

STATE OF MINNESOTA
COUNTY OF RAMSEY

RECEIVED
Ramsey County
District Court

MAR 18 2011

DISTRICT COURT
SECOND JUDICIAL DISTRICT

CASE TYPE: Employment

Clifford L. Whitaker, et al.,
on behalf of themselves
and all others similarly situated,

By _____ Deputy

Court File No. C4-04-12239
(The Honorable Gregg E. Johnson)

Plaintiffs,

**JOINT MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT AND PROVISIONAL
CLASS CERTIFICATION**

vs.

3M Company,

Defendant.

Plaintiffs and Defendant, by and through their respective counsel and pursuant to Minnesota Rule of Civil Procedure 23.05, hereby move the Court for preliminary approval of their proposed class action settlement, including provisional class certification for settlement purposes only, as set forth in the Settlement Agreement between the parties (attached as Exhibit 1). Plaintiffs respectfully refer the Court to their memorandum and affidavits in support of preliminary approval of the proposed class action settlement. The parties ask the Court to make the following findings for the purposes of settlement only:

1. The parties' Settlement Agreement is fair, reasonable, and adequate; and, therefore, warrants submission to members of the proposed Settlement Class for their consideration;

2. The Notice, Class Member Declaration and Claim Sheet (attached to the Settlement Agreement as Exhibits B, C, and D) comply with due process because they

are reasonably calculated to adequately apprise members of the proposed Settlement Class of: (i) the pending lawsuit; (ii) the proposed settlement; and (iii) their rights, including the right to participate in the settlement, exclude themselves from the settlement, or object to the settlement;

3. For purposes of settlement only, the requirements of Minnesota Rule of Civil Procedure 23.01 have been satisfied:

- a. The proposed Settlement Class is so numerous that joinder of all members of the proposed Settlement Class is impracticable;
- b. Plaintiffs' claims are typical of claims of individual members of the proposed Settlement Class;
- c. Questions of law or fact are common to the proposed Settlement Class; and
- d. Plaintiffs and their Counsel fairly and adequately represent and protect the interests of the proposed Settlement Class.

4. For purposes of settlement only, the requirements of Minnesota Rule of Civil Procedure 23.02(c) have been satisfied:

- a. Issues common to the proposed Settlement Class predominate over any questions affecting only individual members of the proposed Settlement Class; and
- b. Class certification is superior for purposes of implementing the Settlement Agreement to other available methods for the fair and efficient adjudication of the controversy.

WHEREFORE, the parties jointly request the Court enter the following order:

1. Preliminarily approving the Settlement Agreement, including the Notice, Class Member Declaration and Claim Sheet (attached to the Settlement Agreement as Exhibits B, C, and D), and requiring the parties to comply with the terms of the Settlement Agreement;

2. Provisionally certifying, for settlement purposes only, the Settlement Class pursuant to Minnesota Rule of Civil Procedure 23.02(c), appointing Named Plaintiffs Clifford Whitaker, Michael Mucci, Mark Swanson, Thomas Bulen and Robert Coates, as class representatives, appointing attorney Steven M. Sprenger of Sprenger + Lang, PLLC, as Lead Class Counsel, and defining the Class as:

All persons who were 46 or older when employed by 3M in Minnesota in a salaried exempt position below job grade 18 at any time on or after May 10, 2003 through December 31, 2010, and who did not sign a document on or about their last day of employment purporting to release claims arising out of their employment with 3M.

3. Directing the parties, through the Claims Administrator selected by the parties, to mail the Notice, Class Member Declaration and Claim Sheet as specified in the Settlement Agreement to Class Members;

4. Establishing the 3M Whitaker Qualified Settlement Fund as described in the Settlement Agreement;

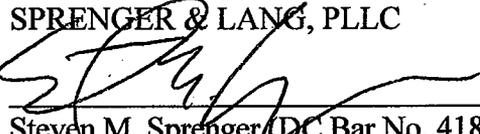
5. Establishing appropriate dates for the filing and service of Class Member opt-out statements and objections and the manner thereof, and the effect of any Class Member's failure to comply with the settlement procedures set forth in the Settlement Agreement and approved by the Court; and

6. Setting a date for a final Fairness Hearing on or after December 15, 2011.

Respectfully submitted,

Dated: 3-14-11

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3/18/11

SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT AND RELEASE (the "**Agreement**") is between Plaintiffs Clifford L. Whitaker, Michael V. Mucci, Robert W. Coats, Mark D. Swanson, and Thomas R. Bulen, individually and on behalf of all others similarly situated, and defendant 3M Company ("**3M**") (collectively, the "**Parties**").

RECITALS

A. On December 21, 2004, Plaintiffs filed a putative class action complaint in the Minnesota District Court, Second Judicial District, entitled *Clifford L. Whitaker et al., on behalf of themselves and all others similarly situated v. 3M Company*, Court File No. 62-C4-04-012239. The Complaint was subsequently amended twice. The operative Third Amended Complaint (the "**Complaint**" or the "**Action**") is dated May 22, 2007.

B. Plaintiffs assert a cause of action for alleged age discrimination in violation of the Minnesota Human Rights Act ("MHRA"), Minn. Stat. ch. 363A, on behalf of all persons who were 46 or older when employed by 3M in Minnesota in salaried exempt positions below job grade 18 any time on or after May 10, 2003, and who did not sign a document on or about their last day of employment purporting to release claims arising out of their employment with 3M. Plaintiffs allege that 3M discriminated against salaried, exempt employees age 46 and older below job grade 18 in connection with promotions, compensation, performance evaluations, training selections, and terminations. 3M denies all of Plaintiffs' allegations.

C. On April 11, 2008, the Minnesota District Court granted Plaintiffs' motion for class certification. On April 28, 2009, the Minnesota Court of Appeals reversed the District Court's order granting certification and remanded for further proceedings consistent with its opinion. Plaintiffs' renewed motion for class certification is presently pending before the Minnesota District Court.

D. The parties, having engaged in extensive settlement discussions, through the use of an experienced and nationally respected mediator, Hunter Hughes, and otherwise, now desire to bring this lawsuit to an amicable resolution on terms set forth herein. The Parties, understanding the risks inherent in continued litigation, believe these terms are fair and that settlement of Plaintiffs' claims is in the best interest of all Parties. The Parties enter into this Agreement acknowledging that nothing herein is or shall be construed as an admission of liability by 3M, which denies any wrongdoing or liability whatsoever.

NOW, THEREFORE, with the intent to be legally bound hereby, and in consideration of the mutual covenants contained herein, the parties agree as follows:

AGREEMENT

1. DEFINITIONS

1.1 "**Class Member Declaration**" means the form sent to Class Members with the Notice requesting information regarding each Class Member's claim against 3M. The proposed Class Member Declaration shall be substantially similar to the form attached as **Exhibit C**.

1.2 ***“Notice of Award, Claim Form and Settlement Class Member Release”*** or ***“Claim Sheet”*** means the form sent to Settlement Class Members containing each Settlement Class Member’s estimated Settlement Award and a release of claims against 3M. The proposed Claim Sheet shall be substantially similar to the form attached as **Exhibit D**.

1.3 ***“Claims Administrator”*** means Rust Consulting, the company the Parties have designated to administer the claims process and payments provided for under the Agreement. The Claims Administrator shall also serve as administrator of the 3M Whitaker Qualified Settlement Fund (“Qualified Settlement Fund”), as described in Section 3.3, below. References to the Claims Administrator shall refer to the Claims Administrator in its capacity as Claims Administrator and/or as administrator of the Qualified Settlement Fund as necessary to implement the terms of this Agreement.

1.4 ***“Claims Administrator Costs”*** means the portion of the Gross Settlement Fund (as defined in Section 3.1 of this Agreement) attributed to all costs, expenses, and time incurred by the Claims Administrator or any other Party acting on its behalf for the administration of this Settlement, including (i) preparing, issuing, printing, mailing, and monitoring all necessary notices, declarations, filings, and tax related documents; (ii) computing the Settlement Awards, applicable taxes, and any other payments to be made; (iii) establishing or maintaining the Qualified Settlement Fund; (iv) distributing payments; (v) any related communications with Class Members or Class Counsel; and (vi) any other obligations mandated by this Agreement for the Claims Administrator, as ordered by the Court, or as may be agreed upon by the parties. Subject to the terms of this Agreement and the Court’s approval, such costs are currently estimated to be not more than a maximum total sum of \$132,000.

1.5 ***“Class,” “Class Member,”*** or ***“Class Members”*** means all persons who, on or before December 31, 2010, were 46 years old or older when employed by 3M in Minnesota in a salaried exempt position below job grade 18 any time on or after May 10, 2003, and who did not sign a document on or about their last day of employment purporting to release claims arising out of their employment with 3M.

1.6 ***“Class Period”*** means January 1, 2001 to December 31, 2010.

1.7 ***“Settlement Class,” “Settlement Class Member,”*** or ***“Settlement Class Members”*** mean Class Members who do not timely submit a written statement opting-out of this Settlement.

1.8 ***“Class Counsel”*** means the law firm of Sprenger + Lang, PLLC and the AARP Foundation Litigation.

1.9 ***“Attorneys’ Fees and Costs”*** means the portion of the Gross Settlement Fund (as defined in Section 3.1 of this Agreement) attributed to attorneys’ fees and costs that shall cover all work performed and all fees and costs incurred by Class Counsel in this litigation, including all work to date, all work to be performed and all fees and costs to be incurred in connection with obtaining the Court’s approval of this Settlement, Class Counsel’s work in connection with the administration of the Settlement, and obtaining final judgment with prejudice of the Action, as further defined in this Agreement.

1.10 ***“Fairness Hearing”*** means the hearing during which the Court makes the final decision on whether to approve this Agreement as fair, reasonable, and adequate.

1.11 ***“Final Approval Order and Judgment”*** means an order and judgment certifying the

Class for settlement purposes only, approving the Settlement and entering Final Judgment. The proposed Final Approval Order and Judgment shall be substantially similar to the form attached as **Exhibit E**.

1.12 “*Final Settlement Date*” means the date when the latest of any of the following events occurs: (a) if no appeal or request for review is taken, five (5) business days after the expiration of the time to file an appeal pursuant to Minn. R. App. P. 104.01; (b) if any appeal or request for review is taken, the date on which Named Plaintiffs serve notice that an appellate court entered an order denying review of or affirming the Final Approval Order and Judgment, and after exhaustion of all appeals or the time for seeking all appeals expires; or (c) five (5) calendar days after the latest date for the expiration of any Plaintiff’s revocation period, as set forth in Section 4 of the settlement agreement in *Arthur J. Garcia et al., on behalf of themselves and all others similarly situated v. 3M Company*, Court File No. C09-01943.

