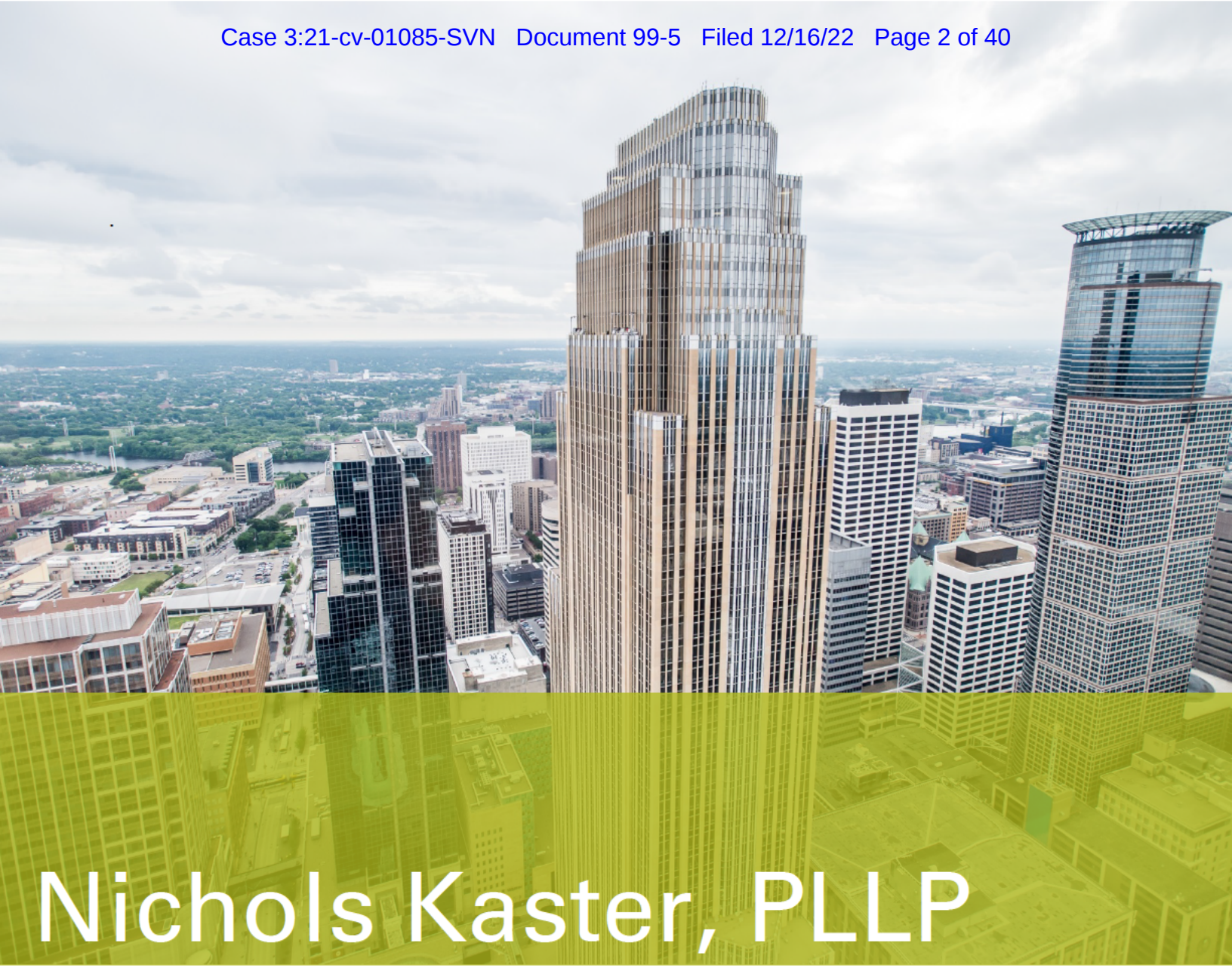
EXHIBIT C



Nichols Kaster, PLLP

Firm Resume

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Firm Overview

For more than forty-five years, Nichols Kaster has enjoyed a sterling reputation as a top employment and consumer plaintiffs' litigation firm. We have represented hundreds of thousands of employees and consumers nationwide on a variety of legal issues arising under both state and federal laws.

The Firm's National **Wage and Hour** team represents employees in class and collective actions seeking to recover unpaid wages in circumstances where employers misclassify workers or otherwise fail to compensate them for all hours worked, pursuant to minimum wage and overtime rates, or as required by contract. The Firm also represents groups of employees seeking to recover unpaid commissions and unlawfully pooled tips.

Employee Representation

-Wage & Hour Violations
-401(k) and Benefit Breaches
-Qui Tam/False Claims
-Wage Fixing
-Equal Pay Violations
-Harassment
-Discrimination
-Retaliation
-Medical leave
-Failure to Accommodate
-Federal Railway Safety Act Violations
-Breach of Contract
-Severance
-Non-Compete Agreements
-Defamation

Nichols Kaster represents workers and consumers who have endured **discrimination** and who have had their **civil rights** violated on either an individual or class-wide basis. The Firm's employment group is also dedicated to assisting individual employees in Minnesota and surrounding states with a variety of legal needs, including addressing discrimination; harassment; retaliation; accommodation and leave issues; contract, severance, and non-compete disputes; as well as defending against licensure complaints.

The Firm also assists employees and retirement plan participants in protecting their **401(k) investments and other benefits**. Nichols Kaster challenges breaches of fiduciary duty relating to excessive fees, underperforming funds, imprudently managed accounts, and failure to properly pay benefits.

Consumer Representation

-Forced-Placed Insurance
-Credit Reporting
-Improper Background Checks
-Student Loans
-Predatory Lending
-Interest Overcharges and Misapplication of Loan Payments
-Billing Practices
-Deceptive Practices
-Debt Collection Violations

Nichols Kaster is dedicated to protecting consumer rights through its National **Consumer** Class Action team. Over the years, the Firm has represented consumers with a variety of violations, primarily on a class-wide basis. The Firm led the way in forced-placed flood and hazard litigation and with claims under the Fair Credit and Reporting Act.

Nichols Kaster also represents **whistleblowers and relators** who have "blown the whistle" on illegal activity. These cases involve the

reporting of possible government fraud, mishandling of toxic substances, violations of tax or securities laws, discrimination in education, failure to provide access to public facilities, and more. Nichols Kaster represents individuals who have brought claims on behalf of the government against entities who have defrauded the government under the False Claims Act (also known as "qui tam" lawsuits).

No matter the type of claim, Nichols Kaster helps everyday people seek redress against big corporations.

Accolades

The NATIONAL TRIAL LAWYERS AND ALM have named Nichols Kaster, PLLP the Employment Rights Law Firm of The Year. According to an ALM spokesperson,

> [T]he lawyers and law firms selected this year from more than 250 submissions have demonstrated repeated success in cutting-edge work on behalf of plaintiffs over the last 15 months. They possess a solid track record of client wins over the past three to five years. The 2020 Elite Trial Lawyers finalists delivered results for clients across a wide range of cases with some of the most difficult sets of facts, very challenging circumstances, often filing uphill battles for years. Many were up against some of the most prominent defense firms on the globe… The winners stood out based on the uniqueness and importance of their cases as well as the results delivered for their clients.

The U.S. NEWS & WORLD REPORT has continued to name Nichols Kaster as a Best Law Firm® and honored individual lawyers at the Firm as Best Lawyers®, consecutively since 2012. LAW360 has listed Nichols Kaster as a top plaintiffs' employment law firm, and MINNESOTA LAWYER has declared it one of Minnesota's top 100 firms. In 2019, nine of Nichols Kaster's attorneys were named as part of the 500 leading plaintiff employment lawyers on Lawdragon.com's list of the nation's best employment lawyers. In 2019, nine of Nichols Kaster's attorneys were named Super Lawyers® and eight Rising Stars by SUPER LAWYERS MAGAZINE. Steve Smith and Matthew Frank were announced as the 2017 Minnesota Lawyers of the Year. On Martindale Hubbell, the firm has a 5 out of 5 peer rating.

Together the National Law Journal and LAW.COM named Nichols Kaster a top 50 firm for Elite Trial Lawyers "that are doing the most creative and substantial work on the plaintiffs side." *Introducing America's Elite Trial Lawyers*, THE NAT'L LAW J. (Sept. 8, 2014).

In 2009, Nichols Kaster was ranked as one of the top ten busiest FLSA firms in the country by Litigation Almanac 360, which conducted a study of over 500,000 federal cases and received input from more than 200 law firms. Nichols Kaster was the only plaintiffs' firm in the top ten.

Judicial Recognition

Nichols Kaster provides employees and consumers with significant results, including substantial settlements, trial victories, and ground-breaking determinations on important legal questions. The Firm's attorneys fight hard for their clients, vigorously litigating complex actions against top national defense firms. Courts have recognized Nichols Kaster's successes and extensive experience and have appointed the Firm as lead or co-lead counsel on hundreds of class and collective actions. Below are just a few examples of this recognition.

"...Class Counsel is one of the relatively few firms in the country that has the experience and skills necessary to successfully litigate a complex ERISA action such as this."

The Honorable Judge Michael H. Watson
Karpik v. Huntington Bancshares Inc., No. 2:17-cv-1153 (S.D. Ohio, Feb. 18, 2021).

And it's not inappropriate to say, at this juncture, how deeply appreciative the Court is of the lawyering here, and I'm appreciative of the lawyering in two most important respects. One, there's been outstanding advocacy here. I have, um, wrestled with the matters in dispute, found them most challenging, and counsel has behaved throughout with both high ethics and zeal and true advocacy on the part of their clients, and I don't want that to go without saying I appreciate it. At the same time, and equally important, we sometimes lose track in advocacy of the desirability of resolving differences. You people have proved yourselves skilled negotiators willing to compromise, realistic, and the Court honors that as well.

The Honorable Judge William G. Young
Moitoso v. FMR, LLC, et al.., No. 1:18-cv-12122-WGY (USDC MA., Jan. 12, 2021).

Class Counsel displayed skill and determination. It is unsurprising that only a few firms might invest the considerable resources to ERISA class actions such as this, which require considerable resources and hold uncertain potential for recovery.

The Honorable Judge Catherine C. Eagles
Sims v. BB&T Corp., No. 1:15-cv-841 (M.D.N.C., May 5, 2019).

[C]lass counsel achieved a strong result through skillful litigation and settlement negotiation. After filing a detailed complaint and amended complaint, working through a substantial discovery process, litigating a motion to dismiss, and undergoing mediation and settlement discussions, class counsel obtained a settlement of $14 million and a mandatory request for proposal that will help ensure quality management of class members' 401(k) funds down the road. Regarding quality of representation, the litigation and settlement appear by all measures to be the work of skillful and experienced attorneys with significant expertise in the ERISA context.

The Honorable Judge Nathanael M. Cousins
Johnson v. Fujitsu Tech. & Bus. of Am., Inc., No. 5:16-cv-03698 (N.D. Cal., May 11, 2018).

The high quality of Nichols Kaster's representation strongly supports approval of the requested fees. The Court has previously commended counsel for their excellent lawyering. The point is worth reiterating here. Nichols Kaster was energetic, effective, and creative throughout this long litigation. The Court found Nichols Kaster's briefs and arguments first-rate. And the documents and deposition transcripts which the Court reviewed in the course of resolving motions revealed the firm's far-sighted and strategic approach to discovery . . . Further, unlike in many class actions, plaintiffs' counsel did not build their case by piggybacking on regulatory investigation or settlement . . . The lawyers at Nichols Kaster can genuinely claim to have been the authors of their clients' success.

The Honorable Judge Paul A. Engelmayer
Hart v. RCI Hospitali Holdings, Inc., No. 09 Civ. 3043, 2015 WL 5577713 (S.D.N.Y. Sept. 22, 2015)

I want to commend all of you for the excellent work that you did in conjunction with the special master and the court's technical advisor . . . I'm satisfied that this settlement is fair and reasonable given all the risk and expense of further litigation . . . .

Honorable Judge Kathryn Vratil
Sibley v. Sprint Nextel Corp., No. 08-cv-2063 (D. Kan. Dec. 20, 2018)

[T]he attorneys at Nichols Kaster, PLLP are qualified, experienced, and competent, as evidenced by their background in litigating class-action cases involving FCRA

violations. . . . . As noted above, Plaintiffs' attorneys are experienced and skilled consumer class action litigators who achieved a favorable result for the Settlement Classes.

The Honorable Chief Judge Deborah Chasanow
Singleton v. Domino's Pizza, LLC, 976 F. Supp. 2d 665 (D. Md. 2013)

[T]his case's early resolution can partly be attributed to counsel's experience representing thousands of employees in wage and hour cases for thirty years, particularly within the oil and gas industry.

The Honorable Judge Dale Drozd
McCulloch v. Baker Hughes Inteq Drilling Fluids, Inc., No. 1:16-cv-00157 (E.D. Cal. Nov. 2, 2017)

Plaintiffs retained counsel with significant experience in prosecuting force-placed insurance cases, and other courts in this district have appointed them class counsel in force-placed insurance cases . . . Counsel have worked vigorously to identify and investigate the claims in this case, and, as this litigation has revealed, understand the applicable law and have represented their clients vigorously and effectively.

The Honorable Magistrate Judge Laurel Beeler
Ellsworth v. U.S. Bank, N.A., No. C 12-02506, 2014 WL 2734953 (N.D. Cal. June 13, 2014)

Thank you for all of your good work here. I know that it was really an extraordinarily complex case, and so well done.

The Honorable Judge Kathryn Vratil
Harlow v. Sprint Nextel Corp., No. 08-2222 (D. Kan. Dec. 10, 2018)

[Nichols Kaster has] considerable experience in litigating wage and hour class and collective actions.

The award . . . follows efficient effort on the part of Class Counsel to achieve a sizeable recovery for the Class Members.

The Honorable Magistrate Judge Katherine Menendez
Allen v. All Temporaries, Inc., No. 16:cv-04409 (D. Minn. Feb. 14, 2018)

[T]he quality of representation, as evidenced by the substantial recovery and the qualifications of the attorneys, is high. As then District Judge Gerard E. Lynch recognized, Nichols Kaster is "a reputable plaintiff-side employment litigation boutique with a nationwide practice and special expertise prosecuting FLSA cases."

The Honorable Judge Sidney H. Stein
Febus v. Guardian 1st Funding Grp., LLC, 870 F. Supp. 2d 337 (S.D.N.Y. 2012)

[T]his court finds that counsel possess more than sufficient experience to represent Plaintiffs fairly and adequately in reaching a fair and equitable settlement in this FLSA collective action . . . The parties are represented by competent and reputable counsel.

The Honorable Judge Tony N. Leung
Mayfield-Dillard v. Direct Home Health Care, No. 1:16-cv-3489 (D. Minn., Dec. 18, 2017)

I think it was just some very efficient and good work on the part of the plaintiffs' attorney that brought you to the point [of settlement]."

The Honorable Judge Josephine L. Staton
Urakhchin v. Allianz Asset Mgm't of Am., L.P., No. 8:15-cv-01614 (C.D. Cal. July 27, 2018)

Counsel's experience in vigorously litigating class/collective wage and hour actions, plus their experience with this industry were essential in obtaining this favorable and efficient result.