1.13 “*Named Plaintiffs*” mean plaintiffs Clifford L. Whitaker, Michael V. Mucci, Robert W. Coats, Mark D. Swanson, and Thomas R. Bulen in their individual capacities, and each of their respective successors, assigns, legatees, heirs, agents and personal representatives.

1.14 “*Enhancement Award*” means the proposed \$25,000 award to be paid to each Named Plaintiff in recognition of his efforts and the risks (financial, professional, and emotional) taken in commencing this Action.

1.15 “*Notice*” means the legal notice of the proposed Settlement terms, as approved by Class Counsel, 3M’s Counsel, and the Court. The proposed Notice shall be substantially similar to the form attached as **Exhibit B**.

1.16 “*Preliminary Approval Order*” means the order preliminarily approving the Settlement, certifying a provisional Settlement Class, providing for notice, setting a date for the Fairness Hearing, appointing Class Counsel and the class representatives, and ordering creation of a Qualified Settlement Fund. The proposed Preliminary Approval Order shall be substantially similar to the form attached as **Exhibit A**.

1.17 “*Settlement*” means the settlement of this Action and related claims effectuated by this Agreement.

1.18 “*Gross Settlement Sum*” means the amount, up to \$12 million (\$12,000,000.00), that 3M agrees to pay to resolve the entire Action for all Class Members on an opt-out basis. In addition, 3M will pay the employer’s share of employment tax withholding obligations (e.g., FICA, FUTA, Medicare).

1.19 “*Class Recovery*” is \$5,600,000.00, which represents the Gross Settlement Sum minus Attorneys’ Fees and Costs.

1.20 “*Settlement Award*” means the amount of money to be paid to each Settlement Class Member.

1.21 “*3M*” means 3M Company as well as its past, present and future officers, directors, administrators, shareholders, employees, agents, attorneys, insurers, and representatives; any past, present or future successors, subsidiaries, parents, affiliated or related corporations; insurers of those

entities; all benefit plans sponsored by 3M, and each of their respective past, present and former agents, employees, or representatives, insurers, partners, associates, successors, and assigns, in any and all capacities (including but not limited to the fiduciary, representative, or individual capacity of any released person or entity); and any entity owned by, related to or affiliated with any of the above.

1.22 “*3M’s Counsel*” means the law firm of Dorsey & Whitney LLP.

2. **REQUISITES FOR CERTIFICATION OF A CLASS ACTION**

2.1 Solely for purposes of settling this case, the Parties stipulate and agree that the requisites for class certification under Minnesota Rule of Civil Procedure 23.01 (numerosity, commonality, typicality, and adequacy of representation) and Minnesota Rule of Civil Procedure 23.02 have been met with respect to the Settlement Class.

2.2 3M denies any liability or wrongdoing of any kind whatsoever associated with the claims alleged in Plaintiffs’ Complaint, and further denies that, for any purpose other than settling these lawsuits, these actions are appropriate for treatment as a class action. 3M categorically denies any liability or wrongdoing of any kind whatsoever associated with any allegations of employment discrimination against 3M, including but not limited to age discrimination and whether or not pled in Plaintiffs’ Complaint. 3M contends that it has at all times complied fully with the requirements of the MHRA and all other laws prohibiting employment discrimination.

2.3 It is the desire of the Parties to fully, finally, and forever settle, compromise, and discharge all disputes and claims arising from or related to the Complaint in this case, or which could have been raised in the Complaint in this case. In order to achieve a full and complete release of 3M, Plaintiffs, for themselves and on behalf of the Class, acknowledge that this Settlement Agreement is intended to include in its effect, to the fullest extent permitted by law, all claims of any nature alleging age discrimination or retaliation in employment related to age discrimination or termination of employment related to age discrimination by 3M under the Minnesota Human Rights Act, Minn. Stat. §§ 363A.01, *et seq.*, or under the common law or otherwise, under any legal or equitable theory, including but not limited to claims of age discrimination in promotions, compensation, performance evaluations, training selections and/or terminations, alleged against 3M as of the date of the Court’s Preliminary Approval Order, as well as any and all claims of retaliation or reprisal, alleged against 3M as of the date of entry of the Court’s Preliminary Approval Order. Plaintiffs agree and acknowledge that the Settlement Class Member Release to be executed by Settlement Class Members as a condition of receiving their respective Settlement Awards shall include in its effect, to the fullest extent permitted by law, all claims of any nature alleging discrimination or retaliation in employment or termination of employment by 3M, including but not limited to claims alleging age discrimination, as set forth below.

2.4 The Parties agree to cooperate and take all steps necessary and appropriate to obtain final judgment.

2.5 At all times, Sprenger + Lang, PLLC and the AARP Foundation Litigation have been counsel of record for Plaintiffs. As defined in Section 1.8 above, for purposes of this Settlement only, Sprenger + Lang, PLLC and the AARP Foundation Litigation shall be designated as Class Counsel. Class Counsel have conducted a thorough investigation into the facts of this class action, including an extensive review of relevant documents, and have diligently pursued an investigation of Class Members’ claims against 3M. Based on their own independent investigation and evaluation, Class

Counsel are of the opinion that the Settlement with 3M for the consideration and on the terms set forth in this Agreement is fair, reasonable, and adequate and is in the best interest of the Settlement Class in light of all known facts and circumstances, including the risk of significant delay, the risk the Class will not be certified by the Court, defenses asserted by 3M, and potential appellate issues. 3M and 3M's Counsel also agree that the Settlement is fair.

3. SETTLEMENT TERMS

3.1 Gross Settlement Sum. 3M will pay to the Qualified Settlement Fund an amount not to exceed \$12 million (\$12,000,000.00) ("**Gross Settlement Sum**") to resolve the entire Action for all Class Members on an opt-out basis, which shall be sufficient to cover claims for Class Counsel's attorneys' fees (not to exceed \$3.5 million), Plaintiffs' litigation costs (not to exceed \$2.9 million), Named Plaintiffs' Enhancement Awards (not to exceed \$125,000), Claims Administrator Costs (currently estimated to be not more than a maximum total sum of \$132,000), and calculated Settlement Awards to eligible Settlement Class Members as reasonably determined by the Claims Administrator consistent with Sections 4.3, 4.6, 4.8, 4.9, 4.13, 4.15, 4.18, 5.6, and 7, herein. The Gross Settlement Sum transferred to the Claims Administrator pursuant to Section 3.3 will be net of any Settlement Awards allocated to Class Members pursuant to Section 4.3 who opt out or fail to timely execute and return a Class Member Declaration or Claim Sheet and Settlement Class Member Release described in Sections 4.6 - 4.8. At no point will 3M be obligated to pay any sum in excess of the Gross Settlement Sum. Subject to the terms set forth in Section 7 below, the Gross Settlement Sum will pay for all expenses related to settlement of this Action.

3.2 Dismissal and Judicial Release. In exchange for 3M's consideration, including but not limited to payment of the Gross Settlement Sum and the Programmatic Relief terms set forth in Section 8 herein, and upon the Court's Final Approval Order, Settlement Class Members and Named Plaintiffs will release 3M from any and all liability for age discrimination claims in accordance with Section 5 below, and the Action shall be dismissed with prejudice. The Court shall retain jurisdiction to enforce the provisions of Section 8 of this Agreement for the duration of the term set forth in Section 8.2.

3.3 Qualified Settlement Fund. The parties will seek the Court's order, in conjunction with its Preliminary Approval Order, establishing a Qualified Settlement Fund ("QSF"), as required by Treas. Reg. Section 1.468B-1. At the times required by this Agreement, 3M shall transfer the Gross Settlement Sum to the Claims Administrator to be held as a separate trust constituting a QSF as described in Treasury Regulation §1.468B-1, 26 C.F.R. §1.468B-1. Class Counsel and 3M jointly shall, and shall cause the Claims Administrator to, take such steps as shall be necessary to qualify the QSF under §468B of the Internal Revenue Code, 26 U.S.C. §468B, and the regulations promulgated pursuant thereto. 3M shall be considered the "transferor" within the meaning of Treasury Regulation §1.468B-1(d)(1). The Claims Administrator shall be the "administrator" within the meaning of Treasury Regulation §1.468B-2(k)(3) and will perform such duties as are required of the Claims Administrator and the administrator of the Qualified Settlement Fund. The Parties shall cooperate in securing an order of the Court to establish the QSF in accordance with the terms hereof. The administrator of the QSF shall have the responsibility for determining all awards and other payments, as well as responsibility for all tax information, return, and withholding obligations under the Internal Revenue Code, as amended, with respect to all amounts paid to eligible Settling Class members out of the QSF pursuant to this Agreement. The parties agree that the QSF is intended to be a qualified settlement fund under the requirements of Treasury Regulations Section 1.468B-1(c). The Settlement Fund shall be established and administered in accordance with Treasury Regulations Sections 1.468B-

1 to 1.468B-5, and all transfers of cash or property to or from the Settlement Fund shall be made in compliance with such Treasury Regulations.

4. SETTLEMENT APPROVAL, NOTICE, OPT-OUT, CLAIM AND DISTRIBUTION PROCEDURES

4.1 Request for Preliminary Approval and Provisional Class Certification. As soon as practicable after the signing of this Agreement, the Parties shall move for preliminary approval of this Agreement and provisional certification of a class action. The proposed order filed in conjunction with the joint motion for preliminary approval shall be substantially similar to the form attached as **Exhibit A**. Class Counsel shall draft the moving papers and give 3M's Counsel drafts of the motion and proposed order to review at least fifteen (15) calendar days before the motion's filing deadline. The motion shall request the Court to:

- (a) preliminarily approve this Agreement as being fair, reasonable, and adequate;
- (b) preliminarily approve the form, manner, and content of the Notice, Class Member Declaration, and Claim Sheet;
- (c) order establishment of a Qualified Settlement Fund;
- (d) set the date and time of the Fairness Hearing;
- (e) provisionally certify a class action under Minnesota Rule of Civil Procedure 23.01, 23.02, and 23.05 for settlement purposes only;
- (f) appoint Named Plaintiffs as the class representatives; and
- (g) appoint Sprenger + Lang, PLLC and the AARP Foundation Litigation as Class Counsel.

4.2 Claim Data. Within sixty-five (65) calendar days after entry of the Preliminary Approval Order, 3M will provide the Claims Administrator with an electronic database or spreadsheet with separate fields containing the following information for each Class Member: (a) name; (b) date of birth; (c) social security number; (d) last known address; (e) date of commencement of employment; (f) compensation and compensation history files for each year during the Class Period in which the Class Member was 46 years or older; (g) employee grade for each year during the Class Period in which the Class Member was 46 years or older; (h) whether the employee was selected as a Black Belt or Master Black Belt or for ALDP I or ALDP II; (i) date of termination/separation, if applicable; and, (j) whether the Class Member's termination/separation entitled the Class Member to severance pay (regardless whether in connection with a job elimination, a performance separation, a sale of a business unit or otherwise) conditioned on the signing of a release that the Class Member did not sign. In addition, 3M will calculate and provide the Claims Administrator with the average pay increase for employees (both older and younger than age 46) in each grade each year, as measured by compensation and compensation history files. The Claims Administrator shall be authorized to use this information for purposes of settlement administration and tax reporting only and shall be required to keep such data secure and confidential.

4.3 Settlement Award Calculations. Within one hundred and thirty (130) calendar days after entry of the Preliminary Approval Order, the Claims Administrator shall provide Class Counsel and 3M's Counsel with a report listing the portion of the Class Recovery allocated to each Class Member, which shall be calculated pursuant to the formula set forth in Section 7.1 below.

4.4 Mailing of Class Notice and Class Member Declaration. On the ninetieth (90th) calendar day after entry of the Preliminary Approval Order, or the following business day if the 90th day is a Sunday or holiday, the Claims Administrator shall mail a copy of the Notice and Class Member Declaration and a self addressed stamped envelope to each Class Member. The proposed Notice and Class Member Declaration shall be substantially similar to the forms attached as **Exhibits B and C**, respectively. The Notice shall prominently advise the Class that 3M will not retaliate against current employees for not opting out of and taking part in the Settlement.

4.5 Address Check. Prior to the initial notice mailing, the Claims Administrator will process the Class Members' addresses through the National Change of Address database maintained by the United States Postal Service. If a mailing to a Class Member is returned as undeliverable, the Claims Administrator shall conduct one search for the Class Member's current address through an automated search service such as Lexis Nexis. If an address is not found, the Claims Administrator is not required to take any further action with respect to that Class Member's Notice, Class Member Declaration, Claim Sheet, or Settlement Award. The Claims Administrator shall provide to Class Counsel and 3M's Counsel a list of those Class Members for whom mailed notice is returned as undeliverable.

4.6 Return of Class Member Declaration. Class Members shall complete, execute and return their Class Member Declaration within seventy-five (75) calendar days of the initial mailing of the Notice and Class Member Declaration. Except for Class Members who opt out pursuant to Section 4.9 below, Class Members who fail to timely execute and return their Class Member Declaration shall not be entitled to any Settlement Award but shall otherwise be bound by the Settlement Agreement, including the Judicial Release set forth in Section 5 herein. Class Member Declarations shall be deemed timely returned if they are postmarked on or before the 75th day after the initial mailing of the Notice and Class Member Declarations. The time to submit a Class Member Declaration will not be enlarged for returned mailings.

4.7 Mailing of Claim Sheet. Within ten (10) calendar days after the deadline for return of Class Member Declarations, as set forth in Section 4.6, the Claims Administrator shall mail a copy of the Claim Sheet and Settlement Class Member Release and a self-addressed stamped envelope to each Settlement Class Member who has timely executed and returned a Class Member Declaration on which the Settlement Class Member indicates a claim for age discrimination. The proposed Claim Sheet shall be substantially similar to the form attached as **Exhibit D**.

4.8 Signed Claim Sheet Required. Class Members shall complete, execute and return their Claim Sheet within forty-five (45) calendar days of the initial mailing of the Claim Sheets. Except for Class Members who opt out pursuant to Section 4.9 below, Class Members who fail to timely sign and return their Claim Sheet shall not be entitled to any Settlement Award but shall otherwise be bound by the Settlement Agreement, including the Judicial Release set forth in Section 5 herein. Claim Sheets shall be deemed timely returned if they are postmarked on or before the 45th day after the initial mailing of the Claim Sheet. The time to submit a Claim Sheet will not be increased for returned mailings.

4.9 Request to Opt-Out. Class Members may elect to opt-out of the Settlement and not be bound by its terms. To make this election, Class Members shall have one hundred (100) calendar days from the initial mailing date of Notice to submit a signed, written request to opt-out to the Claims Administrator. No particular format shall be required for a Class Member to opt-out, provided that the Class Member's written request reasonably identifies the Class Member and the *Whitaker v. 3M Company* litigation and expresses an intent to opt-out of the Settlement. Opt-outs shall be deemed timely returned if they are postmarked on or before the 100th day after the initial mailing of the Notice. The time to submit a written request to opt out will not be enlarged for returned mailings. The Claims Administrator may contact Class Members who elect to opt-out to confirm that they actually intend to opt-out of the Settlement, to explain the Settlement terms, and to provide Class Counsel's contact information if requested. Class Members who fail to timely opt out shall otherwise be bound by the Settlement Agreement, including the Judicial Release set forth in Section 5 herein. Individuals who timely opt-out of the Settlement are no longer deemed to be Settlement Class Members, and, as such, may not object to the Settlement as permitted below.

4.10 Contact Information and Opt-Out List. No later than fifteen (15) calendar days after the opt-out period expires, the Claims Administrator shall send 3M's Counsel and Class Counsel a list of the names of any Class Members who timely and validly opt-out of the Settlement.

4.11 Blow-up Clause. If more than 5% of the Class Members opt-out of the Settlement, 3M, at its sole discretion, may terminate the Settlement within thirty (30) calendar days after the opt-out period expires by notifying Class Counsel and the Claims Administrator in writing that it elects to terminate the Agreement.

4.12 Termination by 3M If Failure of Agreement With EEOC. Notwithstanding any other section of this Agreement, 3M, at its sole discretion, may terminate the Settlement in the event that 3M is unable to reach a negotiated resolution of the EEOC's investigation of putative claims against 3M under the Age Discrimination in Employment Act ("ADEA") on or before the date for mailing of Class Notice set forth in Section 4.4 herein, by notifying Class Counsel and the Claims Administrator in writing that it elects to terminate the Agreement.

4.13 Effect of Agreement If Settlement Is Not Approved. This Agreement is being entered into only for settlement purposes. If the Court does not approve the Settlement or enter the Final Approval Order and Judgment, for any reason, or the Final Settlement Date does not occur, for any reason, including but not limited to those set forth in Sections 4.11 and 4.12 above, this Agreement will be deemed null and void *ab initio*. In that event: (a) the Preliminary Approval Order, and all of its provisions, will be automatically vacated; (b) the Action will revert to the status that existed at the execution date of this Agreement, subject to the Parties' agreement to seek additional time to complete discovery from the Court; (c) no party shall be deemed to have waived any claims, objections, rights or defenses, or legal arguments or positions, including, but not limited to, claims or objections to class certification, and claims and defenses on the merits; (d) no term or draft of this Agreement, or any aspect of the Parties' settlement discussions, including related documentation, will have any effect or be admissible into evidence for any purpose in the Action, or in any other proceeding; and (e) 3M will pay all costs incurred by the Claims Administrator. In addition, 3M shall have no obligation to pay any of the Gross Settlement Sum.

4.14 Objections. Settlement Class Members who wish to object to the Settlement must file a written objection with the Court and serve copies of the filing on Class Counsel and 3M's Counsel no

later than one hundred (100) calendar days from the initial mailing date of Notice. Objections shall be deemed timely returned if they are postmarked on or before the 100th day after the initial mailing of the Notice. The time to submit an objection will not be increased for returned mailings. The objection shall include: (a) the objecting person's full name, address, and telephone number; (b) the words "Notice of Objection" or "Formal Objection"; (c) in clear and concise terms, the legal and factual arguments supporting the objection to the proposed Settlement; and (d) a list identifying the witness(es) the objector may call to testify at the Fairness Hearing and true and correct copies of any exhibit(s) the objector intends to offer. Settlement Class Members who fail to make objections in the manner specified above will be deemed to have waived their ability to object to the Agreement, and, therefore, will be foreclosed from making any objection (whether by a subsequent objection, intervention, appeal, or otherwise) to the Agreement. Settlement Class Members who have not filed and served timely written objections may not speak at the Fairness Hearing. If the Claims Administrator receives objections, the Claims Administrator shall provide Class Counsel and 3M's Counsel with immediate notice of any such objection received.

4.15 Appeal of Settlement Award. Within the time period set forth for the return of Claim Sheets in Section 4.8, a Settlement Class Member may submit a written request to the Claims Administrator for information concerning the calculation of his or her Settlement Award. Upon request and as soon as reasonably practicable, the Claims Administrator shall provide a written description of the calculation upon which the Settlement Class Member's individual Settlement Award was based. If the Settlement Class Member disputes the accuracy of the mathematical calculation of his or her Settlement Award, or of any data that provides the basis for the calculation of his or her Settlement Award, the Settlement Class Member may submit a written appeal of the calculation to the Claims Administrator, which shall set forth the basis for, and any documentation supporting, his or her appeal. The written appeal also shall be submitted within the time period set forth for the return of Claim Sheets in Section 4.8. No particular format shall be required for a Settlement Class Member to submit a written appeal, provided that the Settlement Class Member's written appeal reasonably identifies the Settlement Class Member and the *Whitaker v. 3M Company* litigation and identifies the basis for appeal. Written requests for information or appeals shall be deemed timely submitted if they are postmarked on or before the last day for Settlement Class Members to return Claim Sheets. Data provided by 3M in connection with the administration of this Settlement shall have a presumption of correctness. The Claims Administrator may consult with Class Counsel and 3M Counsel in resolving any appeal, but shall be the final decision maker with respect to any appeal under this Section.

4.16 Claims Administrator's Report. Within ten (10) calendar days following the expiration of the claim period set forth in Section 4.8 and the expiration of the revocation period for all Settlement Class Member Releases, the Claims Administrator shall prepare and deliver to 3M's Counsel and Class Counsel a report identifying (1) all Class Members who timely executed and returned a Class Member Declaration and Claim Sheet and the settlement award amount allocated to each such person; (2) all Class Members who did not timely execute and return a Class Member Declaration and the settlement award amount allocated to each such person; (3) all Class Members who opted out of the settlement and the settlement award amount allocated to each such person; (4) all Settlement Class Members who did not timely execute and return a Claim Sheet and the settlement award amount allocated to each such person; (5) all Settlement Class Members who submitted objections to the settlement through the Claims Administrator.

4.17 Request for Final Approval. After the Claims Administrator has delivered the report required by Section 4.16, and provided that the Agreement has not terminated, the parties shall move

for Court approval of a Final Approval Order and Judgment. The proposed Final Approval Order and Judgment shall be substantially similar to the form attached as **Exhibit E**. Class Counsel shall draft the moving papers and give 3M's Counsel drafts of the motion and proposed order to review at least seven (7) calendar days before the motion's filing deadline.

4.18 Transfer of Gross Settlement Sum. Within five (5) calendar days after the Final Settlement Date, 3M shall transfer the Gross Settlement Sum, as defined in Section 3.1, to the Claims Administrator to distribute the Settlement. 3M's obligations shall never exceed the Gross Settlement Sum.