The Honorable Magistrate Judge Jonathon E. Hawley
Woods v. Club Cabaret, Inc., 1:15-cv-01213, 2017 WL 4054523 (C.D. IL, May, 17, 2017)

The settlement was the result of arm's-length negotiations between experienced counsel. Class Counsel is well known by this Court for their expertise in wage and hour litigation.

The Honorable Judge Michael J. Davis
Burch v. Qwest Commc'ns Intl., No. 06-03523 (D. Minn. Sept. 14, 2012)

I want to say that both sides here have performed at an admirable level. And I wish that the lawyers of all cases would perform at your level. I say this to both of you, because you have you have been of assistance to the Court.

The Honorable Judge William Alsup
Hofstetter v. Chase Home Fin., LLC, No. 10-01313 (N.D. Cal. Nov. 7, 2011) (transcript)

The Court finds that counsel is competent and capable of exercising all responsibilities as Class Counsel for the Settlement Class.

The Honorable Judge Richard H. Kyle
Bible v. Gen. Revenue Corp., 12-CV-1236 (D. Minn. Jan. 7, 2014)

Over the past two years, Class Counsel has been active in all stages of litigation and has particularly benefitted Plaintiffs through capable handling of motion practice. For example, Plaintiffs obtained summary judgment on a key issue involving the Morillion doctrine and defeated summary judgment on Defendants' de minimis defense.

The Honorable Judge Virginia A. Phillips
Cervantez v. Celestica Corp., No. 07-729, 2010 WL 11465133, *7 (C.D. Cal. Oct. 29, 2010)

[T]he combined experience of Plaintiffs' counsel as well as the fact that employment law, particularly the representation of employees, forms a large part of both the firm and counsel's practice persuades this Court that the law firm of Nichols Kaster, PLLP, and its attorneys Steven Andrew Smith and Anna P. Prakash will more than adequately protect the interests of the Class Members.

The Honorable Magistrate Judge Tony N. Leung
Fearn v. Blazin' Beier Ranch, Inc., No. 11-743 (D. Minn. Jan. 30, 2012)

Plaintiffs have shown good cause under Rule 16(b) because Plaintiffs' new counsel has shown the necessary diligence. Plaintiffs brought on Nichols Kaster, an experienced

> *employment law firm of high repute as lead counsel in May 2012. Since that time, Plaintiffs have made a concerted effort to comply with this Court's orders and deadlines.*

The Honorable Magistrate Judge Tony N. Leung
Alvarez v. Diversified Main. Sys., Inc., No. 11-3106 (D. Minn. Aug. 21, 2012)

> *Plaintiff's counsel are qualified, experienced attorneys that are fully capable of conducting this class action litigation . . . they are highly qualified, knowledgeable attorneys that are willing to invest the resources necessary to fully prosecute this case.*

The Honorable Judge Gary Larson
Karl v. Uptown Drink, LLC, No. 27-CV-10-1926 (Minn. Dist. Ct. Nov. 17, 2010)

> *Plaintiffs' Counsel are qualified attorneys with extensive experience in class action and wage and hour litigation and are hereby appointed as Class Counsel.*

The Honorable Judge Susan Richard Nelson of the U.S.D.C. D. Minn.:
Alvarez v. Diversified Main. Sys., Inc., No. 11-3106 (D. Minn. Feb. 14, 2013) (appointing class counsel and preliminarily certifying the class for settlement purposes).

> *However, the difficulty of the legal issues involved [and] the skill and experience of Plaintiffs' counsel in FLSA cases . . . make an enhancement of the lodestar amount appropriate in this case.*

The Honorable Judge Thomas D. Schroeder
Latham v. Branch Banking & Trust Co., No. 1:12-cv-00007, 2014 WL 464236 (M.D.N.C. Jan. 14, 2014)

> *The Court must consider the work counsel has done in identifying or investigating potential claims in the actions, counsels' experience in handling class actions and other complex litigation and claims of the type asserted in the present action, counsels' knowledge of the applicable law, and the resources counsel will commit to representing the class. Fed.R.Civ.P. 23(g)(1)(C). After reviewing the record, the Court is satisfied that the firms of Nichols Kaster, PLLP and Stueve Siegel Hanson LLP satisfy these criteria and will adequately represent the interests of the class as counsel.*

The Honorable Judge Kathryn Vratil

Sibley v. Sprint Nextel Corp., 254 F.R.D. 662, 677 (D. Kan. 2008)

> *The Arbitrator also notes that the briefs submitted by Claimant's counsel and the performance at the hearing by Claimant's counsel were of a very high quality.*

Arbitrator Joel Grossman, Esq.
Green v. CashCall, Inc., JAMS Arbitration No. 1200047225 (JAMS Aug. 22, 2014)

> *Plaintiffs' counsel are adequate legal representatives for the class. They have done work identifying and investigating potential claims, have handled class actions in the past, know the applicable law, and have the resources necessary to represent the class. The class will be fairly and adequately represented.*

The Honorable Judge Susan M. Robiner
Spar v. Cedar Towing & Auction, Inc., No. 27-CV-411-24993 (Minn. Dist. Ct. Oct. 16, 2012)

> *[Defendant] doesn't question whether Plaintiffs are represented by qualified and competent counsel, and it's obvious that they are. Plaintiffs' are represented by a national law firm, Nichols Kaster, that specializes in employment and class action law.*

The Honorable Judge Larry Alan Burns
Norris-Wilson v. Delta-T Grp., Inc., 270 F.R.D. 596 (S.D. Cal. 2010)

Notable Litigation Results

| Settlement Results

In *Moitoso v. FMR LLC*, 1:18-cv-12122 (D. Mass. Jan. 22, 2021), the court granted final approval of the parties' $28.5 million settlement in a case where plaintiffs alleged the defendants breached their fiduciary duties in violation of the Employee Retirement Income Security Act ("ERISA").

In *Intravaia v. National Rural Electric Cooperative Ass'n.*, No. 1:19-cv-00973 (E.D. Va. Feb. 2, 2021), the court granted final approval of the parties' $10 million settlement in a case where plaintiffs alleged the defendants breached their fiduciary duties in violation of ERISA.

In *Karpik v. Huntington Bancshares, Inc.*, 2:17-cv-1153 (S.D. Ohio Feb. 18, 2021), the court granted final approval of the parties' $10.5 million settlement, resolving plaintiffs' claims against defendants under ERISA.

In *Bhatia v. McKinsey & Co., Inc.*, 1:19-cv-01466 (S.D.N.Y. Feb. 17, 2021), the court granted final approval of the parties' $39.5 million settlement for a class of current and former participants in the McKinsey & Company, Inc. Profit-Sharing Retirement Plan and the McKinsey & Company, Inc. Money Purchase Pension Plan.

In *Reetz v. Lowe's Companies Inc.*, 5:18-cv-00075 (W.D.N.C. September 9, 2021), the court granted final approval of the $12.5 million settlement with defendant Lowe's Companies, Inc. for a class of current and former participants in the Lowe's 401(k) Plan.

In *Baker v. John Hancock Life Insurance Co. (U.S.A.)*, 1:20-cv-10397 (D. Mass. Sept. 30, 2021), the court granted final approval of the parties' $14 million settlement in a case where plaintiffs alleged the defendants breached their fiduciary duties in violation of ERISA.

In *Bowers v. BB&T Corp.*, No. 1:15-cv-00732 (M.D.N.C. May 6, 2019), the court granted final approval of the parties' $24 million settlement in a case where plaintiffs alleged the defendants breached their fiduciary duties in violation of ERISA.

In *Moreno v. Deutsche Bank Americas Holding Corp.*, 1:15-cv-09936 (S.D.N.Y. March 1, 2019), the court granted final approval of the parties' $21.9 million settlement in a case where plaintiffs alleged the defendants breached their fiduciary duties in violation of ERISA.

In *Sibley v. Sprint Nextel Corp.*, No. 08-cv-2063 (D. Kan. Dec. 20, 2018), the court granted final approval of a commissions settlement for retail store sales employees totaling $30.5 million.

In *Harlow v. Sprint Nextel Corp.*, No. 08-2222 (D. Kan. Dec. 10, 2018), the court granted final approval of a commissions settlement of $3,650,000 for business channel sales employees.

In *Urakhchin v. Allianz Asset Mgmt. of Am., L.P.*, 8:15-cv-01614 (C.D. Cal. July 30, 2018), the court granted final approval of the parties' $12 million settlement in a case where plaintiffs allege the defendants breached their fiduciary duties in violation of ERISA.

In *Johnson v. Fujitsu Technology Business of America, Inc.*, No. 5:16-cv-03698 (N.D. Cal. May 11, 2018), the court granted final approval of the parties' $14 million settlement, and approved a class of current and former participants in the Fujitsu Group Defined Contribution and 401(k) Plan

In *Vongkhamchanh v. All Temporaries Midwest, Inc.*, 17:cv-00976 (D. Minn. Apr. 27, 2018), the court approved a settlement for health care workers who would receive over 84% of their unpaid overtime wages, explaining that the Firm's "considerable experience litigating wage and hour class and collective actions, and informed opinions of the fairness of the settlement" provided support for approval of the hybrid state and federal action.

In *Main v. American Airlines, Inc.*, 4:16-cv-00473 (N.D. Tex. Feb. 21, 2018), the court granted final approval of the parties' $22 million settlement for a class of current and former participants in the American Airlines, Inc. 401(k) Plan.

In *Allen v. All Temporaries, Inc.*, No. 16:cv-04409 (D. Minn. Feb. 14, 2018), the court granted final approval of a Rule 23 class action and FLSA collective action for settlement of home health workers' overtime claims. The court noted that "Class Members will recover over 99% of their unpaid overtime wages after the deduction for attorneys' fees, costs, and a class-representative service payment."

In *Mayfield-Dillard v. Direct Home Health Care.*, No. 1:16-cv-3489 (D. Minn, Dec. 18, 2017) the court approved the parties' joint motion for settlement approval finding that the settlement was a substantial benefit to the collective as the eligible individuals who accept the settlement will receive all their alleged overtime wage loss. The court found that "counsel possess more than sufficient experience to represent Plaintiffs fairly and adequately in reaching a fair and equitable settlement in this FLSA collective action" and that "[t]he parties are represented by competent and reputable counsel."

In *McCulloch v. Baker Hughes Inteq Drilling Fluids, Inc.*, No. 1:16-cv-00157 (E.D. CA, Nov. 22, 2017), the court approved the settlement finding that $3,000,000 was fair and reasonable and reflected a settlement payoff of 92%of the estimated potential value of the class members' claims. The judge commended Nichols Kaster stating, "[T]his case's early resolution can partly be attributed to counsel's experience representing thousands of employees in wage and hour cases for thirty years, particularly within the oil and gas industry."

In *Henderson v. 1400 Northside Drive, Inc.*, No. 1:13-cv-03767 (N.D. Ga. Mar. 17, 2017), the Firm achieved a $1,360,000 settlement on the eve of trial on behalf of 37 male exotic dancers who were misclassified as independent contractors and required to pay to work through the imposition of mandatory house fees, fines, and tip-outs of other workers.

In *Vaughan v. M-Enterm't Props., LLC*, No. 1:14-CV-914 (N.D. Ga. May 16, 2017), the court approved a $1,100,000 settlement a week before trial for 28 female exotic dancers who the Court previously found were misclassified as independent contractors and were required to pay to work through fines, fees, and tip-outs to other workers.

In *Febus v. Guardian First Funding Group, LLC*, 90 F. Supp. 3d 240 (S.D.N.Y. Mar. 4, 2015), plaintiffs brought a motion to enforce a wage and hour settlement from which one of the individual defendants defaulted. The court ordered the defendant pay the amount due, imposed an additional thirty percent penalty on the amount due, and awarded interest. The court noted that Nichols Kaster had been "attempting, in vain, to collect," and emphasized that defendant "cannot avoid his contractual obligations because he has decided that the settlement terms no longer suit his interests."

In *Hart v. Rick's Cabaret Int'l, Inc.*, No. 09 Civ. 3043, 2015 WL 5577713 (S.D.N.Y. Sept. 22, 2015). the court granted final approval of a class-wide $15,000,000 gross settlement, finding the settlement to be fair, reasonable, and adequate and further awarding plaintiffs' counsel's attorneys' fees, expenses, and service awards to the named plaintiffs and discovery participants.

In the consolidated lawsuits of *Casey v. Citibank, N.A.*, No. 5:12-cv-0820 (N.D.N.Y. Aug. 21, 2014) and *Coonan v. Citibank, N.A.*, No. 1:13-cv-00353, 2014 WL 4120599 (N.D.N.Y. Aug. 21, 2014), the court granted final approval of an approximately $110,000,000 settlement on behalf of settlement classes who were force-placed with flood or hazard insurance by Citibank, N.A. The settlement also provides substantial injunctive relief, forbidding Citibank and its affiliates from accepting commissions or any other form of compensation in connection with force-placed insurance for a period of six years, places limits on the amount of insurance coverage that Citibank may require borrowers to maintain, and requires Citibank to offer class members the opportunity to reduce their flood insurance coverage if Citibank had increased their coverage amount to an amount in excess of the amount required under federal law. The court found the settlement to be "fair, reasonable, and adequate, in the best interests of the Settlement Classes" and overruled nine objections.

In *Bible v. General Revenue Corp.*, No. 12-cv-01236 RHK (D. Minn. June 27, 2014), the court granted final approval of a $1,250,000 settlement on behalf of approximately 134,000 class members, more than double the statutory cap for a Fair Debt Collection Practices Act class action.

In *Farmer v. Bank of America, N.A.*, No. 5:11-cv-00935 (W.D. Tex. Oct. 18, 2013), the court granted final approval of the parties' multi-million-dollar settlement with significant prospective injunctive relief, finally certifying a class of 25,000 Texas mortgagors who had been sent letters requesting proof of hazard insurance in violation of the language of their deeds of trust, and appointing Nichols Kaster as class counsel.

In *Singleton v. Domino's Pizza, LLC*, No. 8:11-cv-01823 (D. Md. Oct. 2, 2013), the court approved the parties' $2,500,000 million settlement for a class of over 50,000 under the Fair Credit Reporting Act in a case where plaintiffs alleged that the defendant employer had improperly procured consumer

reports on employees and applicants and had failed to comply with the pre-adverse action notice requirements of the Act.

In *Ulbrich v. GMAC Mortgage*, No. 11-CIV-62424, 2013 WL 8692404 (S.D. Fla. May 10, 2013), the court granted final settlement approval and appointed Nichols Kaster as class counsel for a 2,000+ nationwide class. The case involved claims against GMAC Mortgage, LLC and Balboa Insurance Services, Inc. relating to force-placed wind insurance.

In *Eldredge v. City of Saint Paul*, No. 09-2018 (D. Minn. Aug. 29, 2011), plaintiff Eldredge reached a settlement of his case that was the second largest paid by the City of Saint Paul in an employment lawsuit.