4.19 Distribution of Gross Settlement Sum. Within thirty (30) calendar days after the Final Settlement Date, the Claims Administrator shall distribute the Gross Settlement Sum as set forth in Section 7.1 below, except that within ten (10) calendar days after the Final Settlement Date, the Claims Administrator shall pay to Class Counsel the amount allocated to attorneys' fees and costs pursuant to Section 7.1(c) and awarded by the Court. Notwithstanding any other Section of this Agreement, the Claims Administrator shall not distribute any Settlement Award to any Settlement Class Member who has not completed the claims process set forth herein, including (1) executed and returned a Class Member Declaration; and (2) executed and returned, and not revoked, a Settlement Class Member Release consistent with the terms of Section 5 of this Agreement.

4.20 Return of Documents and Other Discovery. Within thirty (30) days after the distribution of the Gross Settlement Sum, and except as permitted by Paragraph 12 of the Parties' Stipulated Protective Order in this Action, Named Plaintiffs and Class Counsel (including Class Counsel's agents) shall, at 3M Counsel's request, return or destroy all originals and duplicate copies of all materials or information produced or obtained from 3M in the discovery process (whether by formal or informal discovery) and settlement process. This includes, but is not limited to, business records, proprietary information, compensation information, or any other documents, materials, summaries, or notes relating to this Action. If any material or information is destroyed, rather than returned to 3M by Named Plaintiffs and/or Class Counsel pursuant to this paragraph, that Named Plaintiff and/or Class Counsel shall provide an affidavit to 3M within seven (7) calendar days attesting to and verifying the destruction thereof.

4.21 Request for Attorneys' Fee Award. 3M will not oppose Class Counsel's adequately documented application for attorneys' fees of up to a maximum of \$3.5 million, plus the actual costs incurred in litigating this Action, up to a maximum of \$2.9 million, with combined total attorneys' fees and costs not to exceed \$6.4 million, and agrees that these sums are reasonable in light of Class Counsel's efforts, risks incurred, and results achieved. The awarded attorneys' fees and costs will be paid out of the Gross Settlement Sum. The awarded attorneys' fees and costs shall cover all work performed and all fees and costs related to Plaintiffs' Complaint, this litigation or Class Counsel's efforts with respect to the claims administration process, and all work to be performed and all fees and costs to be incurred in connection with the approval by the Court of this Agreement, the administration of the Settlement, and obtaining Final Judgment, as well as Class Counsel's responsibilities under Section 8.7 below, but does not include Claims Administrator Costs.

4.22 Request for Enhancement Award. 3M will not oppose the Named Plaintiffs' request for a \$25,000 Enhancement Award for each Named Plaintiff in recognition of his efforts and the risks (financial, professional, and emotional) taken in commencing this Action and agrees that this sum is reasonable.

5. NAMED PLAINTIFFS' AND CLASS MEMBERS' RELEASE

5.1 Judicial Release. As a material inducement to 3M to enter into this Agreement, the Named Plaintiffs individually and on behalf of the Settlement Class, for themselves and their agents, heirs, executors, administrators and assigns, and as a free and voluntary act, fully release and forever discharge 3M, to the fullest extent permitted by law from, and covenant not to sue or otherwise institute or cause to be instituted any legal proceedings against 3M for, any and all claims, allegations, debts, liabilities, demands, obligations, guarantees, costs, expenses, attorneys' fees, damages, penalties, actions, or causes of action of every kind or nature, known or unknown, alleging age discrimination by 3M or retaliation or termination of employment by 3M related to age discrimination or participation in the Action, including but not limited to those alleged in the Action, or that could have been alleged in the Action, and all such claims that could have been asserted against 3M at any time prior to the date of the Preliminary Approval Order, pursuant to the Minnesota Human Rights Act, Minn. Stat. §§ 363A.01, *et seq.*, or under the common law or otherwise, under any legal or equitable theory, including but not limited to allegations or claims of age discrimination against 3M in any form, whether or not related to promotions, compensation, performance evaluations, training selections or termination, as well as any and all claims of retaliation or reprisal against 3M (the "Released Claims"). This Release shall be effective as to all Settlement Class Members without regard to whether a particular Settlement Class Member returns a Class Member Declaration or Claim Sheet.

5.2 Subsequently Discovered Facts. The Named Plaintiffs individually and on behalf of the Settlement Class acknowledge that they may hereafter discover facts in addition to or different from those which they now know or believe to be true with respect to the subject matter of the Released Claims, but the Named Plaintiffs expressly hereby have, and all Settlement Class Members, upon the Final Settlement Date, shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever settled and released any and all Released Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, which now exist, or heretofore have existed, without regard to the subsequent discovery or existence of such different or additional facts. The Named Plaintiffs acknowledge that the foregoing waiver and release was separately bargained for and a key element of the settlement of which this release is a part.

5.3 No Lawsuits. Named Plaintiffs warrant and represent that they have not filed any claims, charges, complaints or actions against 3M, or assigned or transferred or purported to assign or transfer to any person or entity all or any part of or any interest in any claim released under this Agreement, except as identified in **Exhibit F**. Named Plaintiffs agree that they will request the agencies and/or courts with jurisdiction over the matters identified in **Exhibit F** to withdraw those matters or to dismiss the matters in their entirety, with prejudice, and will execute all necessary documents to effect such withdrawals and/or dismissals with prejudice. If any agency or court assumes jurisdiction of any complaints, claims, or actions against 3M by or on behalf of any Named Plaintiff or Settlement Class Member arising out of any act or omission occurring before his or her respective execution of a release pursuant to this Agreement, he or she will request that agency or court withdraw the matter or to dismiss the matter in its entirety, with prejudice, and will execute all necessary documents to effect such withdrawal and/or dismissal with prejudice. To the extent required by law, nothing contained in this Section 5.3 will be interpreted to prevent any Named Plaintiff or Settlement Class Member from filing charges with a governmental agency or participating in or cooperating with an investigation conducted by a governmental agency.

5.4 California Civil Code § 1542 (for California Employees or Residents Only): Plaintiffs expressly waive any and all rights and benefits which Plaintiffs may have under the provisions of California Civil Code section 1542, which provides as follows: “A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.”

5.5 Additional Release for Settlement Class Members Individually Executing A Release of Claims. Plaintiffs agree and acknowledge that the release of claims to be executed by Settlement Class Members as a condition of receiving their respective Settlement Awards shall include in its effect, to the fullest extent permitted by law, all claims of any nature alleging discrimination or retaliation in employment or termination of employment by 3M, including but not limited to claims alleging age discrimination, as set forth below. The release to be executed under this Section shall be substantially similar to that set forth in **Exhibit D**, hereto.

5.6 Nonresponsive Class Members. Class members who neither timely opt out nor timely submit a Claim Sheet shall be ineligible to receive any monetary award pursuant to this Settlement Agreement, but shall be bound by the Judicial Release, and shall be deemed to have fully, finally and irrevocably waived, released and discharged 3M from any and all claims of age discrimination, retaliation or reprisal as set forth in Section 5.1, up to and including the date of Preliminary Approval.

6. NO ADMISSION, NO DETERMINATION

6.1 This Settlement Agreement does not, and is not intended to constitute, nor shall it be deemed to constitute, an admission by any party as to the merits, validity or accuracy of any of the allegations, claims or defenses of any party in this case. Named Plaintiffs continue to assert the merits and validity of their claims under the MHRA. By entering into this Agreement, 3M does not admit or concede, expressly or impliedly, but denies that it has in any way violated the MHRA, parallel federal, state or local laws prohibiting employment discrimination, the common law of any jurisdiction, or any other federal, state or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity. Neither the Court nor any other court has made any findings or expressed any opinion concerning the merits, validity or accuracy of any of the allegations, claims or defenses in this case.

6.2 Nothing in this Settlement Agreement, nor any action taken in implementation thereof, nor any statements, discussions or communications, nor any materials prepared, exchanged, issued or used during the course of the mediation or negotiations leading to this Settlement Agreement, is intended by the parties to, nor shall any of the foregoing constitute, be introduced, be used or be admissible in any way in this case or any other judicial, arbitral, administrative, investigative or other proceeding of whatsoever kind or nature (including, without limitation, the results of the claims process established under this Settlement Agreement) as evidence of employment discrimination prohibited by the MHRA, parallel federal, state or and local laws prohibiting employment discrimination, the common law of any jurisdiction, or any other federal, state or local law, statute, ordinance, regulation, rule or executive order, or any other law or equity. Notwithstanding the foregoing, this Settlement Agreement may be used in any proceeding in the Court to enforce or implement any provision of this Settlement Agreement or implement any orders or judgments of the Court entered into in connection herewith.

6.3 Except to the extent that it would constitute a set off in an action for damages claimed

for the Class Period covered by this Settlement, neither the fact nor amount of an award, nor the fact of any non-award, shall be admissible in any other proceeding for any purpose other than to enforce a release of claims pursuant to this Agreement, nor shall it be deemed to be a finding as to the merits of any claim.

7. SETTLEMENT FUND ALLOCATION

7.1 **Distribution of Gross Settlement Sum.** The Claims Administrator shall allocate the Gross Settlement Sum as follows:

- (a) **Enhancement Awards.** The Claims Administrator shall pay the Court-awarded Enhancement Award to each Named Plaintiff, not to exceed \$25,000 per Named Plaintiff.
- (b) **Administrative Costs.** The Claims Administrator shall pay itself reasonable Claims Administrator Costs in an amount currently estimated to be not more than \$132,000 for all costs, expenses, and time incurred with the administration of this Settlement, including (i) preparing, issuing, printing, mailing, and monitoring all necessary notices, declarations, filings, and tax related documents; (ii) computing the Settlement Awards, applicable taxes, and any other payments to be made out of the Gross Settlement Sum; (iii) establishing or maintaining the Qualified Settlement Fund; (iv) distributing payments out of the Gross Settlement Sum; (v) any related communications with Class Members or Class Counsel; and (vi) any other obligations mandated by this Agreement for the Claims Administrator, as ordered the Court, or as may be agreed upon by the parties.
- (c) **Attorneys' Fees and Costs.** The Claims Administrator shall pay the Court-awarded attorneys' fees of up to a maximum of \$3.5 million, plus the actual costs incurred in litigating this Action, up to a maximum \$2.9 million, with combined total attorneys' fees and costs not to exceed \$6.4 million, pursuant to Section 4.21, above.
- (d) **Settlement Awards.** The Claims Administrator shall allocate a Settlement Award to each Settlement Class Member, pursuant to the calculation described in Section 4.3 above, as follows. Payment of the allocated Settlement Award shall be subject to all required notice and claim procedures set forth in Sections 4 and 5, herein.
 - (i) **Allocation to Class Members.** Based on the information provided by 3M, the Claims Administrator will determine each Class Member's award, as follows. The inclusion of the formula used in this Settlement Agreement, as prepared by Class Counsel and to be administered by the Claims Administrator, does not indicate that 3M endorses or approves of the formula. 3M shall have no responsibility for, and no liability whatsoever with respect to, any allocations to Class Members as set forth herein.
 - (1) First, the Claims Administrator will calculate for each full calendar year during the Class Period in which the Class

Member was (i) employed for the full year by 3M, (ii) at the beginning and end of the year was a full time regular employee in exempt grades 7 thru 17 and aged 46 or older, (iii) at the end of the year was not in a grade higher than at the beginning of the year, and (iv) a Minnesota employee at either the beginning or end of the year, the dollar difference, if any, between each Class Member's base compensation increase and the average base compensation increase for employees in that grade. Each Class Member's differentials will be totaled, with the differential for any years in which the employee received a larger pay increase than the average for his/her grade subtracted from the differentials in any years in which the employee received a smaller pay increase than the average for his/her grade. The total dollar difference for each Class Member shall be referred to as the "Individual Compensation Loss," and the total dollar difference for all Class Members shall be referred to as the "Class Compensation Loss." Monetary awards for Individual Compensation Loss shall be calculated by multiplying each Class Member's Individual Compensation Loss by forty percent (40%) of the Class Recovery and dividing by the Class Compensation Loss.