In *Hofstetter v. JPMorgan Chase Bank, N.A.*, No. C- 10-01313, 2011 WL 1225900 (N.D. Cal. Mar. 31, 2011), Nichols Kaster was appointed class counsel for four classes encompassing approximately 40,000 mortgagors against Chase Bank. In the same case, Nichols Kaster secured an approximately $10,000,000 settlement for the classes. *Hofstetter*, 2011 WL 5545912 (N.D. Cal. Nov. 14, 2011).

| Appellate Achievements

In *Oman v. Delta Air Lines, Inc.*, 2021 WL 351960 (9th Cir. Feb. 2, 2021) and the companion case *Ward v. United Airlines, Inc.*, 2021 WL 345578 (9th Cir. Feb. 2, 2021), the Ninth Circuit held that California's wage statement and pay timing requirements apply to flight attendants who are based at California airports, rejecting the airlines' argument that compliance with these state laws would impermissibly burden interstate commerce. This ruling followed a decision from the California Supreme Court on certified questions, which held that California' wage statement and pay timing statutes apply to interstate employees who work less than 50% of their time in any one state if the employee's base of operations is in California. *See Oman v. Delta Air Lines, Inc.*, 9 Cal. 5th 762 (2020); *Ward v. United Airlines, Inc.*, 9 Cal. 5th 732 (2020).

In *Brotherston v. Putnam Investments, LLC*, 907 F.3d 17 (1st Cir. 2018), the First Circuit reversed the district court's grant of defendants' directed verdict motion, holding that plaintiffs had met their burden of proving loss causation, and that plaintiffs' damages model constituted a viable measurement of the losses suffered by Putnam's employees as a result of defendants' fiduciary breaches. The defendant field a writ of certiorari to the U.S. Supreme Court, and in *Putnam Investments, LLC v. Brotherston*, No. 18-926, 2020 WL 129535 (U.S. Jan. 13, 2020), the Supreme Court denied defendants' petition. The case is remanded to the district court for continued trial proceedings under the First Circuit's holding that the burden to prove causation is on defendants and plaintiffs presented sufficient evidence of losses to the plan as a result of defendants' mismanagement.

In *Ray v. County of Los Angeles*, 935 F.3d 703 (9th Cir. 2019), the Ninth Circuit ruled for the plaintiffs on two distinct issues. First, the Court upheld the District Court's ruling that the County of Los Angeles was not entitled to Sovereign Immunity as an arm of the state for its role in implementing the In-Home Supportive Services program for homecare workers in Los Angeles County. In so holding,

the Court declined to overturn long-standing Ninth Circuit precedent outlining the "arm of the state" doctrine, and it determined that, under the existing five-factor test, four of the factors weighed against immunity for the County. In the second part of its ruling, the Court reversed the District Court's holding regarding the effective date of Department of Labor regulations governing homecare workers employed by third parties, holding that the regulations at issue were effective January 1, 2015, despite industry challenges to the regulations that were successful at the district court level but ultimately unsuccessful on appeal.

In *Wingate v. Metropolitan Airport Commission* A19-0226 (August 19, 2019), Wingate appealed the district court's summary judgment finding in favor of Metropolitan Airport Commission (MAC) dismissing the whistleblower claim. The court of appeals reversed the district court's decision ruling the evidence presented by Wingate including his positive performance reviews, his supervisor's remarks, MAC's promotion patterns, and a sergeant's similar report of retaliatory conduct support an inference that Wingate's engagement in protective activity was the true reason that MAC did not promote him to sergeant, thus raising a material fact dispute on the issue of pretext.

In *Moore v. City of New Brighton*, A18-2111, (July 29, 2019), the parties filed cross appeals where Moore appealed the district court's summary judgment decision and the city appealed the district court and the Court of Appeals subject-matter jurisdiction over the case. In a published decision, the Minnesota Court of Appeals reversed the district court's summary judgment decision, finding that the evidence showing the city maintained the administrative, home-bound leave for a period so long and so inconsistent with its purported reason for commencing the leave creates a material fact dispute as to whether the city's actions "penalized" the sergeant under the Minnesota Whistleblower Act and whether the city's reason is pretextual. Further, both the district court and the court of appeals rejected the city's jurisdictional argument and held that both courts have subject-matter jurisdiction over Moore's claim under the Minnesota Whistleblower Act.

Frost v. BNSF Railway, Co., 914 F.3d 1189 (9th Cir. 2019), was tried to a jury in Montana in December 2016. Mr. Frost alleged that he was retaliated against when BNSF terminated his employment after he reported suffering from PTSD. Mr. Frost was diagnosed with PTSD after he was nearly struck by an oncoming train while repairing a section of the track after his supervisor released track authority but failed to inform him and his fellow crew members. Pursuant to the Defendant's request, the jury was provided an honest belief instruction and a defense verdict resulted. Mr. Frost appealed, arguing that the instruction was error because it conflicted with the clear language of the Federal Railway Safety Act ("FRSA") and granted the jury a short-cut to rule for BNSF while ignoring evidence of retaliation. The Ninth Circuit agreed. In a unanimous decision, the Ninth Circuit definitively held there was no requirement that FRSA plaintiffs separately prove discriminatory intent under the FRSA's contributing factor standard, and thus the instruction was error. The Ninth Circuit reversed the trial verdict and remanded for a new trial.

In *McKeen-Chaplin v. Provident Savings Bank, FSB*, 862 F.3d 847 (9th Cir. 2017), the Ninth Circuit reversed the district court's grant of summary judgment to the defendant, finding that the defendant's

mortgage underwriters did not fit within the administrative exemption to the Fair Labor Standards Act and remanding for judgment in the plaintiffs' favor on the issue.

In *Clark v. Centene Co. of Texas, L.P.*, 656 F. App'x 688 (5th Cir. 2016) (per curiam), the U.S. Court of Appeals for the Fifth Circuit affirmed a lower court decision that appeals nurses do not fall within the administrative or professional exemptions of the FLSA overtime requirements.

In *Carter v. HealthPort Technologies, LLC*, 822 F.3d 47 (2d Cir. 2016), the U.S. Court of Appeals for the Second Circuit vacated and remanded the district court's dismissal of plaintiff's complaint, finding that plaintiff's had Article III standing to bring this action regarding the excessive fees for providing copies of plaintiffs' medical records charged by defendants, and stating that "because the complaint alleged that each name plaintiff "through [her or his] counsel" had "paid" the charges demanded for the records, and that the "ultimate expense" was borne by the plaintiffs, the complaint plausibly alleged that plaintiffs, as principals acting through their agents, had been injured by the alleged overcharges."

In *Monroe v. FTS USA, LLC*, 815 F.3d 1000 (6th Cir. 2016), the U.S. Court of Appeals for the Sixth Circuit upheld the lower court's denial of defendant's motion to decertify the collective and affirmed the trial verdict in favor of plaintiffs. The Sixth Circuit ruled that Plaintiff's presentation of representative testimony was appropriate at trial for proving liability for the collective and estimated average approach to calculating damages.

In *Bible v. United Student Aid Funds, Inc.*, 799 F.3d 633 (7th Cir. 2015), *reh'g. en banc denied*, 807 F.3d 839 (7th Cir. 2015), *cert. denied*, 136 S. Ct. 1607 (2016), the U.S. Court of Appeals for the Seventh Circuit reversed the district court's dismissal of plaintiff's complaint against a student loan guarantor for wrongfully charging collection fees on a defaulted student loan, finding that plaintiff's claims for breach of contract and for violations of the RICO Act were not preempted by the Higher Education Act, and stating that "a guaranty agency may not impose collection costs on a borrower who is in default for the first time but who has timely entered into and complied with an alternative repayment agreement."

In *Perez v. Mortgage Bankers Assoc.*, 135 S. Ct. 1199 (2015), the United States Supreme Court ruled unanimously in favor of a group of employees represented by Nichols Kaster. The Court upheld a Department of Labor interpretation granting minimum wage and overtime compensation for mortgage loan officers.

In *Karl v. Uptown Drink, LLC*, 835 N.W.2d 14 (Minn. Aug. 14, 2013), the Minnesota Supreme Court ruled that under Minnesota law, employers cannot require employees to reimburse them from their tips for items such as cash register shortages, unsigned credit card receipts, and customer walk outs. The Court also found that employees do not have to show that because of the deductions their wages fell below the minimum wage in order to prove a violation of Minn. Stat. § 181.79. In this case, the plaintiffs were over 750 employees who worked at three different bars/night clubs in Minneapolis. At a jury trial in 2011, the plaintiffs prevailed on their record-keeping and certain minimum wage claims, but lost on the unlawful deductions claims. Nichols Kaster appealed the deductions issue, and took it all

the way to the Minnesota Supreme Court, where the Court agreed with plaintiffs and instructed the lower court to enter judgment on the plaintiffs' behalf on this claim.

In *Boaz v. Federal Express Customer Info. Services, Inc.*, 725 F.3d 603 (6th Cir. 2013), the U.S. Court of Appeals for the Sixth Circuit ruled that plaintiff, a FedEx project manager who had claimed that FedEx had failed to pay her overtime wages, in violation of the Fair Labor Standards Act, and paid her less than male coworkers performing the same job, in violation of the Equal Pay Act, could pursue her overtime and gender discrimination claims. The federal laws at issue provide employees three years to file a lawsuit and FedEx had plaintiff sign an application which stated that lawsuits had to be brought within 6 months or claims were lost. The lower court had dismissed plaintiff's claims, citing the application. The Sixth Circuit unanimously sided with plaintiff, reversed the dismissal and remanded the case for trial.

In *Calderon v. GEICO General Insurance Co.*, 809 F.3d 111 (4th Cir. 2015), the U.S. Court of Appeals for the Fourth Circuit affirmed a district court's grant of affirmative summary judgment in favor of approximately one hundred current and former Security Investigators, finding that they were not covered by the administrative exemption. Specifically, the Appellate Court found that plaintiffs' primary job duty was not the performance of work directly related to general business operations.

In *Lass v. Bank of America, N.A.*, 695 F.3d 129 (1st Cir. 2012), the U.S. Court of Appeals for the First Circuit struck down the district court's ruling that had dismissed plaintiff's claims. The court found that plaintiff's allegations regarding excessive flood insurance and improper kickbacks had been properly alleged and that the case should proceed.

In *Kasten v. Saint-Gobain Performance Plastics Corp.*, 131 S. Ct. 1325 (2011), the U.S. Supreme Court found in favor of the plaintiff and held that "an oral complaint of a violation of the Fair Labor Standards Act is protected conduct under the [Act's] anti-retaliation provision." This was a huge win for employees all over the country, as the Supreme Court's decision set a new FLSA anti-retaliation standard.

| Trial Verdicts and Arbitration Awards

In *Cummings v. Chevron Corp.*, JAMS Case No. 1100086694 (June 8, 2018), an arbitrator issued a final award in the amount of $511,533.95 in favor of Donnie Cummings, a Well Site Supervisor who worked for Chevron. The arbitrator ruled that Chevron misclassified Cummings as an independent contractor and also misclassified him as exempt from the overtime provisions of state and federal law. The arbitrator awarded Cummings $284,270.15 in unpaid overtime, liquidated damages, and meal and rest period premiums, and awarded attorneys' fees and costs in the amount of $227,263.80.

In *Kaiser v. Gortmaker et al.*, No. 15-cv-01030, (District of South Dakota, Dec. 21, 2017) following a five-day trial in Aberdeen, South Dakota, a six-person jury returned a $1.2 million verdict in favor of former South Dakota Division of Criminal Investigation agent, Laura Zylstra-Kaiser. At the conclusion of trial, the jury found in favor of Kaiser on both her retaliation and gender discrimination claims. The

jury awarded Kaiser $311,812.00 in lost wages, $498,929.00 in lost retirement benefits, and $400,000.00 in emotional distress damages.

In *Clark v. Centene Company of Texas, LP*, 104 F. Supp. 3d 813 (W.D. Tex. 2015), upon the conclusion of a bench trial, the court awarded damages to a collective action of utilization review nurses. The court found that plaintiffs submitted sufficient evidence to create a just and reasonable inference as to overtime hours worked by the collective and awarded liquidated damages. This victory followed the court's order on the parties' cross-motions for summary judgment and defendant's motion for decertification last year, holding that the defendant misclassified its utilization nurses. 44 F. Supp. 3d 674 (W.D. Tex. 2014). The court ruled that plaintiffs are not exempt from the Fair Labor Standards Act's overtime laws and are thus eligible for overtime pay. The court further held that defendant's claim that each plaintiff's claim would need to be analyzed individually to determine liability and damages was without merit.

In *Rhodes v. CashCall*, JAMS Ref. No. 1200047475, *Garcia v. CashCall*, JAMS Ref. No. 1200047422, *Good v. CashCall*, JAMS Ref. No. 1200047220, and *Green v. CashCall, Inc.*, JAMS Ref. No. 1200047225 (2014), a JAMS arbitrator ruled that CashCall misclassified Rhodes and Green, loan processers, and Garcia and Good, underwriters, as exempt from the overtime requirements of California and federal law. The arbitrator awarded Rhodes $15,000 in unpaid overtime plus an additional $15,000 in liquidated damages, along with $88,179 in attorneys' fees and costs, Green was awarded $15,067.72 in damages, as well as $54,165.50 in attorneys' fees and costs. The arbitrator also awarded Garcia $10,000 in unpaid overtime plus an additional $10,000 in liquidated damages, along with $98,709 in attorneys' fees and costs, and Good was awarded $43,631 in unpaid overtime, as well as $50,627.49 in attorneys' fees and costs.

In *Walsten v. Shank Power Products Co., Inc.*, No. 19HA-CV-12-1094 (Minn. Dist. Ct., Sept. 9, 2013), a minority shareholder case, an advisory jury returned a $700,000 verdict for the plaintiff, finding for him on his claims for breach of fiduciary duty and violation of his reasonable expectation of continuing employment. The trial judge subsequently issued an order sustaining the $700,000 advisory verdict and awarding $200,000 in attorneys' fees.

In *Monroe v. FTS USA, LLC*, No. 2:08-cv-21 (W.D. Tenn. Oct. 2011), the jury found that defendants willfully violated the Fair Labor Standards Act by failing to pay nearly 300 cable installers for all overtime hours worked. The district court entered judgment with damages for the plaintiffs.

| Summary Adjudication

In *T.B. et al. v. Independent School District No. 112*, No. 19-cv-2414 (D. Minn. Aug. 1, 2022), the district court denied defendant school district's motion for summary judgment, finding that there were triable issues of material fact as to whether the district violated two students' civil rights by maintaining a racially hostile environment within its schools, failing to adequately respond to reports of race discrimination, and failing to provide school staff with proper training on how to respond to incidents of race discrimination.

In *K.R. et al. v. Duluth Edison Public Schools Academy*, No. 19-cv-00999 (D. Minn. Mar. 16, 2022), the district court denied defendant school district's motion for summary judgment, finding that there were triable issues of material fact as to whether the district violated two students' civil rights under Title VI, the Minnesota Human Rights Act, and the Fourteenth Amendment to the U.S. Constitution pursuant to Section 1983.

In *Mass v. Regents of the University of California*, No. RG17879223 (Cal. Super. Ct., Alameda Cnty. Nov. 19, 2021), the court denied defendants' motion for summary judgment, finding that there were triable issues of material fact as to whether defendants as trustee/plan administrator owed a duty to the UCRP beneficiaries and the contours of any such duty, whether defendants breached the alleged owed duty, and whether any breach by defendants caused members of the class to suffer any injury.