- (2) Second, the Claims Administrator will add the number produced by multiplying .25 by the number of calendar years during the Class Period in which the Class Member was (i) 46 years or older for at least half the year, (ii) was employed by 3M for the full year and (iii) was a full time regular Minnesota employee in exempt grade 7 thru 17 at the beginning of the year plus the number of grades the class member moved down during the Class Period in which the Class Member was 46 years or older. From this number, the Claims Administrator will subtract the number of grades each Class Member moved up during the Class Period in which the Class Member was 46 years or older, and shall also subtract the number one (1) if the Class Member was selected as a Black Belt, Master Black Belt, or for ALDP I or II. The resulting figure shall be referred to as the "Individual Promotion/Demotion Score." For each Class Member whose Individual Promotion/Demotion Score is equal to or greater than three-fourths (.75), the Claims Administrator shall multiply the Individual Promotion Score by 100% of the Class Member's average base compensation during the Class Period in which the Class Member was 46 years or older. The dollar amount for each Class Member shall be referred to as the "Individual Promotion/Demotion Loss," and the total dollar difference for all Class Members shall be referred to as the "Class Promotion/Demotion Loss." Monetary awards for Individual Promotion/Demotion Loss shall be calculated by multiplying each Class Member's Individual Promotion/Demotion Loss by

fifty percent (50%) of the Class Recovery and dividing by the Class Promotion/Demotion Loss.

- (3) Third, the Claims Administrator will calculate for each Class Member who separated from 3M under circumstances permitting receipt of severance but who did not receive the severance because s/he declined to sign a release the present value (using the Minnesota judgment interest rate, Minn. Stat. 549.09, subd. 1(c)(2), from the date of termination) of 3M's severance offer to the Class Member. The dollar amount for each Class Member shall be referred to as the "Individual Termination Loss," and the total dollar amount for all Class Members shall be referred to as the "Class Termination Loss." The Class Termination Loss shall be ten percent (10%) of the Class Recovery. Class Members with an Individual Termination Loss who filed an administrative charge of age discrimination or this Action shall be paid first on a pro rata basis up to their full Individual Termination Loss. The remaining amount, if any, shall be paid to all other Class Members with an Individual Termination Loss in proportion to their respective Individual Termination Losses. Under no circumstances shall any Class Member eligible to receive a monetary award under this paragraph receive a total monetary award greater than fifty thousand dollars (\$50,000). The Parties agree that, in the event additional Class Members with Individual Termination Losses are identified pursuant to the claims process, other than as set forth in the Claims Administrator's allocation pursuant to Section 4.3 herein, the Claims Administrator shall recalculate the allocation under this subsection effective as of the close of the claim period set forth in Section 4.8 herein.
- (4) Fourth, the Claims Administrator will calculate the sum of each Class Member's separate monetary awards, which shall be the Class Member's Final Award. Each Class Member's Final Award shall be no less than Seventy-Five Dollars (\$75.00), which shall be the minimum award.

(ii) The Parties agree that reasonable assumptions may be made in defining and identifying the relevant data, establishing the parameters of class membership and award eligibility, and interpreting the allocation formula set forth above so as to accomplish a fair and reasonable allocation of the settlement funds consistent with the intent of Sections 4 and 7 herein.

7.2 Cashing Settlement Awards. Settlement Class Members will have one hundred and twenty (120) calendar days to cash or deposit their Settlement Award. After ninety (90) calendar days, the Claims Administrator shall mail to Settlement Class Members who have not cashed or deposited their Settlement Award a postcard reminding them of the deadline to do so. The Claims Administrator

may, but is not obligated to, contact Settlement Class Members by phone if they have not cashed or deposited their Settlement Awards. Uncashed Settlement Awards shall be cancelled by the Claims Administrator if not cashed by the Settlement Class Member within one hundred and twenty (120) calendar days, at which point the Settlement Class Member's claim will be deemed void and of no further force or effect. A Settlement Class Member's failure to cash a Settlement Award shall have no effect on the Settlement Class Member's release of claims against 3M pursuant to this Agreement.

7.3 Unclaimed or Uncashed Settlement Awards. At the conclusion of the period set forth in Section 7.2, the Claims Administrator will redistribute to 3M, or as otherwise may be required by law, all unclaimed and/or uncashed Settlement Awards in excess of the amounts described in Section 7.1 (a) – (d) and any other funds remaining in the Qualified Settlement Fund over and above the amounts required to satisfy the requirements of Section 7.1 (a) – (d).

7.4 Proof of payment. The Claims Administrator shall file proof of payment with the Court and provide the same to Class Counsel and 3M's Counsel.

7.5 Payment of Settlement Awards and Employee Taxes. The Parties agree that 100% of the Settlement Awards distributed to Settlement Class Members will be treated as income subject to W-2 reporting and withholdings pursuant to state and federal laws. Enhancement Awards distributed to the Named Plaintiffs will be treated as non-wage income. The Claims Administrator will mail IRS forms W-2, W-9 and any other necessary tax withholding forms to each Settlement Class Member and forms 1099 to each Named Plaintiff for their respective Enhancement Awards. Settlement Class Members' individual Settlement Awards, including Named Plaintiffs', will be inclusive of all related tax obligations except for the employer's share of employment tax withholding obligations (e.g., FICA, FUTA, Medicare), which shall remain 3M's responsibility, and all Settlement Awards distributed to Settlement Class Members will be net of any required withholdings and deductions. The Settlement Class Members will be responsible for correctly characterizing this compensation for tax purposes and paying any taxes owing on said amount. Settlement Class Members agree that they are solely responsible for any tax obligations resulting from the payment of their respective Settlement Awards.

It is understood that 3M makes no representations or warranties with respect to the tax consequences of the payments referenced in this Agreement to Settlement Class Members or Class Counsel under the terms of this Agreement. Settlement Class Members further acknowledge and agree that the payments set forth herein may result in taxable income to Settlement Class Members under applicable federal, state, and/or local tax laws. With the exception of the employer's share of employment tax withholdings described in the previous paragraph, Settlement Class Members acknowledge and agree that they shall be solely responsible for any taxes that may be assessed against them relating to the payments made pursuant to this Agreement, including but not limited to all federal, state, and/or local taxes, and any other liens, obligations, claims, or consequences to them that may arise from this Agreement, and that they will not seek any indemnification from 3M with respect thereto. Settlement Class Members further agree to indemnify and hold 3M harmless from any claims, demands, deficiencies, judgments or recoveries by any governmental entity against 3M for any amounts claimed in connection with money paid to Settlement Class Members pursuant to this Agreement which are properly taxable to Settlement Class Members, including amounts paid by 3M as taxes, attorneys' fees, fines, penalties, interest or otherwise.

7.6 Settlement Awards Do Not Trigger Additional Benefits. All Settlement Awards shall be deemed to be income to Settlement Class Members solely in the year in which such payments

are received by Settlement Class Members. Such Settlement Awards shall not entitle any Settlement Class Member to additional compensation or benefits under any company bonus, contest, or other compensation, stock compensation, incentive, or benefit plan or agreement in place during the period covered by the Settlement, nor will it entitle any Settlement Class Member to any increased retirement, 401(k) benefits or matching benefits, or deferred compensation or any other benefits. It is the intent of this Settlement that the Settlement Awards provided for in this Agreement are the sole payments to be made by 3M to Settlement Class Members, and that the Settlement Class Members are not entitled to any new or additional compensation or benefits as a result of having received the Settlement Awards.

8. PROGRAMMATIC RELIEF

8.1 Overview. As part of this Settlement, 3M has agreed to take steps to increase employee awareness and understanding of its long-standing commitment to equal employment opportunity for all employees, as consistently affirmed through the 3M Human Resources Principles. The provisions set forth in this Section are not, and shall not be construed to be, an admission of any liability whatsoever by 3M, but simply confirm and reinforce 3M's existing commitment to equal employment opportunity.

8.2 Term. The term of the provisions of this Section 8 shall be for three (3) years from the Execution Date.

8.3 EEO Communications and Training.

- (a) 3M will distribute its Equal Employment Opportunity (EEO) and Affirmative Action (AA) policy statement to all new hires and will re-issue the statement to employees annually and post it on a company intranet site that is accessible to all employees. The EEO/AA policy statement will be signed by 3M's Chief Executive Officer and will confirm 3M's commitment to prohibiting unlawful discrimination, including but not limited to discrimination based on age, in all terms and conditions of employment.
- (b) 3M will include in the Company's existing Employment Law for Leaders course content focused on age discrimination and will deliver the course to the eligible population of managers and supervisors every two years.
- (c) 3M will review the company's leadership, supervisory development, and diversity training programs for content on equal employment opportunity and non-discrimination and, to the extent there is no such content or where 3M determines that additional content would clarify the company's commitments, revise the course content to include information regarding 3M's EEO and non-discrimination commitments.

8.4 Performance Appraisals.

- (a) 3M will not use rating distribution guidelines or quotas in connection with its performance appraisal processes.
- (b) 3M will provide additional guidance to supervisors to clarify criteria for placement recommendations and high potential designations used in connection with the performance appraisal process.

- (c) 3M will support a review and appeal process for employee EC&DP ratings, through which employees can challenge contribution codes, leadership attribute ratings, high potential designations and/or placement recommendations.

8.5 Promotions/Transfers/Development/Training Opportunities.

- (a) 3M will post Black Belt positions internally and will accept applications for those positions.
- (b) 3M will post on an intranet site accessible to employees program descriptions and the selection criteria and process for the ALDP I, ALDP II, and Leadership Development for Growth (“LDG”) leadership development programs.
- (c) 3M will publish job posting guidelines on an intranet site accessible by employees. Pursuant to the published posting guidelines, 3M will increase the minimum posting period for positions required to be posted to five days and will agree to post all open positions below the L3 job grade with limited exceptions where there is an important business need.
- (d) 3M will not preclude employees who receive a 2 level of contribution rating through the EC&DP process from applying for open positions in the company. 3M will make available to hiring managers and/or recruiters the past three years of EC&DP ratings for internal candidates applying for open positions.