In *Deluca v. Farmers Ins. Exchange*, 386 F.Supp.3d 1235 (N.D. Cal. 2019), the court granted in part Plaintiffs' affirmative summary judgment motion and denied Defendant's summary judgment motion. The court found that Farmers could not satisfy either duties prong of the administrative exemption. As a result, the court determined that plaintiffs and class members were misclassified as exempt under state and federal law and are entitled to overtime premiums.

In *Rego v. Liberty Mutual Managed Care, LLC*, 367 F. Supp. 3d 849 (E.D. Wis. 2019), the court found as a matter of law that a defendant insurance company misclassified its utilization management nurses as exempt from overtime protections under the administrative and the professional exemptions. The plaintiffs primary job duty consisted of reviewing medical authorization requests against well-established guidelines to determine whether the criteria for medical necessity are satisfied. The court held in part that this work involved the performance of routine mental work, likened to inspection-type duties as opposed to bedside nursing.

In *Henderson v. 1400 Northside Drive, Inc.*, No. 1:13-cv-3767, 2016 WL 3125012 (N.D. Ga. June 3, 2016), the district court granted in part Plaintiffs' affirmative motion for summary judgment on the issues of: (1) whether the owner qualified as a joint employer, (2) the viability of the defendants' counterclaims, and (3) whether minimum wage damages includes recovery for fines, fees, and tipouts paid by the employee to the employer. In an earlier order, the court also the court granted plaintiffs' motion for partial summary judgment on the issues of: (1) the creative professional exemption, finding that defendants misclassified adult entertainers as exempt from the overtime and minimum wage requirements of the FLSA; and (2) offset, finding that defendants could not offset their minimum wage obligations with tips paid by customers to adult entertainers. 110 F. Supp. 3d 1318 (N.D. Ga. 2015).

In *Vaughan v. M-Enterm't Props., LLC*, No. 1:14-CV-914, 2016 WL 7365201 (N.D. Ga. Mar. 15, 2016), the district court granted in part exotic dancer plaintiffs' affirmative motion for summary judgment on the issues of (1) whether entertainers qualify as employees under the FLSA, (2) whether related entity defendants qualified as joint employers, (3) the viability of the defendants' offset defense, and (4) the viability of the defendants' counterclaims.

In *Heaton v. Social Finance, Inc.*, No. 3:14-cv-05191-the, 2015 WL 6003119 (N.D. Cal. Oct. 15, 2015), the court denied defendants' motion for summary judgment, finding that there were triable issues of fact as to whether defendants had violated the statutes at issue, whether the alleged violations were willful, and finding that defendants had failed to meet their burden as to plaintiffs' claims under the California Unfair Competition Law.

In *Hart v. Rick's Cabaret Int'l, Inc.*, the court denied decertification of the FLSA Collective and Rule 23 Class of approximately 2,300 adult entertainers at Rick's Cabaret in New York and granted, in part, plaintiffs' affirmative motion for partial summary judgment on damages, finding that no reasonable jury could conclude the Class was owed less than $10.8 million. No. 09-Civ-3043, 2014 WL 6238175 (S.D.N.Y. Nov. 14, 2014). This significant ruling came approximately one year after the court ruled that the Class and Collective Members are employees as a matter of law under the FLSA and New York Labor Law and that Rick's Cabaret violated both laws by failing to pay wages. The court further held that the money entertainers received from Rick's Cabaret's customers were tips and not service charges that could offset wage obligations and that Rick's Cabaret violated New York Labor Law by charging Class and Collective Members fines and fees as a condition of employment. 967 F. Supp. 2d 901 (S.D.N.Y. Sept. 10, 2013).

In *Wolfram v. PHH Corp.*, No. 1:12-cv-599, 2014 WL 2737990 (S.D. Ohio June 17, 2014), the court granted plaintiffs' motion for partial summary judgment, finding that the assigned real estate offices from where plaintiffs, who are current or former loan officers employed by defendant, worked where all serving as the "employer's place of business" under the outside sales exemption of the Fair Labor Standards Act. This established that an employee may work from multiple sites, not technically owned or operated by the employer, and each of those sites can be considered the "employer's place of business" under the regulations, therefore any work performed at these sites is not "outside" work under the outside sales exemption.

In *MacIntyre v. Lender Processing Services, Inc.*, No. 3:13-cv-89-J-25JBT (M.D. Fla. Apr. 29, 2014), the court granted affirmative summary judgment to plaintiff (a Minnesota resident) on a breach of contract claim for an unpaid bonus and used its discretion to enforce Minnesota state law for defendant's (a Florida company) failure to promptly pay wages. The court simultaneously denied defendant's motion to dismiss plaintiff's gender discrimination claims ruling, in part, that defendant's actions toward plaintiff constituted direct evidence of gender discrimination.

In *Huff v. Pinstripes, Inc.*, 972 F. Supp. 2d 1065 (D. Minn. 2013), the court ruled in plaintiffs' favor on cross-motions for summary judgment, finding that Pinstripes had violated the Minnesota Fair Labor Standards Act's provisions on tip-pooling by requiring its servers to share their tips with "server assistants," who act as servers' support staff at the restaurant.

In *Ernst v. DISH Network, LLC*, No. 12-8794-LGS (S.D.N.Y. Sept. 22, 2014), the court ruled on plaintiff's and two of the defendants' cross-motions for partial summary judgment, granting plaintiff's motion and denying defendants' motion. The court ruled that the summary report received by two of the defendants was a "consumer report" for purposes of the Fair Credit Reporting Act because it

"communicated information bearing on Plaintiff's character, general reputation, or mode of living, and the information was collected and expected to be used for 'employment purposes.'"

In *Kirsch v. St. Paul Motorsports, Inc.*, No. 11-cv-02624, 2013 WL 1900620 (D. Minn. May 7, 2013), the court denied defendants' motion for summary judgment in its entirety, finding that plaintiff had put forth sufficient evidence for a prima facie claim of age discrimination.

In *Bollinger v. Residential Capital*, 863 F. Supp. 2d 1041 (W.D. Wash. 2012), the court granted plaintiffs' motion for partial summary judgment, finding that defendants misclassified the underwriter plaintiffs under the administrative exemption, and rejected defendants' argument that there was no evidence of willful violation of the FLSA, stating that "a jury could conclude that Defendants knowingly and recklessly" misclassified plaintiffs.

In *Clincy v. Galardi South Enterprises, Inc.*, 808 F. Supp. 2d 1326 (N.D. Ga. 2011), the court granted plaintiffs' motion for partial summary judgment on the issue of misclassification, finding that defendants misclassified adult entertainers as independent contractors and that the entertainers were in fact employees covered by the FLSA.

| Class and Collective Certification

In *Brayman v. Keypoint Government Solutions*, No. 18-cv-550-WJM-NRN Dkt 365 (D. Colo. March 31, 2022) the court granted Plaintiffs' Amended Motion for Final Certification of the FLSA Collective and Plaintiffs' Amended Motion for Rule 23 Class Certification and denied Defendant's Amended Motion for Decertification. The court found that the material terms of Plaintiffs' employment, including policies and practices to which they were uniformly subjected to, as well as the similarities of the Plaintiffs" job functions, weighed in favor of finding Plaintiffs to be similarly situated for purposes of maintaining an FLSA collective. Further, Plaintiffs met all four requirements of a Rule 23 class and the court found that all class members' claims arise from the same course of conduct favoring certification and granted Plaintiffs' Motion for Rule 23 Class Certification.

In *MacDonald, et al. v. CashCall, Inc., et al.*, No. 2:16-cv-02781-MCA-ESK, Dkt 102 (D. N.J. Oct. 31, 2019) the court granted Plaintiffs' motion for class certification and appointed Nichols Kaster, PLLP class counsel in case involving more than 11,000 borrowers where Defendants are alleged to have violated usury law, the New Jersey Consumer Fraud Act, and RICO.

In *Brotherston v. Putnam Investments, LLC*, No. 1:15-cv-13825 (D. Mass. Dec. 13, 2016), the court certified a class of current and former participants in the Putnam Retirement Plan and appointed Nichols Kaster as class counsel. Plaintiffs alleged that Defendants mismanaged the plan and engaged in prohibited transactions in breach of their fiduciary duties under ERISA.

In *Harris v. Union Pac. R.R. Co.*, 329 F.R.D. 616, 620 (D. Neb. 2019), Nichols Kaster won class certification and was appointed class counsel for a class of over 7,000 railroad employees who plaintiffs alleged had been removed from their jobs in violation of the Americans with Disabilities Act

In *Ayala v. GEICO*, No. 7:18-cv-03583 (Dec. 5, 2018), the district court certified a collective class under the FLSA for Auto Adjuster Trainees who alleged they were not paid for all their overtime worked during training.

In *Bell v. Michigan Civil Service Commission and Jan Winters, State Personnel Director*, No. 17-003861-CV (Mich. Cir. Ct., Nov. 17, 2018), Nichols Kaster won class certification and was appointed class counsel for a class of over 600 African-American applicants who plaintiffs alleged had been discriminated against by defendants through the use of their entry-level law enforcement examination.

In *Dunham-Sunde v. The Copper Hen Cakery*, No. 27-CV-17-17288 (Minn. Dist. Ct., Aug. 28, 2018), the court certified a class of over one hundred restaurant servers to pursue claims against a local restaurant for its unlawful tip-sharing practices in violation of the Minnesota Fair Labor Standards Act.

In *Deluca v. Farmers Ins. Exch.*, No. 17-cv-00034, 2018 WL 1981393 (N.D. Cal. Feb. 27, 2018), the court granted class certification of California state law overtime claims and related claims for a group of special investigators who allege that Farmers misclassified them as exempt from overtime. The court previously granted conditional certification of the plaintiffs' FLSA overtime claims.

In *Wildman v. American Century Serv., LLC*, 2017 WL 6045487 (W.D. Mo. Dec. 6, 2017), the court certified a class of current and former participants in the American Century Retirement Plan and appointed Nichols Kaster as class counsel. Plaintiffs alleged that defendants breached their fiduciary duties and engaged in prohibited transactions.

In *Ganci v. MBF Inspection Svcs., Inc.*, 323 F.R.D. 249 (S.D. Ohio 2017), the court granted class certification of a class of pipeline inspectors who worked for MBF and were paid based on a day rate, who sought unpaid overtime under Ohio state law. The court had previously granted conditional collective certification of the plaintiffs' FLSA overtime claims. 2016 WL 5104891 (S.D. Ohio Sept. 20, 2016).

In *Moreno v. Deutsche Bank Americas Holding Corp.*, 1:15-cv-09936, 2017 WL 3868803 (S.D.N.Y. Sept. 5, 2017), the court certified a class of current and former participants in the Deutsche Bank Matched Savings Plan and appointed Nichols Kaster as class counsel. Plaintiffs alleged that Defendants mismanaged the plan in breach of their fiduciary duties under ERISA.

In *Sims v. BB&T Corp.*, No. 1:15-cv-732, 2017 WL 3730552(M.D.N.C. Aug. 28, 2017), the district court certified a class of current and former participants in the BB&T Corporation 401(k) Savings Plan and appointed Nichols Kaster as co-class counsel. Plaintiffs alleged that Defendants breached their fiduciary duties to the Plan.

In *Urakhchin v. Allianz Asset Mgmt. of Am., L.P.*, 8:15-cv-01614, 2017 WL 2655678 (C.D. Cal. June 15, 2017), the district court certified a class of current and former participants in the Allianz Asset Management of America L.P. 401(k) Savings and Retirement Plan and appointed Nichols Kaster as class

counsel. Plaintiffs alleged that defendants improperly managed plan assets and breached their fiduciary duties.

In *Mayfield-Dillard v. Direct Home Health Care, Inc.*, No. 0:16-cv-3489, 2017 WL 945087 (D. Minn. Mar. 10, 2017), the district court granted Plaintiffs' motion for conditional certification, certifying a group of home health care workers who challenged Defendant's practice of paying straight-time only, for overtime hours worked.

In *McQueen v. Chevron*, No. C 16-02089, 2017 WL 8948943 (N.D. Cal. Feb. 21, 2017), the Court granted conditional certification of an FLSA collective for well site managers and drill site managers who performed services for Chevron throughout the country, rejecting Chevron's arguments that the various intermediary staffing companies and differing contractual terms put the workers on different footing.

In *Tamez v. BHP Billiton Petroleum (Americas), Inc.*, No. 5:15-cv-330, 2015 WL 7075971 (W.D. Tex. Oct. 5, 2015), the court granted plaintiffs' motion for conditional certification, conditionally certifying a class of employees alleging violations of the overtime wage provisions of the Fair Labor Standards Act by a multinational corporation that produces major commodities including oil and gas.

In *Miller v. Fleetcor Technologies Operating Co., LLC*, 118 F. Supp. 3d 1351 (N.D. Ga. 2015), the court denied defendant's motion for decertification, agreeing with plaintiffs that each individual claim and the case as a whole should be kept together, allowing plaintiffs to move forward as a collective group.

In *Pearsall-Dineen v. Freedom Mortgage Corp.*, No. 13-cv-06836-JEI-JS, 2014 WL 2873878 (D. N.J. June 25, 2014), the court conditionally certified the Fair Labor Standards Act overtime case as a collective action. The judge's order authorized notice of the lawsuit to be disseminated to all mortgage underwriters who worked for Freedom Mortgage in the last three years, providing them the opportunity to join the lawsuit and to assert their overtime claims against the defendant for failing to pay them overtime hours.

In *Ellsworth v. U.S. Bank, N.A.*, No. C 12-2506-LB, 2014 WL 2734953 (N.D. Cal. June 13, 2014), the court issued a broad class certification ruling on behalf of plaintiff-borrowers who were force-placed with flood insurance. In its order, the court certified multi-state classes of borrowers spanning forty different states to pursue claims against U.S. Bank for breach of their mortgage agreements stemming from U.S. Bank's force-placed insurance practices. In addition, the court separately certified classes of borrowers in California and New Mexico to pursue claims against U.S. Bank and its force-placed insurance vendor, ASIC, for unjust enrichment, unfair business practices, and/or breach of the covenant of good faith and fair dealing.

In *Arnett v. Bank of America, N.A.*, No. 3:11-cv-01372-SI (D. Or. Apr. 17, 2014), the court preliminarily approved a $31 million settlement for approximately 625,000 class members, the largest common fund settlement ever negotiated in a case involving force-placed flood insurance.

In *Ernst v. DISH Network, LLC*, No. 12-8794-LGS (S.D.N.Y. July 23, 2013), the court appointed Nichols Kaster as interim class counsel for the putative class with claims against Defendant Sterling Infosystems, Inc., finding that Nichols Kaster had "demonstrated it is able fairly and adequately to represent the interests of the putative class.

In *Gustafson v. BAC Home Loan Services, LP*, No. 8:11-cv-00915 (C.D. Cal. Feb. 27, 2013), Judge Josephine Staton Tucker appointed Nichols Kaster as co-lead interim class counsel for multiple putative classes in a force-placed insurance case against Bank of America and other defendants.