8.6 Job Eliminations/Terminations of Employment/Releases.

- (a) 3M will use a form of release in connection with its severance plans and/or any group reductions in force which includes terms that are not materially different from those set forth in **Exhibit G** (“Approved Release Terms”), except as necessary to comply with changes in law, including but not limited to changes in the OWBPA or judicial opinions interpreting legal requirements, or otherwise as necessary to comply with 3M’s legal obligations. As of the Execution Date, and subject to changes in the OWBPA, the parties acknowledge that the Approved Release Terms comply with OWBPA. 3M also will describe the decisional unit on any eligible/ineligible lists in a manner that will allow employees affected by a group reduction to understand the contours of the affected group.
- (b) 3M will maintain a termination review process that requires approval of all terminations of employment, including those due to job elimination, by designated levels of business and human resources management. Part of the approval process will include confirmation that the selection process and resulting job elimination decisions were implemented in a manner consistent with principles of non-discrimination.
- (c) 3M will comply fully with the OWBPA, including with its requirements regarding releases of claims, and will train human resources personnel on the construction of eligible/ineligible lists under the OWBPA.

8.7 Implementation.

- (a) 3M's human resources function will be responsible for implementing the programmatic relief set forth in this Section 8 and for ensuring that 3M's policies regarding equal employment opportunity and non-discrimination are enforced. 3M's Senior Vice President, Human Resources, will be ultimately responsible for implementation of Section 8 of this Agreement.
- (b) 3M will continue to maintain the company's internal grievance process through which employees have multiple channels to raise concerns and complaints, including concerns or complaints regarding unlawful discrimination, retaliation, or alleged noncompliance with this decree. 3M will increase communications to employees concerning its grievance process. 3M's grievance process will not preclude or discourage employees from complaints or expressing concerns directly to the EEOC or class counsel.
- (c) 3M's Counsel shall report to Class Counsel every twelve (12) months for a period of three (3) years from the Execution Date as to steps taken by 3M to comply with these injunctive provisions, which reports shall be maintained on a Confidential basis as defined in the stipulated protective order in the Action, which is incorporated as if set forth fully herein. Unless a different person is otherwise designated by Class Counsel, in writing, the reports set forth in this section shall be deemed duly given if addressed to Steven M. Sprenger and personally delivered, sent by U.S. Mail, or sent by confirmed facsimile or other agreed upon method. Class Counsel shall provide written notice to 3M's Counsel of any noncompliance by 3M with the terms of this Section, and 3M and Class Counsel shall attempt to informally resolve any allegation of noncompliance prior to any effort by Class Counsel to enforce the terms of this Section. Only Class Counsel shall have standing to seek relief from the Court for alleged violations of this section.
- (d) 3M shall not retaliate against any Settlement Class Member for appealing any EC&DP rating or complaining about 3M's alleged failure to comply with the terms of the Decree.

8.8 Section 8.7(c) Void Upon Agreement Between 3M and the EEOC. Upon the execution, during the time period identified in Section 8.7(c), of any consent decree between 3M and the EEOC resolving the EEOC's investigation of putative claims against 3M under the Age Discrimination in Employment Act ("ADEA") which shall have as terms therein provisions substantially similar to the terms set forth, in whole or in part, in Section 8.3 – 8.7, the provisions of Section 8.7(c) shall be void and of no further effect to the extent such provisions are encompassed by the aforementioned consent decree

9. ADDITIONAL PROVISIONS

9.1 No Liability for Disbursements Related to Settlement Fund. No person shall have any claim against 3M, Class Counsel, 3M's Counsel, the Claims Administrator, or any agent designated by Class Counsel or 3M based on distributions made substantially in accordance with this Agreement or court orders, including the allocation of Settlement Awards to each Class Member.

9.2 No Collateral Attack. This Agreement shall not be subject to collateral attack by any individual. Prohibited collateral attacks shall include, but not be limited to, claims that a Class Member's Settlement Award was improperly calculated or adjusted.

9.3 Confidentiality. As a free and voluntary act, Named Plaintiffs, individually and on behalf of the Class, agree that as an essential and material element of this Agreement, they will comply with the following provisions regarding confidentiality:

- (a) Except as otherwise specifically provided in this Agreement, Named Plaintiffs will not disclose or characterize (in whole or in part) any of the terms or provisions of this Agreement or their respective release of claims against 3M, their individual Settlement Awards, or any of the negotiations leading to the making of this Agreement to any other person or entity, other than in documents filed in connection with the joint motion for preliminary approval or final approval of this settlement, except to their respective attorneys, spouses, accountants or tax advisors, or as otherwise required by law or legal process.
- (b) It shall not be a breach of this Agreement for a Named Plaintiff to disclose his individual Settlement Award to his attorneys, spouse, accountants or tax advisors; provided, however that the Plaintiff shall inform his attorneys, spouse, accountants or tax advisors of the terms of the confidentiality provisions contained in this Agreement.
- (c) In response to any inquiry made of any Named Plaintiff or Class Counsel with respect to the making of this Agreement and/or its terms and provisions, it shall not constitute a violation of this Agreement for the Named Plaintiff or Class Counsel to state, upon the Parties' motion for preliminary approval of the settlement, that "The Parties have asked the Court to preliminarily approve a \$12 million class settlement of age discrimination claims against 3M;" to state, upon the granting of the Preliminary Approval Order, that "The Court has given preliminary approval to \$12 million class settlement of age discrimination claims against 3M;" and, upon granting of the Final Approval Order, that "The Court has given final approval to a \$12 million class settlement of age discrimination claims against 3M."
- (d) Named Plaintiffs agree and acknowledge that any breach of the foregoing provisions concerning confidentiality by any Named Plaintiff shall be a material breach of this Agreement in its entirety as to that Named Plaintiff, and that upon such material breach by that Named Plaintiff, 3M's obligations under this Agreement as to that Named Plaintiff, including but not limited to payment of his Settlement Award, if unpaid, shall cease and be of no effect, and that the Named Plaintiff shall be liable to 3M in the full amount of the Settlement Award, if any, previously paid by 3M to that Named Plaintiff, as well as for other equitable and legal relief.

9.4 Change of Time Periods. The time periods and dates described in this Agreement regarding notices, hearings, and other events are subject to approval and change by the Court or by the written agreement of counsel for the Parties without notice to the Class.

9.5 Voluntary Agreement. The Parties executed this Agreement voluntarily and without duress or undue influence.

9.6 Binding on Successors. This Agreement will bind and inure to the benefit of the Parties' respective successors, assigns, legatees, heirs, and personal representatives.

9.7 Parties Represented by Counsel. The Parties acknowledge that: (a) they have been represented by independent counsel of their own choosing during the negotiation and preparation of this Agreement; (b) their respective counsel fully explained to them the contents and legal effect of this Agreement; (c) they have read this Agreement themselves; and (d) they fully understand the contents and legal effect of this Agreement.

9.8 Authorization. Each Party warrants and represents that there are no liens or assignments, or claims of lien or assignments in law or equity or otherwise, against any of the claims or causes of action released by this Agreement, and further, that each Party is fully entitled and duly authorized to give this complete and final release and discharge.

9.9 Entire Agreement. This Agreement and attached exhibits contain the entire agreement between the Parties and constitute the complete, final, and exclusive embodiment of their agreement with respect to this subject matter. This Agreement is executed without reliance upon any promise, representation, or warranty by any Party or any representative of a Party, other than those expressly set forth in this Agreement.

9.10 Construction and Interpretation. Neither Party nor any of the Parties' respective attorneys will be deemed the drafter of this Agreement for purposes of interpreting any provision in this Agreement in any judicial or other proceeding that may arise between them. This Agreement has been and shall be construed to have been drafted by all the Parties so that any rule that construes ambiguities against the drafter will have no force or effect.

9.11 Headings. The various headings in this Agreement are used solely for the convenience of the Parties and shall not be used to interpret, define, limit, extend, or describe the scope of this Agreement or the intent of any provision in this Agreement.

9.12 Exhibits. The attached exhibits are integral parts of this Agreement and are incorporated by reference into this Agreement as though fully set forth herein.

9.13 Modifications and Amendments. No amendment, change or modification to any part of this Agreement is valid unless in writing, signed by the Parties or their counsel, and approved by the Court.

9.14 Governing Law. This Agreement is governed by the laws of the State of Minnesota, and should be interpreted in accordance with those laws and without regard to conflict of laws principles.

9.15 Further Assurances. The Parties will each execute and deliver any additional

documents or perform any additional acts reasonably necessary to carry out the express intent of this Agreement.

9.16 Execution Date. This Agreement will be deemed executed on the last date of execution by all of the undersigned.

9.17 Counterparts and Copies. This Agreement may be executed in counterparts, each of which will constitute an original, but all of which together will constitute the same instrument. Several signature pages may be collected and annexed to one or more documents to form a complete executed Agreement. Photocopies of the executed Agreement may be treated as originals.

9.18 Recitals. The recitals are incorporated into this Agreement.

9.19 Severability. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law and to carry out each provision herein to the greatest extent possible, but if any provision of this Agreement is held to be void, voidable, invalid, illegal or for any other reason unenforceable, the Parties agree that the validity, legality and enforceability of the remaining provisions of this Agreement will not be affected or impaired thereby, and will be interpreted so as to effect, as closely as possible, the intent of the Parties hereto.

9.20 No Conflict Intended. Any inconsistency between this Agreement and the attached exhibits shall be resolved in favor of this Agreement.

9.21 List of Exhibits. The following exhibits are attached to this Agreement:

- Exhibit A – Proposed Order Granting Preliminary Approval of Class Settlement and Provisional Class Certification
- Exhibit B – Proposed Notice
- Exhibit C – Proposed Class Member Declaration
- Exhibit D – Proposed Claim Sheet
- Exhibit E – Proposed Final Approval Order and Judgment
- Exhibit F – List of Lawsuits and Charges
- Exhibit G – Approved Release Terms

****The rest of this page intentionally has been left blank.****

THE PARTIES AND CLASS COUNSEL HAVE AGREED TO THE TERMS OF THIS AGREEMENT.

NAMED PLAINTIFFS ACKNOWLEDGE AND AGREE THAT THEY HAVE CAREFULLY READ AND VOLUNTARILY SIGNED THIS AGREEMENT, THAT THEY HAVE HAD ADEQUATE TIME TO CONSIDER THE TERMS OF THIS AGREEMENT, THAT THEY HAVE HAD AN OPPORTUNITY TO CONSULT WITH AN ATTORNEY OF THEIR CHOICE, AND THAT THEY SIGN THIS AGREEMENT WITH THE INTENT OF RELEASING 3M FROM ANY AND ALL CLAIMS SET FORTH HEREIN

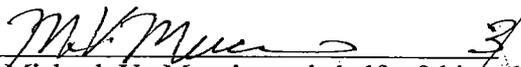
Dated: 3-14-2011

PLAINTIFF CLIFFORD L. WHITAKER

By: 
Clifford L. Whitaker, on behalf of himself and all others similarly situated

Dated: _____

PLAINTIFF MICHAEL V. MUCCI

By: 
Michael V. Mucci, on behalf of himself and all others similarly situated

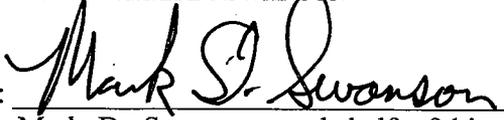
Dated: 3-8-2011

PLAINTIFF ROBERT W. COATS

By: _____
Robert W. Coats, on behalf of himself and all others similarly situated

Dated: 3/14/11

PLAINTIFF MARK D. SWANSON

By: 
Mark D. Swanson, on behalf of himself and all others similarly situated

Dated: _____

PLAINTIFF THOMAS R. BULEN

By: _____
Thomas R. Bulen, on behalf of himself and all others similarly situated

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Dated: _____

PLAINTIFF CLIFFORD L. WHITAKER

By: _____
Clifford L. Whitaker, on behalf of himself and all others similarly situated

Dated: _____

PLAINTIFF MICHAEL V. MUCCI

By: _____
Michael V. Mucci, on behalf of himself and all others similarly situated

Dated: _____

PLAINTIFF ROBERT W. COATS

By: _____
Robert W. Coats, on behalf of himself and all others similarly situated

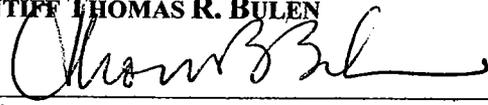
Dated: _____

PLAINTIFF MARK D. SWANSON

By: _____
Mark D. Swanson, on behalf of himself and all others similarly situated

Dated: 2/28/2011

PLAINTIFF THOMAS R. BULEN

By: 
Thomas R. Bulen, on behalf of himself and all others similarly situated

THE PARTIES AND CLASS COUNSEL HAVE AGREED TO THE TERMS OF THIS AGREEMENT.

NAMED PLAINTIFFS ACKNOWLEDGE AND AGREE THAT THEY HAVE CAREFULLY READ AND VOLUNTARILY SIGNED THIS AGREEMENT, THAT THEY HAVE HAD ADEQUATE TIME TO CONSIDER THE TERMS OF THIS AGREEMENT, THAT THEY HAVE HAD AN OPPORTUNITY TO CONSULT WITH AN ATTORNEY OF THEIR CHOICE, AND THAT THEY SIGN THIS AGREEMENT WITH THE INTENT OF RELEASING 3M FROM ANY AND ALL CLAIMS SET FORTH HEREIN

Dated: _____

PLAINTIFF CLIFFORD L. WHITAKER

By: _____
Clifford L. Whitaker, on behalf of himself and all others similarly situated

Dated: _____

PLAINTIFF MICHAEL V. MUCCI

By: _____
Michael V. Mucci, on behalf of himself and all others similarly situated

Dated: 2-28-11

PLAINTIFF ROBERT W. COATS

By: Robert W. Coats
Robert W. Coats, on behalf of himself and all others similarly situated

Dated: _____

PLAINTIFF MARK D. SWANSON

By: _____
Mark D. Swanson, on behalf of himself and all others similarly situated

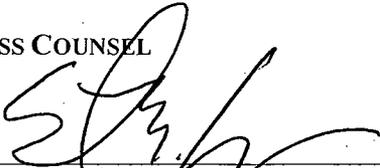
Dated: _____

PLAINTIFF THOMAS R. BULEN

By: _____
Thomas R. Bulen, on behalf of himself and all others similarly situated

Dated: 3-14-11

CLASS COUNSEL

By: 
Steven M. Sprenger
Sprenger + Lang PLLC

By: 
Daniel Kohrman
AARP Foundation Litigation

Dated: _____

3M COMPANY

By: _____

Print name: _____

Position: _____

Dated: _____

3M'S COUNSEL

By: _____
Paul Klaas
Dorsey & Whitney LLP

Dated: _____

CLASS COUNSEL

By: _____
Steven M. Sprenger
Sprenger + Lang PLLC

By: _____
Dan Kohrman
AARP Foundation Litigation

Dated: 2/25/2011

3M COMPANY

By: Gregg M. Larson

Print name: _____

Position: Gregg M. Larson
Deputy General Counsel
and Secretary

Dated: _____

3M'S COUNSEL

By: _____
Paul Klaas
Dorsey & Whitney LLP

THE PARTIES AND CLASS COUNSEL HAVE AGREED TO THE TERMS OF THIS AGREEMENT.

NAMED PLAINTIFFS ACKNOWLEDGE AND AGREE THAT THEY HAVE CAREFULLY READ AND VOLUNTARILY SIGNED THIS AGREEMENT, THAT THEY HAVE HAD ADEQUATE TIME TO CONSIDER THE TERMS OF THIS AGREEMENT, THAT THEY HAVE HAD AN OPPORTUNITY TO CONSULT WITH AN ATTORNEY OF THEIR CHOICE, AND THAT THEY SIGN THIS AGREEMENT WITH THE INTENT OF RELEASING 3M FROM ANY AND ALL CLAIMS SET FORTH HEREIN

Dated: _____

PLAINTIFF CLIFFORD L. WHITAKER

By: _____

Clifford L. Whitaker, on behalf of himself and all others similarly situated

Dated: _____

PLAINTIFF MICHAEL V. MUCCI

By: _____

Michael V. Mucci, on behalf of himself and all others similarly situated

Dated: _____

PLAINTIFF ROBERT W. COATS

By: _____

Robert W. Coats, on behalf of himself and all others similarly situated

Dated: _____

PLAINTIFF MARK D. SWANSON

By: _____

Mark D. Swanson, on behalf of himself and all others similarly situated

Dated: _____

PLAINTIFF THOMAS R. BULEN

By: _____

Thomas R. Bulen, on behalf of himself and all others similarly situated

Dated: _____

CLASS COUNSEL

By: _____
Steven M. Sprenger
Sprenger + Lang PLLC

By: _____
Dan Kahrman
AARP Foundation Litigation

Dated: _____

3M COMPANY

By: _____

Print name: _____

Position: _____

Dated: March 12, 2011

3M'S COUNSEL

By: 
Paul Klaas
Dorsey & Whitney LLP

EXHIBIT A

**[PROPOSED] ORDER GRANTING PRELIMINARY
APPROVAL OF CLASS SETTLEMENT AND PROVISIONAL CLASS CERTIFICATION**

STATE OF MINNESOTA
COUNTY OF RAMSEY

DISTRICT COURT
SECOND JUDICIAL DISTRICT

CASE TYPE: Employment

Clifford L. Whitaker et al.,
on behalf of themselves
and all others similarly situated,

Court File No. C4-04-12239
(The Honorable Gregg E. Johnson)

Plaintiffs,

vs.

3M Company,

Defendant.

**[PROPOSED] ORDER
GRANTING PRELIMINARY
APPROVAL OF CLASS
SETTLEMENT AND
PROVISIONAL CLASS
CERTIFICATION**

On _____, 2011, this Court heard the Parties' joint motion for preliminary approval of class action settlement and provisional class certification under Minnesota Rule of Civil Procedure 23.05. This Court reviewed the motion, including the Settlement Agreement and Release ("Agreement") and plaintiffs' memorandum in support of the motion. Based on this review and findings below, the Court finds good cause to grant the motion.

FINDINGS

For purposes of the Settlement Agreement only, the Court finds:

1. The Agreement is fair, reasonable, and adequate;
2. The Notice, Class Member Declaration and Claim Sheet (attached to the Agreement) comply with due process because they are reasonably calculated to adequately apprise Class Members of: (i) the pending lawsuit; (ii) the proposed settlement; and (iii) their rights, including the right to participate in the settlement, exclude themselves from the settlement, or object to the settlement;
3. For settlement purposes only, the Class is so numerous that joinder of all Class Members is impracticable;

4. For settlement purposes only, Plaintiffs' claims are typical of individual Class Members' claims;

5. For settlement purposes only, there are issues common to the Class that predominate over any questions affecting only individual Class Members;

6. For settlement purposes only, the Plaintiffs and their Counsel fairly and adequately represent the Class's interests; and

7. For settlement purposes only, class certification is superior for purposes of implementing the Settlement Agreement to other available methods for the fair and efficient adjudication of the controversy.

IT IS ORDERED THAT:

1. **Settlement Approval.** The Agreement, including the Notice, Class Member Declaration and Claim Sheet, attached to the Agreement, are preliminarily approved. Plaintiffs and Defendant, 3M Company ("3M") (collectively "the Parties"), are ordered to comply with the terms of the Agreement.

2. **Provisional Certification.** For settlement purposes only, the Class is provisionally certified as:

All persons who were 46 or older when employed by 3M in Minnesota in a salaried exempt position below job grade 18 at any time on or after May 10, 2003 through December 31, 2010, and who did not sign a document on or about their last day of employment purporting to release claims arising out of their employment with 3M.

3. **Provision of Class Notice.** On the ninetieth (90th) calendar day after entry of this Order, or the following business day if the 90th day is a Sunday or holiday, the Parties, through the appointed Claims Administrator, will mail Notice and a Class Member Declaration to each Class Member as specified in the Agreement.

4. **Request to Opt-Out.** Class Members who wish to be excluded from the Settlement shall submit a written request to opt-out to the Claims Administrator within one hundred (100) calendar days of the initial mailing of the Notice and Class Member Declaration. No particular

format shall be required for a Class Member to opt-out, provided that the Class Member's written request reasonably identifies the Class Member and the *Whitaker v. 3M Company* litigation and expresses an intent to opt-out of the Settlement. Requests to opt out shall be deemed timely if they are postmarked on or before the 100th day after the initial mailing of the Notice and Class Member Declaration. The time to opt-out will not be enlarged for any returned mailings. Individuals who validly opt-out of the Settlement are no longer deemed to be Class Members. As such, those individuals cannot object to the Settlement.

5. Objection to Settlement. Class Members who do not opt out and who wish to object to the Agreement shall file a written objection with the Court and serve copies on Class Counsel and 3M's Counsel no later than one hundred (100) calendar days from the initial mailing date of the Notice and Class Member Declaration. Written objections shall be deemed timely if they are postmarked on or before the 100th day after the initial mailing of the Notice and Class Member Declaration. The Objection shall state: (a) the objecting person's full name, address, and telephone number; (b) the words "Notice of Objection" or "Formal Objection"; (c) in clear and concise terms, the legal and factual arguments supporting the objection; and (d) a list identifying the witness(es) the objector may call to testify at the Fairness Hearing and true and correct copies of any exhibit(s) the objector intends to offer. The objection will not be valid if it objects only to the lawsuit's appropriateness or merits.