In *Spar v. Cedar Towing & Auction, Inc.*, Case No. 27-CV-11-24993 (Minn. Dist. Ct., Oct. 16, 2012), Nichols Kaster won class certification and was appointed class counsel for a class of approximately six thousand Minneapolis consumers who plaintiffs alleged had been charged illegal towing fees by defendant.

| Denial of Motions to Dismiss

In *Padilla v. Caliper Building Systems, LLC et al.*, No. 20-cv-00658 (SRN/KMM) (D. MN, Sep. 21, 2020) the court denied defendant's motion to dismiss, holding that construction laborers working for a framing subcontractor through a labor broker plausibly alleged facts supporting joint employer status under federal and state law.

In *Jane Doe 1 et al v. Independent School District 31*, No. 20-cv-226(SRN/LIB) (D. MN, August 14, 2020) the court denied defendant's motion to dismiss, finding that plaintiffs pled sufficient facts to support plausible Title IX, Section 1983, negligence, negligent supervision, and negligent retention claims. Specifically, the court found that the complaint plausibly alleged a duty of care arising from a special relationship between the school district and plaintiffs, taking into account the elevated status of the school official who sexually exploited plaintiffs, the egregiousness of the sexual exploitation that occurred on district-owned devices, and the fact that the district had clear notice. Further, the court found that plaintiffs plausibly alleged that the district's own conduct created a foreseeable risk of injury to plaintiffs and that the district owed them a duty to prevent the sexual harassment and bullying faced by plaintiffs after the school official's arrest. Additionally, the court held that the complaint plausibly alleged that the district acted with deliberate indifference, resulting in a hostile education environment and peer harassment under Title IX and Section 1983. Finally, plaintiffs sufficiently alleged a pattern of constitutional violations that put the district on notice that "its employees' responses to recurring sex discrimination were insufficient to protect Plaintiffs' constitutional rights."

In *Intravaia v. National Rural Electric Cooperative Association*, No. 1:19-CV-973, 2020 WL 58276 (E.D. Va. Jan. 2, 2020), the court denied defendants' motion to dismiss in full, holding plaintiffs adequately alleged breaches of fiduciary duty and prohibited transactions under ERISA relating to the administration of the National Rural Electric Cooperative Association's 401(k) plan.

In *Reetz v. Lowe's Companies, Inc.*, No. 518CV00075, 2019 WL 4233616 (W.D.N.C. Sept. 6, 2019), the court denied defendants' motion to dismiss in substantial part, holding plaintiffs adequately alleged breaches of fiduciary duty under ERISA relating to the management of the Lowe's 401(k) plan.

In *Karpik v. Huntington Bancshares Inc.*, No. 2:17-CV-1153, 2019 WL 7482134 (S.D. Ohio Sept. 26, 2019), the court denied defendants' motion to dismiss in substantial part and held that plaintiffs adequately alleged breaches of fiduciary duty under ERISA relating to the management and monitoring of Huntington Bank's 401(k) plan.

In *Belt v. P.F. Chang's*, No. 18-cv-03831 (E.D. Pa. Aug. 15, 2019), the court denied defendant's motion for judgment on the pleadings, holding that the DOL's new interpretation of the FLSA was unreasonable and not subject to deference, confirming that Plaintiffs had stated a claim for minimum wage violations due to P.F. Chang's failing to pay its servers the full minimum wage when they performed related yet untipped labor, such as side work, for more than 20% of their time in a workweek.

In *Nelsen v. Principal Global Investors Trust Co.*, No. 4:18-cv-00115 (S.D. Iowa, Jan. 24, 2019), the court denied defendants' motion to dismiss in substantial part, holding plaintiffs adequately alleged breaches of fiduciary duty under ERISA relating to the management of Principal's collective investment trusts.

In *In re M&T Bank Corp. ERISA Litig.*, No. 16-cv-375, 2018 WL 4334807 (W.D.N.Y. Sept. 11, 2018), the court denied defendants' motion to dismiss in substantial part, holding plaintiffs adequately alleged breaches of fiduciary duty under ERISA relating to the management of the M&T Bank Corporation Retirement Savings Plan.

In *Velazquez v. Massachusetts Fin. Servs. Co.*, 320 F. Supp. 3d 252 (D. Mass. 2018), the court denied defendants' motion to dismiss in substantial part and held that plaintiffs adequately alleged breaches of fiduciary duty under ERISA relating to the management of the Massachusetts Financial Services Company MFSavings Retirement Plan and the Massachusetts Financial Services Company Defined Contribution Plan.

In *Beach v. JP Morgan Chase Bank*, No. 1:17-cv-00563 (S.D.N.Y. Mar. 28, 2018), the court denied defendants' motion to dismiss in substantial part and held that plaintiffs adequately alleged breaches of fiduciary duty under ERISA.

In *Wildman v. American Century Serv., LLC*, 237 F. Supp. 3d 902 (W.D. Mo. 2017), the court denied defendants' motion to dismiss, finding that plaintiffs adequately alleged breaches of fiduciary duty and prohibited transactions by defendants in connection with the American Century Retirement Plan.

In *Johnson v. Fujitsu Technology Business of America, Inc.*, 250 F. Supp. 3d 460 (N.D. Cal. April 11, 2017), the court denied defendants' motions to dismiss, and held that plaintiffs adequately alleged breaches of fiduciary duty under ERISA relating to the management of the Fujitsu Group Defined Contribution and 401(k) Plan.

In *Moreno v. Deutsche Bank Americas Holding Corp.*, 1:15-cv-09936, 2016 WL 5957307 (S.D.N.Y. Oct. 13, 2016), the court denied defendants' motion to dismiss in substantial part and held that plaintiffs adequately alleged breaches of fiduciary duty under ERISA relating to the management of the Deutsche Bank Matched Savings Plan.

In *Urakhchin v. Allianz Asset Mgmt. of Am., L.P.*, 8:15-cv-01614, 2016 WL 4507119 (C.D. Cal. Aug. 5, 2016), the court denied defendants' motion to dismiss in substantial part and held that plaintiffs adequately alleged breaches of fiduciary duty under ERISA relating to the management of the Allianz Asset Management of America L.P. 401(k) Savings and Retirement Plan.

In *Bowers v. BB&T Corporation*, No. 1:15-cv-732-CCE-JEP (M.D.N.C. Apr. 18, 2016), the court denied defendant's motion to dismiss, finding that plaintiff's allegations regarding Employment Retirement Income Security Act ("ERISA") violations related to defendant's management of plaintiffs' 401(k) Savings Plans are sufficient for litigation to move forward.

In *Brotherston v. Putnam Investments, LLC*, No. 1:15-cv-13825, 2016 WL 1397427 (D. Mass. Apr. 7, 2016), the court denied defendant's motion to dismiss, finding that plaintiff's allegations regarding Employment Retirement Income Security Act ("ERISA") violations related to defendant's management of plaintiffs' 401(k) Savings Plans are sufficient for litigation to move forward.

In *Johnson v. Casey's Gen. Stores, Inc.*, 116 F. Supp. 3d 944 (W.D. Mo. 2015), the court denied defendant's motion to dismiss, finding that plaintiff's allegations regarding Fair Credit Reporting Act violations and the willfulness of defendant's conduct sufficient for litigation to move forward.

In *Lengel v. HomeAdvisor, Inc.*, 102 F. Supp. 3d 1202 (D. Kan. 2015), the court denied defendant's motion to dismiss, finding that plaintiff's allegations regarding Fair Credit Report Act violations and the willfulness of defendant's conduct sufficient for litigation to move forward.

In *Holmes v. Bank of America, N.A.*, No. 3:12-cv-00487, 2013 WL 2317722 (W.D.N.C. May 28, 2013), the court denied four motions to dismiss plaintiffs' claims regarding force-placed insurance and allowing the case to proceed.

In *Walls v. JPMorgan Chase Bank, N.A.*, No. 3:11-cv-00673, 2012 WL 3096660 (W.D. Ky. July 30, 2012), a case regarding force-placed flood insurance, the court denied defendant's motion to dismiss, stating that the plaintiff's mortgage agreement did not explicitly provide that the lender's flood insurance requirement could change at will and that Kentucky contracts contain provisions which can impose limits on discretion afforded by a contract, thus rejecting defendant's interpretation of plaintiff's mortgage agreement for purposes of the motion.

| Defeat of Motions to Compel Arbitration

In *Doll House, Inc. v. Tapia*, Nos. 5D16-4235, 5D16-4455 (Fla. DCA Nov. 21, 2017), the Florida District Court of Appeal for the Fifth District affirmed per curium a trial court ruling denying defendant's motion to compel arbitration. The court of appeals found that the parties never formed a

binding agreement, and alternatively that the agreement at issue was unconscionable and therefore unenforceable.

In *Payne v. WBY, Inc.*, 141 F. Supp. 3d 1344 (N.D. Ga. 2015) the court denied defendant's motion to compel arbitration of opt-in plaintiffs in an FLSA conditionally certified collective action. The court held that the defendant's alleged posting of an arbitration agreement on a bulletin board in the breakroom without additional notice to workers of its existence, its terms, or its binding nature was insufficient to establish an offer or acceptance of its terms.

Nichols Kaster Attorneys

| Partner Biographies

James H. Kaster is a Civil Trial Law Specialist who has tried well over 100 cases to verdict or decision. He has also handled many significant cases on appeal, including a successful case in front of the United States Supreme Court (*Kasten v. Saint-Gobain Performance Plastics Corp.*). He was ranked by Chambers USA as number one among plaintiffs' employment lawyers in Minnesota, was named Lawyer of the Year by Best Lawyers in 2012, and 2016, and has been listed by Super Lawyers of Minnesota as one of the top 10 lawyers in the State. Jim's success in the courtroom includes earning many million dollar and multi-million dollar recoveries for plaintiffs. Jim is also a frequent lecturer before local, state, and national organizations on damage recovery and trial skills. He was selected as a Fellow of the American College of Trial Lawyers, a premier professional trial organization in America whose membership is limited to 1% of the trial lawyers in any state or province. He was also selected to be a

member of the College of Labor and Employment Lawyers. ***Education***: B.A. Marquette University 1976, J.D. Marquette University 1979.

Lucas J. Kaster is a skilled and seasoned trial lawyer focused on aggressive advocacy, creative solutions, and responsiveness to clients. As a member of Nichols Kaster's individual rights team, Lucas represents clients in a wide-range of employment matters, including harassment, retaliation and discrimination claims. Lucas also represents clients in civil rights claims, such as police misconduct and prisoner rights. Over his career, Lucas has tried many cases to verdict or decision. Most recently, Lucas represented a South Dakota law enforcement officer in a retaliation and sexual harassment lawsuit that resulted in a $1.2 million jury verdict. In a separate lawsuit, Lucas represented four golf course employees who were subject to harassment and retaliation in a court trial that resulted in a plaintiff's verdict and treble damages under the Minnesota Human Rights Act ("MHRA"). Lucas uses this unique trial experience to drive litigation strategy and provide his clients the best possible representation. Lucas is also an experienced appellate advocate. In 2018, Lucas successfully argued before the Ninth Circuit Court of Appeals in *Michael Frost v. BNSF Railway Co.*, 9:15-cv-000124-DWM. The Ninth Circuit's decision addressed a hotly debated subject under the Federal Railway Safety Act ("FRSA"). The question before the Court was whether the honest belief instruction was proper because the FRSA's contributing factor standard required plaintiffs to separately prove discriminatory intent. In the opinion, the Ninth Circuit definitively held that there is no requirement that FRSA plaintiffs separately prove discriminatory intent, and thus the instruction was error. Due to his experience, Lucas is a well-respected and sought-after speaker. Lucas is a frequent presenter at the ABA's Labor and Employment and Employment Rights and Responsibilities conferences. In February 2019, Lucas also spoke at the College of Labor and Employment Lawyer's Regional Program for the 4th and 11th Circuits in Charleston, South Carolina. Lucas participated in a three-member panel titled: *The #MeToo Movement One Year Later: Where Are We Now?* Lucas is a member Twin Cities Diversity in Practice's Emerging Leaders Group and a contributor to Nichols Kaster's training and marketing committees. ***Education:*** B.A. Villanova University 2004, J.D. Marquette University Law School 2011.

Paul J. Lukas is one of the co-leaders of the firm's ERISA Class Action Team. Mr. Lukas also has extensive experience litigating class and collective actions and has tried over 50 cases over the course of his career. Mr. Lukas has been recognized by his peers as one of "The Best Lawyers in America" and is frequently named to the Minnesota Super Lawyers list. He also has had many publications and speaking engagements about issues and strategies for plaintiff class action lawyers and the plaintiffs' bar. ***Education***: B.A. St. John's University 1988, J.D. William Mitchell College of Law 1991.

Steven Andrew Smith has been named "Lawyer of the Year" for Employment Law in Minneapolis by Best Lawyers for 2021 and 2022, named "Attorney of the Year" twice by Minnesota Lawyer for his work protecting employees' rights, named one of "The Best Lawyers in America" for the last eight years, named to the Minnesota Super Lawyers "Top 100" list five times, and named to the Minnesota Super Lawyers list for 20 consecutive years. In 2020, Steve was elected as a Fellow of the College of Labor and Employment Lawyers. Steve was honored by the Minnesota Chapter of the National Employment Lawyers Association as the recipient of the 2014 Karla Wahl Dedicated Advocacy

Award. The Award is given to recipients "for their ceaseless and courageous efforts" to protect and advance the rights of Minnesota employees. Steve was also the recipient of the 2011 Distinguished Pro Bono Service Award from the United States District Court for the District of Minnesota, was selected for the Merit Selection Panel regarding the Re-Appointment of U.S. Magistrate Judge Arthur J. Boylan (D. Minn. 2012), was further recognized in 2014 by the United States District Court and Chief Judge Michael J. Davis for his involvement in the Pro Se Project, a project by the United States District Court of Minnesota for assisting individuals representing themselves in federal court, and has received the Martindale Hubble AV Preeminent rating. Steve's trial experience includes trials to verdict in sexual harassment, whistleblower, reprisal/retaliation, commission, contract, gender discrimination, marital status discrimination, disability, and wage and hour claims. Steve has also litigated several notable cases having substantial effect on employees' rights under state and federal employment laws. Steve is often invited to lecture on employment issues both nationally and locally. He has also authored a number of articles on employment law issues such as sexual harassment in the workplace. ***Education***: B.A. Concordia College 1990, J.D. William Mitchell College of Law 1995 *cum laude*.

Michele R. Fisher is a managing partner, and Chair of the Firm's Business Development and Marketing Groups, which originate class and collective actions and market the firm. She has dedicated her career to litigating wage and hour cases in an aggressive, creative, and strategic manner. She is one of the leaders of a practice group that has been described as a "powerhouse" for mass wage and hour litigation and arbitration. Michele has the experience, resources, and staff to take on any company regardless of size. She has handled several jury trials and arbitrations in her fight for employee rights and prides herself on the firm's reputation as a leader in national wage and hour class and collective action litigation. Michele has litigated hundreds of class and collective actions involving positions such as home health aides, loan officers, retail salespersons, oil and gas workers, assistant managers, field service engineers, call center representatives, exotic dancers, inside sales representatives, restaurant workers, insurance adjusters, property specialists, property managers, installers, service technicians, and road construction laborers. She is additionally admitted to practice before the United States Court of Federal Claims.

Michele is active in several organizations. She is a Co-Chair and faculty member of the Practicing Law Institute's Wage & Hour Litigation and Compliance conference, and the Co-Chair of the ABA Labor and Employment Law Section's Annual Conference Planning Committee. She has served as the Co-Chair of the ABA Labor and Employment Law Section's Federal Labor Standards Legislation Committee, Co-Editor-in-Chief of the ABA Labor and Employment Law Section's Federal Labor Standards Legislation Committee FLSA Midwinter Report, the Co-Chair of the ABA Labor and Employment Law Section's Revenue and Partnership Development Committee, Track Coordinator for the ABA Labor and Employment Law Section's annual conference, an editorial board member for BNA's the Fair Labor Standards Act Treatise, and a chapter editor for BNA's Wage and Hour Laws: A State-by-State Survey. She is a Fellow in the College of Labor and Employment Lawyers, has been named to the Best Lawyers, Super Lawyers, Top Women Attorneys, Lawyers of Distinction, and Rising Star lists repeatedly, is a member of the Top 10 Wage and Hour Lawyers, Top 100 National Trial Lawyers, Top 100 High Stakes Litigators, and LawDragon 500 Leading Plaintiff Employment Lawyers. Michele volunteers as an attorney for a foster child through the Children's Law Center. She also created

and administers arbitratorrater.com. ***Education***: B.A. St. Cloud State University 1997, J.D. William Mitchell College of Law 2000.

Matthew H. Morgan is a managing partner at the Firm and a Minnesota State Bar Association Civil Trial Specialist. Much of Matt's career has focused on litigating class and collective actions on behalf of individuals seeking minimum wage and overtime pay and fighting discrimination. Recently, Matt first-chaired a nineteen-day age discrimination class action trial on behalf of nearly 1000 people against the federal government. Matt has been recognized as a Super Lawyer every year since 2014, and has been named to the Who's Who in Employment Law by Minnesota Law and Politics. Matt formerly served as an adjunct faculty member at William Mitchell College of Law (now Mitchell Hamline) teaching representation skills to first-year students and advanced advocacy to second- and third-year students. Matt is a frequent lecturer at legal seminars, focusing on litigation-related topics including trials and taking 30(b)(6) depositions. ***Education***: B.A. University of Minnesota 1996, J.D. William Mitchell College of Law 2000.

Rachhana T. Srey is a Partner at Nichols Kaster, PLLP who has extensive litigation experience, primarily dedicating her legal practice to national wage and hour complex class and collective action employment litigation. She has been a zealous advocate for thousands of employees over her 14-year career, representing a wide variety of workers in many industries including those who work in healthcare, insurance, financial services, communications, retail, manufacturing, and security industries as well as federal sector employees. Rachhana's exceptional case management and advocacy skills, dedication to her clients, strong work ethic and outgoing personality have earned her the respect of her clients and of her colleagues in the legal community. Rachhana has tried several wage and hour cases, most notably obtaining a jury verdict that was upheld by the Sixth Circuit in favor of a group of nearly three hundred cable installers. In addition to her wage and hour practice, Rachhana is also currently litigating a large age discrimination class case venued at the EEOC. She is active in several organizations, holding leadership positions in a few. Rachhana is currently the Co-Chair of the National Employment Lawyer Association's ("NELA") Wage & Hour Committee and Practice Group and the Co-Chair of the Association of Justice's ("AAJ") Wage & Hour Litigation Group. She is also an active Board Member of Mid-Minnesota Legal Aid. Rachhana is often invited to speak nationally and locally on a wide range of topics including class and collective action litigation strategies, wage and hour litigation, discovery issues, recent developments in the law, and age and gender discrimination. ***Education***: B.A. University of Minnesota 2000, J.D. William Mitchell College of Law 2004 *cum laude*.

Matthew C. Helland is an experienced and tenacious litigator who has fought for workers' and consumers' rights throughout his career. Matt serves as the managing partner of Nichols Kaster's San Francisco office, where he focuses his practice on class and collective wage and hour cases filed in California and throughout the country. Handling both large class actions and individual matters throughout this career, Matt has developed a record of success in significant and complex litigation. Matt litigates each of his cases with the same zealous advocacy and passionate protection of his clients' rights, whether the case involves millions of dollars and thousands of clients, or thousands of dollars and one individual. In addition to representing workers across the country in wage and hour actions, Matt

has also handled cases involving WARN Act violations, breach of contract, and severance negotiations. Matt is licensed in both California and Minnesota. Matt is an active volunteer at Workers' Rights Clinics through Legal Aid Work, where he supervises student attorneys in providing legal assistance to low wage workers. While attending the University of Minnesota Law School, Matt was a staff member and Managing Tribute Editor of the University of Minnesota Journal of Global Trade. He also participated in the Child Advocacy Clinic, representing the interests of children as a student attorney in both Family and Juvenile Court. ***Education***: B.A. Rhodes College 2002 *magna cum laude*, J.D. University of Minnesota Law School 2005 *magna cum laude*.

David E. Schlesinger David Schlesinger is an experienced attorney who has been recognized for the quality of his work for employees. He is an MSBA Certified Employment Law Specialist who has been selected as a Super Lawyer for the last seven years. He teaches Law in Practice at the University of Minnesota Law School and is the former president of the Minnesota Chapter of the National Employment Lawyers Association. David has successfully litigated a wide variety of employment claims, including several significant cases involving gender discrimination, cases under the Americans with Disabilities Act, and many other claims. His practice also includes an emphasis on the intersection of employment and business disputes, including litigation of breach of fiduciary duty and minority shareholder claims. He has effectively defended employees from non-compete and trade secret claims brought by their former employers. ***Education***: B.A. Mary Washington College 2001 *cum laude*, J.D. University of Minnesota Law School 2006 *cum laude*.

Anna P. Prakash is a tough and determined litigator. Her practice focuses on complex class actions on behalf of protected groups and those harmed by corporate or governmental wrongdoing. Whether in the context of civil rights, illegal pay practices, loan issues, insurance coverage, consumer fraud, or other harm to vulnerable communities, Anna seeks out injustices to hold wrongdoers accountable and give all people a voice. She cares about and fights for her clients, brings a high level of skill and intellect to the fight, and has achieved great success for her clients in state and federal courts around the country, including the summary judgment victories referenced above in *Huff*, *Hart*, and *Clincy*, successful appeal in *Bible v. United Student Aid Funds*, and the trial verdict in *FTS*. Anna also serves on the Board of Directors of the Public Justice Foundation, a nationwide charitable organization supporting high-impact lawsuits to combat social and economic injustice and protect the Earth's sustainability. She is a frequent speaker at national legal seminars, an adjunct professor of legal writing at the University of Minnesota Law School, and a past board member of the Minnesota chapter of the National Employment Lawyers' Association. ***Education***: B.A. University of Michigan 2002, J.D. Cornell Law School 2005.

Rebekah L. Bailey is a tireless advocate dedicated to civil rights and social justice. She has helped tens of thousands of employees and consumers recover millions of dollars primarily in complex class and collective actions across the country. Rebekah has worked on the firm's wage and hour team and was a founding member of the consumer practice area as well as the firm's civil rights and impact litigation group. Rebekah has been recognized as a Minnesota Super Lawyer every year since 2014. Over the years, she has served on numerous trial and arbitration teams, successfully first-chairing her first bench

trial. Rebekah has achieved several affirmative summary judgment determinations and certification decisions, including in *Rego*, *Dunham-Sunde*, *Henderson*, *Vaughan*, *Spar*, and *Norris-Wilson*, mentioned above. Rebekah leads the firm's e-discovery committee. She has spoken at national seminars on various topics, including electronic discovery, class litigation, arbitration, equal pay, and various wage and hour issues. Rebekah is a practical instructor for the University of Minnesota's Law & Practice course. She is a member of the District of Minnesota's Federal Practice Committee, and a board member for the Complex Litigation eDiscovery Forum. She is very involved in the ABA's Labor and Employment Law section. She serves as the employee vice chair of the section's treatise committee; she is an associate editor for the FLSA Committee's Mid-Winter Report; and she serves as a FLSL liaison to the ABA/LEL CLE Coordinating & Resources Committee. ***Education***: B.S. Grand Valley State University 2004 *magna cum laude*, J.D. University of Minnesota Law School 2008 *magna cum laude*.

Reena I. Desai is a partner at Nichols Kaster, PLLP, in the firm's Minneapolis office. She is a skilled and meticulous litigator, who has represented thousands of employees in class and collective actions to recover unpaid overtime, minimum wages, commissions, and other types of compensation. Reena has also advocated for employees in cases involving race, age and disability discrimination. She is a board member of a legal non-profit and frequently speaks at legal seminars and conferences across the country. Reena has dedicated the majority of her career to helping employees combat wage theft and recover unpaid overtime compensation, minimum wages, and other unpaid compensation. She has represented employees in a variety of industries, including investigators, home health care workers, loan officers, mortgage underwriters, field service technicians, sales representatives, and restaurant workers. Reena has also litigated discrimination cases on both a class and individual level, advocating for employees whose employers have discriminated against them because of their age, race or disability. Reena has been asked to share her knowledge and experience with her peers, serving as a speaker at several national conferences. She has lectured on topics including wage and hour litigation, electronic discovery issues, attorney-client privilege and mediation/settlement. Reena also serves on the Board of Directors for the Minnesota Justice Foundation, a legal non-profit in Minnesota, and has been named a Rising Star by Minnesota Super Lawyers every year since 2014. ***Education***: B.A. George Washington University 2002 *magna cum laude*, J.D. University of Minnesota Law School 2007 *cum laude*.

Robert L. Schug is a partner on Nichols Kaster's Civil Rights and Impact Litigation team. Robert has more than a decade of experience litigating cases through trial in both court and arbitration. He has represented employees across the country on a variety of issues, including race, gender, and disability discrimination, employee misclassification, unpaid overtime, and unpaid wages. Robert previously served as Director of Litigation at the Impact Fund, a nationally recognized non-profit law firm in Berkeley, California devoted to achieving social justice through large scale impact litigation. He has been recognized as a Rising Star by Northern California and Minnesota Super Lawyers. He is licensed in California and Minnesota. ***Education:*** B.S. Middle Tennessee State University 2003 *summa cum laude*; J.D. William Mitchell College of Law 2006 *summa cum laude*.

Brock J. Specht is a member of Nichols Kaster's national class-action litigation team. He represents consumers, employees, and retirees in lawsuits against some of the country's largest corporations, holding these companies accountable when they fail to deal fairly and honestly with their employees and customers. His recent cases have led to the recovery of millions of dollars in retirement benefits for thousands of participants in 401(k) plans nationwide. Prior to joining the firm, Brock worked with a major Twin Cities law firm, and as a law clerk for two judges on the Minnesota Court of Appeals. Brock also has worked as a Special Assistant State Public Defender, *pro bono*, and as an Adjunct Professor of Law at the University of St. Thomas School of Law. ***Education***: B.A. University of Minnesota 2002, J.D. University of St. Thomas School of Law 2007 *magna cum laude*.

| Associate Biographies

Ben J. Bauer is a member of Nichols Kaster's ERISA litigation team where he represents employees whose retirement accounts have been shortchanged due to excessive fees, imprudent investments, employer self-dealing, and general mismanagement. Prior to joining the firm, Ben clerked for Judge Tom Fraser in Hennepin County District Court. During law school, he interned for the Minnesota Department of Human Rights, the ACLU of Minnesota, and earned the Law School Public Service Award. Prior to law school, Ben taught 7th grade English in Tulsa, Oklahoma and continued to work in schools while completing his law degree in Mitchell Hamline's night program. **Education:** B.A., St. John's University, 2011, *magna cum laude*, J.D., Mitchell Hamline School of Law, 2017, *magna cum laude*.

Caroline E. Bressman is a member of the firm's national wage and hour litigation team where she fiercely advocates for workers' rights. Caroline is dedicated to furthering social justice and equity in the workplace on behalf of employees challenging their employers' unfair practices. Caroline is a contributing editor to the Fair Labor Standards Act Midwinter Report of the ABA Section of Labor and Employment Law. During law school, Caroline served as a staffer, and subsequently Symposium Articles Editor, for the *Minnesota Law Review* and clerked for a nonprofit legal and policy advocacy organization focused on addressing gender inequality. Caroline was also the recipient of the ABA-Bloomberg BNA Award for Excellence in Health Law. ***Education:*** B.A. St. Olaf College 2015 *magna cum laude*, J.D. University of Minnesota Law School 2018 *cum laude*.

Daniel S. Brome worked with the California Labor Commissioner while in law school and served as the Editor-in-Chief of the Berkeley Journal of Employment and Labor Law, and as Director of the Workers' Rights Clinic. After law school, Daniel worked with a California law firm representing workers and unions in arbitrations and litigation. Daniel continues pursuing his passion for employment law at Nichols Kaster, working with the firm's national wage and hour team out of the San Francisco office. ***Education:*** B.A. Princeton University 2005, J.D. University of California Berkeley School of Law 2011.

Grace Chanin is a member of the firm's ERISA practice group where she represents employees, retirees, and beneficiaries in class-action litigation against some of the nation's largest corporations. By holding these corporations accountable for breaching their fiduciary duties and other ERISA violations,

she has helped recover over $30 million for her clients. Grace's preferred pronouns are she/her/hers. Prior to joining the firm, Grace clerked for Judge Connolly, Judge Larkin, and Judge Bjorkman at the Minnesota Court of Appeals. She graduated *magna cum laude* from the Mitchell Hamline School of Law and received three separate CALI awards for her work as the top-performing student in a class. During law school, she was a member of the Mitchell Hamline law review, worked as a law clerk for a Minneapolis business law firm, and received the Law School Public Service Award for her work as a pro bono law clerk at a top Minneapolis law firm. Grace is dedicated to improving well-being in the legal community. Grace has been a volunteer for Lawyers Concerned for Lawyers (Minnesota's Lawyers Assistance Program) since 2019. In that role, Grace shares her personal experience with wellbeing and mental health issues to help other attorneys. And, in September 2022, Grace was elected to the Lawyers Concerned for Lawyers Board of Directors. As a board member, she hopes to further support increased wellbeing in Minnesota's legal community. Grace also played an integral role in the firm's creation of a Wellness Committee. As the Wellness Committee's current co-chair, she leads the firm's wellness initiatives and ensures employees have access to a variety of wellness resources. ***Education:*** B.A., Minnesota State University 2012 *magna cum laude*, J.D. Mitchell Hamline School of Law 2018 *magna cum laude*

H. Clara Coleman is a member of Nichols Kaster's National Wage and Hour litigation Team where she fights for employees' right to hard-earned wages. Prior to joining Nichols Kaster, Clara served an Attorney-Advisor to the Honorable Christopher Larsen at the U.S. Department of Labor, Office of Administrative Law Judges in San Francisco where she collaborated with ALJ Larsen to manage and decide employment-related matters. Clara also focused on the advancement of workers' rights throughout law school. She advocated for employees in her two clerkship positions at plaintiff-side employment firms, and represented a wage and hour client as a student-attorney for the Public Justice Advocacy Clinic. ***Education:*** B.A., Loyola University Maryland, *summa cum laude*; J.D., George Washington University School of Law, *with honors.*

Patricia C. Dana is a member of Nichols Kaster's ERISA litigation team where she represents current and former employees whose retirement accounts have been shortchanged due to excessive fees, imprudent investments, employer self-dealing, and general mismanagement. Prior to joining Nichols Kaster, she clerked for Justice Anne McKeig on the Minnesota Supreme Court. During law school, she was an editor of the *University of St. Thomas Law Journal*, worked as a law clerk at Mid-Minnesota Legal Aid, clerked for Judge Michael Browne in Hennepin County District Court, and received the Judge Earl R. Larson Award for excellence in the study of federal law and practice. Prior to law school, Patty represented Medicare and Medicaid recipients in administrative appeals at The Legal Aid Society in New York. *Education:* B.A., Carleton College, *cum laude*; J.D., University of St. Thomas, *summa cum laude.*

Charles A. Delbridge is a member of Nichols Kaster's Civil Rights and Impact Litigation Team where Charlie focuses on class actions on behalf of employees, consumers, and other protected groups. Charlie's cases challenge discrimination of all types, fraud, and other unfair practices. He has nearly a decade of experience as a civil litigator across a broad range of substantive practice areas. Charlie has been recognized as a "Minnesota Rising Star" by *Super Lawyers* magazine, and an "Up & Coming

Attorney" by *Minnesota Lawyer*. He is active in professional organizations, having served as a member of the Board of Directors of both the Minnesota State Bar Association and Minnesota Continuing Legal Education. ***Education:*** B.A. University of Wisconsin-Madison 2003, J.D. William Mitchell College of Law 2006 *magna cum laude*.

Steve Eiden is a member of Nichols Kaster's ERISA litigation team where he both represents employees whose retirement accounts have been shortchanged due to excessive fees, imprudent investments, employer self-dealing, and general mismanagement and assists with case research and analysis related to the same for the group. Prior to joining Nichols Kaster, Steve worked at Thrivent Financial supporting a team of Wealth Advisors. During his time at Thrivent, Steve obtained his Series 7 General Securities Representative and Series 66 Uniform Combined State Law licenses while assisting in quantitative and qualitative investment research and due diligence. Steve holds a degree in financial economics and minor in mathematics in addition to his law degree. ***Education:*** B.A. Gustavus Adolphus College, 2015, *magna cum laude*, J.D. University of St. Thomas School of Law, 2021, *magna cum laude*.

Laura A. Farley is a member of Nichols Kaster's individual rights litigation team and is dedicated to protecting the rights of current and former employees who face a wide-range of employment-related issues, including discrimination, harassment, retaliation, minority shareholder, and contract disputes. Prior to joining Nichols Kaster, Laura worked as an associate for a Minneapolis litigation firm, focusing on minority shareholder, employment, and contract disputes. During law school, Laura was on the Executive Board of the *Minnesota Law Review*, the board of the Women's Legal Student Association, and volunteered with the Advocates for Human Rights. Prior to attending law school, Laura worked for a Fortune 100 company in business-to-business sales supporting operations and logistics in small businesses. ***Education:*** B.A. University of St. Thomas 2010 *magna cum laude*, J.D. University of Minnesota Law School 2015.

Kate Fisher is a Case Development Attorney for the Nichols Kaster's Civil Rights and Impact Litigation Practice Group. In this role, she investigates new cases and works with other members of the Group to advance litigation. Kate formerly served as an Associate Attorney for the firm's Individual Practice Group, where she represented employees in a wide range of employment-related matters, including but not limited to, allegations of discrimination, harassment, retaliation, violations of the Family and Medical Leave Act, and whistleblower claims. In addition to her practice, Kate has also served as an Adjunct Professor at St. Thomas Law School and Mitchell Hamline School of Law. ***Education***: B.A. College of St. Catherine 2006 *summa cum laude*; J.D. University of St. Thomas School of Law 2011 *cum laude*.

Melanie A. Johnson is a member of Nichols Kaster's Civil Rights and Impact Litigation team. Prior to joining the firm, Melanie clerked for Judge Matthew E. Johnson at the Minnesota Court of Appeals. During law school, she served as a managing editor of the *Minnesota Law Review*, student director of the Child Advocacy and Juvenile Justice Clinic, research assistant in the ara of juvenile law, and board member of the student chapter of the Minnesota Justice Foundation. She received the Mondal Hall Engagement Award in 2019.***Education:*** B.A University of Oregon 2010 *magna cum laude*, J.D. University of Minnesota Law School 2019 *cum laude*.

Kayla M. Kienzle is a member of Nichols Kaster's National Wage and Hour Litigation Team where she advocates on behalf of workers seeking unpaid wages in class and collective actions across the country. Kayla is also a contributing author to the ABA Fair Labor Standards Act Midwinter Report. Prior to joining the firm, Kayla clerked for the Honorable John R. Rodenberg and the Honorable Michelle A. Larkin at the Minnesota Court of Appeals. During law school, she served as Submissions Editor for the University of St. Thomas Law Journal and as President of the Women Law Students Association. She also worked as a law clerk at the Hennepin County Public Defender's Office and a legal intern at the United States Department of Justice, Office of Justice Programs, Office for Civil Rights. Prior to attending law school, Kayla worked in retail management. ***Education***: B.A., Iowa State University, J.D., University of St. Thomas School of Law, *cum laude*.

Michelle L. Kornblit is a member of Nichols Kaster's individual rights practice group and assists employees with a wide-range of claims, including discrimination, harassment, retaliation and whistleblower protection. Michelle has been dedicated to employee rights and challenging unfair employment practices her entire career. While in law school, Michelle interned with an Administrative Law Judge of the U.S. Equal Employment Opportunity Commission, and with the Women's Rights Project of the American Civil Liberties Union. Prior to joining Nichols Kaster, Michelle was an associate with a leading employment litigation firm in New York, representing employees in individual, multi-party and class action cases. ***Education:*** B.A. New York University 2010 *cum laude*, J.D. Benjamin N. Cardozo School of Law 2014 *cum laude*.

Caitlin L. Opperman is a member of Nichols Kaster's National Wage and Hour Litigation team, advocating for the rights of workers seeking unpaid wages in class and collective actions across the country. Caitlin also represents individual employees in discrimination disputes. Prior to joining the firm, Caitlin clerked for the Honorable Eric C. Tostrud of the United States District Court for the District of Minnesota and the Honorable Matthew E. Johnson of the Minnesota Court of Appeals. During law school, Caitlin was a Robina Public Interest Scholar and worked as a student attorney at the Neighborhood Justice Center, Hennepin County Public Defender's Office, and University of Minnesota Child Advocacy and Juvenile Justice Clinic. She also served as a managing and research editor of the ***Minnesota Law Review***, president of the Women's Law Student Association, a research assistant in Professor Francis X. Shen's Neurolaw Lab, and a student legal writing instructor. In 2018, Caitlin received the ABA-Bloomberg BNA Excellence in Health Law Award. Prior to attending law school, Caitlin worked as a psychometrist in a neurology clinic. *Education:* B.A., Macalester College, 2012, *cum laude*; J.D. University of Minnesota Law School, 2018, *cum laude*.

Neil Pederson has been practicing law with the firm since October 2017. Prior to that, he clerked for the Honorable Karen A. Janisch in Hennepin County State District Court. His practice has focused on national class action employment discrimination litigation and national wage and hour class and collective action litigation. He has represented hundreds, if not thousands, of workers who have been discriminated against or who are seeking to recover lost wages, including overtime pay and minimum wages, through collective, class, and hybrid actions. Since he started at Nichols Kaster, Neil has worked

on multiple class and collective actions, involving positions such as railroad workers, home health aides, delivery drivers, oil field workers, and nurses. Neil has handled managing discovery and filing class certification and other motions in these cases. In addition to being a litigation associate at the firm, Neil also works with its Business Development Group, which originates class and collective actions. Neil is also a contributing editor to the ABA Section of Labor and Employment Law's Fair Labor Standards Act Midwinter Report. Neil volunteers as an attorney for the Mid-Minnesota Legal Aid's Housing Section ***Education:*** B.A. University of Minnesota 2007 *summa cum laude*, Political Science Ph.D. work University of Chicago 2008-2010, J.D. William Mitchell College of Law 2015 *summa cum laude*.

Nicole J. Schladt is a member of Nichols Kaster's Civil Rights and Impact Litigation group. Prior to joining Nichols Kaster, Nicole served as a judicial law clerk for the Honorable Susan M. Robiner in Minnesota's Fourth Judicial District. During her time in law school, Nicole co-founded Emory LGBTQ Legal Services (ELLS), an organization created to provide pro bono legal assistance to members of Atlanta's queer community. Her work with ELLS led to her receiving the 2018 Marion Luther Brittain Award, Emory University's highest student honor, as well as the 2018 National LGBT Bar Association Student Leadership Award. Nicole's academic research prior to law school explored the intersections of international human rights law, feminist theory, and international politics. ***Education:*** B.A. University of Kentucky 2014 summa cum laude, M. Phil. University of Cambridge 2015, J.D. Emory University School of Law 2018 *with honors*.

| Staff Attorney Biography

Laura A. Baures is dedicated to fighting for employees and applicants who have been discriminated against for unlawful reasons including on the bases of their age, disability, race, color, national origin, religion, and sex. In addition, she helps employees pursue their fair and equal wages owed in the eyes of the law. Her work focuses primarily on representing classes fighting against discrimination. Laura has experience in both federal and private sector matters. During law school, Laura won the MSBA Labor and Employment Law Section Law Student Award in Labor Law. Laura participated in the AAJ Regional Trial Competition, was president of the Women Law Students Association, and volunteered for over 100 hours through the Minnesota Justice Foundation working as certified student attorney for the Washington County Public Defender's Office and at Eldercare Rights Alliance. She also completed an externship with the Honorable Gail Chang Bohr at Minnesota's Second Judicial District. Before law school, Laura worked for a local company that provides residential care for people with disabilities where she discovered her passion for employment law. ***Education:*** B.A. University of Wisconsin – Eau Claire *cum laude*, J.D. William Mitchell College of Law.

| Of Counsel Biography

Gerald C. Robinson is Of Counsel in Nichols Kaster's Civil Rights and Impact Litigation team. After doing complex commercial litigation for several years, since 2005 Gerald's practice has been devoted exclusively to representing whistleblowers under the federal False Claims Act and similar laws. During that time, the cases he has worked on have recovered over $500 million for the Government. Gerald has represented whistleblowers in a wide range of industries, including pharmaceutical and

medical device manufacturers, commercial and retail pharmacies, health care, defense contractors, and higher education. His cases have also tackled a wide-range of fraudulent schemes, including fraudulent inducement, kickbacks, bribery, price manipulation, medical upcoding, off-label marketing of drugs, loan and grant fraud, and goods and services that were substandard or never provided. Gerald has been a member of the whistleblower attorney group Taxpayers Against Fraud since 2005. Gerald is licensed in Minnesota, New Jersey and the District of Columbia, and is admitted to practice before the federal courts of appeals for the Third, Fourth, Eighth, Ninth and D.C. Circuits, and the United States Supreme Court. Gerald has briefed several dozen dispositive and other motions to federal District Courts, has briefed and argued three federal appeals, and petitioned one case to the U.S. Supreme Court. *Education:* B.A. University of Minnesota 1987, *cum laude*, Phi Beta Kappa, Phi Kappa Phi, Omicron Delta Kappa, Mortar Board, Golden Key; J.D. University of Minnesota Law School 1990.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

Chris Carrigan, Michael Venti, and Sylvain Yelle, individually and as representatives of a class of similarly situated persons, and on behalf of the Xerox Corporation Savings Plan **Plaintiffs,** **v.** **Xerox Corporation, the Xerox Corporation Plan Administrator Committee, and John Does 1-30** **Defendants.**	Civil Action No. 3:21-cv-01085-SVN **DECLARATION OF CHRIS CARRIGAN IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT** December 16, 2022

I, Chris Carrigan, declare and state as follows:

1. I am a named plaintiff and proposed class representative in the above-captioned action. I had an active account balance in the Xerox Corporation Savings Plan ("Plan") from 1999 until April 2019.

2. I am fully aware of my duties as a proposed class representative, and I signed a form acknowledging those duties at the outset of the litigation. A copy of that form is attached as **Exhibit 1**. I am not aware of any conflicts of interest between myself and other Class Members.

3. I take my duties as a class representative seriously, and I have attempted to fulfill those duties throughout the course of the litigation. Among other things, I have (1) reviewed the allegations in the Complaint; (2) provided information and documents to counsel to assist in the investigation and prosecution of the action; (3) made myself available answer questions from counsel and to stay informed on the status of the action; and (4) conferred with counsel regarding

the potential strengths and weaknesses of the claims asserted in this action and the potential risks and rewards of the Settlement compared to pursuing further litigation.

4. I am fully informed of the terms of the Settlement and have had the opportunity to discuss the Settlement with counsel. I believe the Settlement provides a fair recovery for myself and the other Settlement Class Members in light of the potential risks and delay involved in further litigation, and I am in agreement with the plan of allocation.

5. I am also pleased that the Settlement provides for prospective relief, requiring that, within five years, Defendants will utilize the services of an independent consultant to assist with a request for proposal, fee benchmarking study, or other comparative analysis to ensure that the Plan's recordkeeping fees remain competitive.

6. In short, I support the Settlement in this case and encourage the Court to approve the Settlement as well.

Under 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: 12/14/2022

Chris Carrigan

EXHIBIT 1

LEGAL SERVICES AGREEMENT

I, Chris Carrigan ("Client"), engage the law firm of Nichols Kaster, PLLP ("NKA") to represent me with regard to my claims against Xerox Corporation, the Plan Administrator Committee, and related parties ("Defendants"), related to the management of the Xerox Corporation Savings Plan.

ATTORNEY FEES AND EXPENSES

Client agrees that the cost of legal services shall be computed in the following manner:

A. NKA will advance all costs necessary for prosecution of Client's claims (to the extent applicable law and ethics rules allow) and will not bill or charge Client for any such costs. Client understands that these costs will be repaid to NKA solely out of any settlement, judgment or award, after the attorneys' fees have been deducted. Client further understands that NKA will pay any or all of Defendants' costs (to the extent applicable law and ethics rules allow) in the unlikely event that the Court orders such, if our litigation is unsuccessful.

B. Attorneys will receive the greater of (a) one-third (33 1/3%) of the total settlement proceeds, award or judgment, if any; or (b) the full amount of any attorneys' fees designated in the settlement, award or judgment or otherwise awarded by a decision maker in the case. Client understands that this fee is not set by law and is negotiable between Attorneys and Client. Client understands that no settlement of Client's individual claims will be made without Client's approval.

C. Client will not waive in whole or in part the right to recover attorneys' fees and/or costs as a condition of settlement.

D. Attorneys shall not be entitled to payment of attorneys' fees unless Attorneys' efforts result in the provision of monetary and/or injunctive relief.

Date: 05/01/2021

Chris Carrigan

Chris Carrigan

Date: 6/3/2021

Nichols Kaster, PLLP
Kai H. Richter, Partner

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

Chris Carrigan, Michael Venti, and Sylvain Yelle, individually and as representatives of a class of similarly situated persons, and on behalf of the Xerox Corporation Savings Plan **Plaintiffs,** **v.** **Xerox Corporation, the Xerox Corporation Plan Administrator Committee, and John Does 1-30** **Defendants.**	Civil Action No. 3:21-cv-01085-SVN **DECLARATION OF MICHAEL VENTI IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT** December 16, 2022

I, Michael Venti, declare and state as follows:

1. I am a named plaintiff and proposed class representative in the above-captioned action. I had an active account balance in the Xerox Corporation Savings Plan ("Plan") from 1998 until November 2020.

2. I am fully aware of my duties as a proposed class representative, and I signed a form acknowledging those duties at the outset of the litigation. A copy of that form is attached as **Exhibit 1**. I am not aware of any conflicts of interest between myself and other Class Members.

3. I take my duties as a class representative seriously, and I have attempted to fulfill those duties throughout the course of the litigation. Among other things, I have (1) reviewed the allegations in the Complaint; (2) provided information and documents to counsel to assist in the investigation and prosecution of the action; (3) made myself available answer questions from counsel and to stay informed on the status of the action; and (4) conferred with counsel regarding

the potential strengths and weaknesses of the claims asserted in this action and the potential risks and rewards of the Settlement compared to pursuing further litigation.

4. I am fully informed of the terms of the Settlement and have had the opportunity to discuss the Settlement with counsel. I believe the Settlement provides a fair recovery for myself and the other Settlement Class Members in light of the potential risks and delay involved in further litigation, and I am in agreement with the plan of allocation.

5. I am also pleased that the Settlement provides for prospective relief, requiring that, within five years, Defendants will utilize the services of an independent consultant to assist with a request for proposal, fee benchmarking study, or other comparative analysis to ensure that the Plan's recordkeeping fees remain competitive.

6. In short, I support the Settlement in this case and encourage the Court to approve the Settlement as well.

Under 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: 12/07/2022

Michael Venti

Michael Venti

EXHIBIT 1

LEGAL SERVICES AGREEMENT

I, Mike Venti ("Client"), engage the law firm of Nichols Kaster, PLLP ("NKA") to represent me with regard to my claims against Xerox Corporation, the Plan Administrator Committee, and related parties ("Defendants"), related to the management of the Xerox Corporation Savings Plan.

ATTORNEY FEES AND EXPENSES

Client agrees that the cost of legal services shall be computed in the following manner:

A. NKA will advance all costs necessary for prosecution of Client's claims (to the extent applicable law and ethics rules allow) and will not bill or charge Client for any such costs. Client understands that these costs will be repaid to NKA solely out of any settlement, judgment or award, after the attorneys' fees have been deducted. Client further understands that NKA will pay any or all of Defendants' costs (to the extent applicable law and ethics rules allow) in the unlikely event that the Court orders such, if our litigation is unsuccessful.

B. Attorneys will receive the greater of (a) one-third (33 1/3%) of the total settlement proceeds, award or judgment, if any; or (b) the full amount of any attorneys' fees designated in the settlement, award or judgment or otherwise awarded by a decision maker in the case. Client understands that this fee is not set by law and is negotiable between Attorneys and Client. Client understands that no settlement of Client's individual claims will be made without Client's approval.

C. Client will not waive in whole or in part the right to recover attorneys' fees and/or costs as a condition of settlement.

D. Attorneys shall not be entitled to payment of attorneys' fees unless Attorneys' efforts result in the provision of monetary and/or injunctive relief.

Date: 05/04/2021

Mike Venti

Date: 6/3/2021

Nichols Kaster, PLLP
Kai H. Richter, Partner

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

Chris Carrigan, Michael Venti, and Sylvain Yelle, individually and as representatives of a class of similarly situated persons, and on behalf of the Xerox Corporation Savings Plan **Plaintiffs,** **v.** **Xerox Corporation, the Xerox Corporation Plan Administrator Committee, and John Does 1-30** **Defendants.**	Civil Action No. 3:21-cv-01085-SVN **DECLARATION OF SYLVAIN YELLE IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT** December 16, 2022

I, Sylvain Yelle, declare and state as follows:

1. I am a named plaintiff and proposed class representative in the above-captioned action. I am a current participant in the Xerox Corporation Savings Plan ("Plan").

2. I am fully aware of my duties as a proposed class representative, and I signed a form acknowledging those duties at the outset of the litigation. A copy of that form is attached as **Exhibit 1**. I am not aware of any conflicts of interest between myself and other Class Members.

3. I take my duties as a class representative seriously, and I have attempted to fulfill those duties throughout the course of the litigation. Among other things, I have (1) reviewed the allegations in the Complaint; (2) provided information and documents to counsel to assist in the investigation and prosecution of the action; (3) made myself available answer questions from counsel and to stay informed on the status of the action; and (4) conferred with counsel regarding

the potential strengths and weaknesses of the claims asserted in this action and the potential risks and rewards of the Settlement compared to pursuing further litigation.

4. I am fully informed of the terms of the Settlement and have had the opportunity to discuss the Settlement with counsel. I believe the Settlement provides a fair recovery for myself and the other Settlement Class Members in light of the potential risks and delay involved in further litigation, and I am in agreement with the plan of allocation.

5. I am also pleased that the Settlement provides for prospective relief, requiring that, within five years, Defendants will utilize the services of an independent consultant to assist with a request for proposal, fee benchmarking study, or other comparative analysis to ensure that the Plan's recordkeeping fees remain competitive.

6. In short, I support the Settlement in this case and encourage the Court to approve the Settlement as well.

Under 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: 12/07/2022

Sylvain R. Yelle

Sylvain Yelle

EXHIBIT 1

LEGAL SERVICES AGREEMENT

I, Sylvain Yelle ("Client"), engage the law firm of Nichols Kaster, PLLP ("NKA") to represent me with regard to my claims against Xerox Corporation, the Plan Administrator Committee, and related parties ("Defendants"), related to the management of the Xerox Corporation Savings Plan.

ATTORNEY FEES AND EXPENSES

Client agrees that the cost of legal services shall be computed in the following manner:

A. NKA will advance all costs necessary for prosecution of Client's claims (to the extent applicable law and ethics rules allow) and will not bill or charge Client for any such costs. Client understands that these costs will be repaid to NKA solely out of any settlement, judgment or award, after the attorneys' fees have been deducted. Client further understands that NKA will pay any or all of Defendants' costs (to the extent applicable law and ethics rules allow) in the unlikely event that the Court orders such, if our litigation is unsuccessful.

B. Attorneys will receive the greater of (a) one-third (33 1/3%) of the total settlement proceeds, award or judgment, if any; or (b) the full amount of any attorneys' fees designated in the settlement, award or judgment or otherwise awarded by a decision maker in the case. Client understands that this fee is not set by law and is negotiable between Attorneys and Client. Client understands that no settlement of Client's individual claims will be made without Client's approval.

C. Client will not waive in whole or in part the right to recover attorneys' fees and/or costs as a condition of settlement.

D. Attorneys shall not be entitled to payment of attorneys' fees unless Attorneys' efforts result in the provision of monetary and/or injunctive relief.

Date: 06/21/2021

Sylvain Yelle

Date: 06/22/2021

Nichols Kaster, PLLP
Kai H. Richter, Partner

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

Chris Carrigan, Michael Venti, and Sylvain Yelle, individually and as representatives of a class of similarly situated persons, and on behalf of the Xerox Corporation Savings Plan **Plaintiffs,** **v.** **Xerox Corporation, the Xerox Corporation Plan Administrator Committee, and John Does 1-30** **Defendants.**	Civil Action No. 3:21-cv-01085-SVN **[Proposed] Order on Plaintiffs' Motion for Preliminary Approval of Class Action Settlement**

This litigation arose out of claims of alleged breaches of fiduciary duties in violation of the Employee Retirement Income Security Act of 1974 ("ERISA"), asserted against Defendants Xerox Corporation and the Xerox Corporation Plan Administrator Committee in connection with the management of the Xerox Corporation Savings Plan ("Plan").

Presented to the Court for preliminary approval is a settlement of the litigation as against all Defendants. The terms of the Settlement are set out in a Class Action Settlement Agreement dated December 16, 2022, executed by Class Counsel and Defendants' Counsel. Except as otherwise defined herein, all capitalized terms used herein shall have the same meaning as ascribed to them in the Settlement Agreement.

Upon reviewing the Settlement Agreement and the papers submitted in connection with the Motion for Preliminary Approval, and good cause appearing therefore,

It is hereby ORDERED as follows:

1. **Preliminary Findings Regarding Proposed Settlement:** The Court preliminarily finds that:

A. The proposed Settlement resulted from arm's-length negotiations by experienced and competent counsel overseen by a neutral mediator;

B. The Settlement was negotiated only after Class Counsel had received pertinent information and documents from Defendants;

C. Class Counsel and the Class Representatives have submitted declarations in support of the Settlement; and

D. Considering the relevant Second Circuit factors, the Settlement is sufficiently fair, reasonable, and adequate to warrant sending notice of the Settlement to the Settlement Class.

2. **Fairness Hearing:** A hearing will be held on [a date no sooner than one-hundred-thirty (130) calendar days after the date of the Preliminary Approval Order]_____, 2023, at ____ _____.m., in Courtroom XXX of the United States District Court for the District of Connecticut, before the undersigned United States Judge, to determine, among other issues:

A. Whether the Court should approve the Settlement as fair, reasonable, and adequate;

B. Whether the Court should enter the Final Approval Order, and

C. Whether the Court should approve any motion for Attorneys' Fees and Costs, Administrative Expenses, and Class Representative Compensation.

3. **Settlement Administrator:** The Court approves and orders that the Settlement Administrator selected through Plaintiffs' competitive bidding process will be responsible for carrying out the responsibilities set forth in the Settlement Agreement.

A. The Settlement Administrator shall be bound by the Confidentiality Order and any further non-disclosure or security protocol jointly required by the Settling Parties, set forth in writing to the Settlement Administrator.

B. The Settlement Administrator shall use the data provided by Defendants and the Plan's recordkeeper solely for the purpose of meeting its obligations as Settlement Administrator, and for no other purpose.

C. The Settling Parties shall have the right to approve a written protocol to be provided by the Settlement Administrator concerning how the Settlement Administrator will maintain, store, and dispose of information provided to it in order to ensure that reasonable and necessary precautions are taken to safeguard the privacy and security of such information.

4. Class Certification: The following Settlement Class is preliminarily certified for settlement purposes only pursuant to Fed. R. Civ. P. 23(b)(1):

> All participants and beneficiaries of the Xerox Corporation Savings Plan at any time from August 11, 2015, until January 1, 2021 (the date that the Plan's current recordkeeper took over the recordkeeping function), excluding any persons with responsibility for the Plan's administrative functions or expenses.

The Court appoints Chris Carrigan, Michael Venti, and Sylvain Yelle as representatives for the Settlement Class. Further, the Court appoints Nichols Kaster, PLLP and Garrison, Levin-Epstein, Fitzgerald & Pirotti, P.C. as counsel for the Settlement Class.

5. Class Notice: The Settling Parties have presented to the Court the Settlement Notices, which are the proposed forms of notice regarding the Settlement for mailing to Class Members.

A. The Court approves the text of the Settlement Notices and finds that the proposed forms and content therein fairly and adequately:

i. Summarize the claims asserted;

ii. Describe the terms and effect of the Settlement;

iii. Notify the Settlement Class that Class Counsel will seek compensation from the Qualified Settlement Fund for Attorneys' Fees and Costs, Administrative Expenses, and Class Representative Compensation;

iv. Give notice to the Settlement Class of the time and place of the Fairness Hearing, and Class Members' right to appear; and

v. Describe how the recipients of the Class Notice may object to the Settlement, or any requested Attorneys' Fees and Costs, Administrative Expenses, or Class Representative Compensation.

B. Under Rules 23(c)(2) and (e) of the Federal Rules of Civil Procedure, the contents of the Settlement Notices and mailing the Settlement Notices constitutes the best notice practicable under the circumstances, provides due and sufficient notice of the Fairness Hearing and of the rights of all Class Members, and complies fully with the requirements of Federal Rule of Civil Procedure 23 and due process.

C. The Settlement Administrator shall send by first class mail the appropriate Settlement Notice to each Class Member within forty-five (45) calendar days of the date of this Order, as specified in the Settlement Agreement, based on data provided by the Plan's recordkeeper. The Settlement Notices shall be mailed by first-class mail, postage prepaid, to the last known address of each Class Member provided by the Plan's recordkeeper (or its designee), unless an updated address is obtained by the Settlement Administrator through its efforts to verify the last known addresses provided by the Plan's recordkeeper (or its designee). The Settlement

Administrator shall use commercially reasonable efforts to locate any Class Member whose Settlement Notice is returned and re-mail such documents one additional time.

D. On or before the date that Settlement Notices are sent to the Settlement Class, the Settlement Administrator shall establish a Settlement Website and telephone support line as provided by the Settlement Agreement. The Settlement Administrator shall post a copy of the Settlement Notices on the Settlement Website.

6. Preliminary Injunction: Each Class Member and their respective heirs, beneficiaries, executors, administrators, estates, past and present partners, officers, directors, agents, attorneys, predecessors, successors, and assigns, is preliminarily enjoined from suing Defendants, the Plan, or the Released Parties in any action or proceeding alleging any of the Released Claims, even if any Class Member may thereafter discover facts in addition to or different from those which the Class Members or Class Counsel now know or believe to be true with respect to the Action and the Released Claims. Further, pending final determination of whether the Settlement Agreement should be approved, no Class Member may directly, through representatives, or in any other capacity, commence any action or proceeding in any court or tribunal asserting any of the Released Claims against the Defendants, the Plan, or the Released Parties.

7. Objections to Settlement: Any objections to any aspect of the Settlement shall be heard, and any papers submitted in support of said objections shall be considered, by the Court at the Fairness Hearing if they have been timely sent to Class Counsel and Defendants' Counsel. To be timely, the objection and any supporting documents must be sent to Class Counsel and Defendants' Counsel at least twenty-eight (28) calendar days prior to the scheduled Fairness Hearing.

8. Responses to Objections and Final Approval Motion: Any party may file a response to an objection by a Class Member at least fourteen (14) calendar days before the Fairness Hearing, and Plaintiffs shall file their Final Approval Motion at least fourteen (14) calendar days before the Fairness Hearing.

9. Continuance of Hearing: The Court may adjourn, modify, or continue the Fairness Hearing without further direct notice to the Class Members, other than by notice via the Court's docket or the Settlement Website.

10. CAFA Notices: The Court approves the form of the CAFA notices attached as Exhibit 5 to the Settlement Agreement and orders that upon the mailing of the CAFA notices, Defendants shall have fulfilled their obligations under the Class Action Fairness Act, 28 U.S.C. §§ 1711, *et seq*.

IT IS SO ORDERED.

Dated: _____ _____

Hon. Sarala V. Nagala
United States District Judge