6. Failure to Object to Settlement. Class Members who fail to object to the Agreement in the manner specified above will: (1) be deemed to have waived their right to object to the Agreement; (2) be foreclosed from objecting (whether by a subsequent objection, intervention, appeal, or otherwise) to the Agreement; and (3) not be entitled to speak at the Fairness Hearing.

7. Participation in Settlement Fund. Class Members who wish to participate in the Settlement under the Agreement shall complete, execute and return their Class Member Declaration within seventy-five (75) calendar days of the initial mailing of the Notice and Class Member Declaration. Class Member Declarations shall be deemed timely if they are postmarked on or before the 75th day after the initial mailing of the Notice and Class Member Declaration. Class Members

who fail to timely execute and return their Class Member Declaration, but who do not opt out, shall not be entitled to any Settlement Award but shall otherwise be bound by the Settlement Agreement, including the Judicial Release. Class Members who timely execute and return a Class Member Declaration which indicates a claim for age discrimination shall also complete, execute and return their Claim Sheet within forty-five (45) days after the mailing of their Claim Sheet by the Claims Administrator. Claim Sheets shall be deemed timely if they are postmarked on or before the 45th day after the mailing of the Claim Sheets by the Claims Administrator. Class Members who fail to timely execute and return their Claim Sheet shall not be entitled to any Settlement Award but shall otherwise be bound by the Settlement Agreement, including the Judicial Release.

8. Appointment of Class Representative and Class Counsel. For settlement purposes only, Plaintiffs are conditionally appointed as the Class Representative to implement the Parties' settlement in accordance with the Agreement. The law firm of Sprenger + Lang, PLLC and the AARP Foundation Litigation are appointed as Class Counsel. Plaintiffs and Class Counsel shall continue to fairly and adequately represent and protect the Class's interests.

9. Termination of Agreement. If the Agreement terminates for any reason, the following will occur: (a) this Preliminary Approval Order, and all of its provisions, including conditional certification of the settlement class, will be automatically vacated; (b) this Action will revert to the status that existed at the execution date of the Agreement, subject to the Parties' request for additional time to complete discovery; (c) no party shall be deemed to have waived, and will not be prejudiced in its right to pursue or oppose, any claims, objections, rights or defenses, or legal arguments or positions, including, but not limited to, claims or objections to class certification, and claims and defenses on the merits; (d) no term or draft of the Agreement, or any aspect of the Parties' settlement discussions, including related documentation, will have any effect or be admissible into evidence for any purpose in this Action; and (e) 3M shall have no obligation to pay any of the Gross Settlement Sum. This Order will not waive or otherwise impact the Parties' rights or arguments.

10. No Admissions. Nothing in this Order is or may be construed as an admission or concession on any point of fact or law by or against any Party.

11. Qualified Settlement Fund. The Court approves and orders the creation of a 3M Whitaker Qualified Settlement Fund (“Qualified Settlement Fund”) in accordance with the terms of the parties’ Settlement Agreement. 3M has agreed to pay to the Qualified Settlement Fund the Gross Settlement Sum, as set forth in the Settlement Agreement, which payment will be in full settlement and discharge of all of the claims of Settlement Class Members against 3M that are the subject of this lawsuit and in exchange for a full release and discharge by the Named Plaintiffs, Class Representatives, and all Settlement Class Members who do not exclude themselves from the settlement.

Establishment of the Qualified Settlement Fund is intended to satisfy the requirements of Treasury Regulation Section 1.468B-1(c), 26 C.F.R. § 1.468B-1, by (a) being established pursuant to the approval and order of this Court, (b) resolving and satisfying claims for discrimination and violations of statutory and common law against 3M, and (c) constituting a segregated account, all as required by those regulations.

The Qualified Settlement Fund will be administered by the Claims Administrator Rust Consulting, (hereafter, the “administrator”). The Qualified Settlement Fund will receive the Gross Settlement Sum as set forth in the Settlement Agreement in accordance with its terms, and subject to further approvals of this Court, as required. The Qualified Settlement Fund and its administrator will remain subject to the continuing jurisdiction of this Court until the Qualified Settlement Fund terminates by its terms.

12. Fairness Hearing. On _____ 2011, at _____, this Court will hold a Fairness Hearing to determine whether the Agreement should be finally approved as fair, reasonable, and adequate. All supporting papers, including the class counsels’ request for attorneys’ fees and reimbursement of costs, shall be filed no later than 5 days before the Fairness Hearing. This Court may order the Fairness Hearing to be postponed, adjourned, or continued. If that occurs, the Parties will not be required to provide additional notice to class members.

DATED: _____

HONORABLE GREGG E. JOHNSON
DISTRICT COURT JUDGE

EXHIBIT B

NOTICE

DISTRICT COURT OF THE STATE OF MINNESOTA
FOR RAMSEY COUNTY

If 3M employed you in a salaried, exempt position below grade 18 in Minnesota when you were age 46 or over on or after May 10, 2003 through December 31, 2010, a proposed class action settlement may affect your rights.

- Five current and former 3M employees have sued the 3M Company claiming age discrimination against persons 46 or older in salaried, exempt positions in Minnesota below director level.
- Although 3M strongly denies any wrongdoing or liability in this matter, 3M has agreed, subject to approval of the Ramsey County District Court (Judge Gregg E. Johnson presiding) (“Court”), to settle the case for on the terms set out in the settlement agreement.
- You now have the following choices:

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
SUBMIT A CLASS MEMBER DECLARATION BY _____, 2011, AND A CLAIM SHEET BY _____, 2011	The only way to get a payment from the settlement fund.
EXCLUDE YOURSELF BY _____, 2011	Get no payment or other benefit from the settlement, but retain your full ability to separately sue 3M about alleged age discrimination that occurred prior to December 31, 2010.
COMMENT OR OBJECT BY _____, 2011	Write to the Court about whether you believe the settlement is fair under the circumstances. This option is not open for persons who exclude themselves.
SPEAK AT A HEARING ON _____, 2011	Ask to speak in Court about the fairness of the settlement. This option is not available for persons who exclude themselves. If you elect to speak at the hearing, you must file a notice of appearance with the Court.
DO NOTHING	Get no payment, but waive certain rights to sue 3M about alleged age discrimination that occurred prior to December 31, 2010.

- The Court has preliminarily approved the settlement. It has not decided whether to finally approve the settlement. Payments will be made only if the Court finally approves the settlement.

- You can get additional information by visiting the website maintained by the attorneys who represent the named plaintiffs and settlement class (“Class Counsel”). You also may consult with Class Counsel at no charge. The website, toll-free phone number and email addresses are below.

WHAT THIS NOTICE CONTAINS

QUESTION/INFORMATION

PAGE

Basic Information

1. Why should I read this notice?
2. Will I be subjected to retaliation for participating in the settlement?
3. What is a class action?
4. Why is this lawsuit a class action?
5. Who are the Plaintiffs?
6. What is the Settlement Class in this case?
7. Who is excluded from the Settlement Class?

Who are the Lawyers?

8. Do I have a lawyer in this case?
9. Should I get my own lawyer?
10. Who represents 3M in this case?

What are The Claims in this Case?

11. What do the Plaintiffs complain about in the case?
12. How does 3M respond to these claims?
13. Has the Court decided who is right?

What Benefits are Available to Settlement Class Members?

14. How much money will be paid under the Settlement?
15. For what purposes will that money be used?
16. What is the amount of my award?
17. How has the amount of my award been determined?
18. How do I know that the monetary award formula is fair?
19. What do I have to do to receive the award?
20. What is the programmatic relief available?
21. How much will Class Counsel be paid?

How Do I Submit a Claim Form?

22. How do I submit a claim sheet?
23. What is the deadline for submitting claim sheets?

What Will I Give Up if I Remain a Settlement Class Member?

24. If I remain a Settlement Class Member, what claims will I be releasing?
25. Will I give up any additional rights if I submit a claim sheet?

How Do I Exclude Myself from the Settlement?

26. What are the effects of excluding myself from the Settlement?
27. How may I exclude myself?

How May I Comment on or Object to the Settlement?

28. How may I comment in favor of or against the Settlement?
29. What is the difference between objecting and excluding?

May I Participate in the Final Settlement Approval Hearing?

- 30. When will the final approval hearing be held?
- 31. What must I do to speak at the hearing?
- 32. What happens if the Settlement is not approved or is otherwise terminated?

What if I do Nothing?

- 33. What happens if I do nothing at all?

Additional Information

- 34. How can I get additional information?

BASIC INFORMATION

1. Why should I read this notice?

3M's records show that you are a Class Member in this class action age discrimination case filed on behalf of 3M employees in Minnesota in salaried, exempt positions below the director level. The Court has preliminarily approved a class action settlement. The settlement agreement and related documents are referred to as the "Settlement" in the rest of this notice.

Because the Settlement will affect your legal rights, the Court ordered that this Notice be sent to you. Before the Court decides whether to finally approve the Settlement, you have legal rights and options that you may exercise. Those legal rights and options are explained in detail in this notice.

2. Will I be subjected to retaliation for participating in the settlement?

NO. If you are still employed by 3M, your decision about whether to participate in the Settlement will not affect your employment. Minnesota law and 3M's policy strictly prohibit unlawful retaliation.

3. What is a class action?

In a class action lawsuit, one or more people called "Class Representatives" sue on behalf of other people who have similar claims. The "Class Representatives" are also called "Plaintiffs." The Class Representatives and the people who have similar claims are called the "Class," or where, as here, the Class is approved solely for purposes of settlement, the "Settlement Class." Each member of the Settlement Class is called a "Settlement Class Member." One Court resolves the issues for everyone in the Settlement Class, except for those people who exclude themselves from the Settlement Class.

4. Why is this lawsuit a class action?

Cases can be approved as class actions for trial or settlement. Here, the Court has preliminarily decided that the case meets the requirements for a class action for the limited purpose of settlement only. The Court will make a final decision at or after the final settlement approval hearing. The Court hasn't decided whether, absent the Settlement, it would permit these claims to proceed to trial on a class basis.

5. Who are the Plaintiffs?

There are five Plaintiffs. Two of them – Clifford Whitaker and Mark Swanson – are still 3M employees. Three of them – Mike Mucci, Thomas Bulen and Robert Coats – are no longer employed by 3M.

6. What is the Settlement Class in this case?

The Settlement defines the Settlement Class as “all persons who were 46 or older when employed by 3M in Minnesota in a salaried exempt position below job grade 18 at any time between May 10, 2003 and December 31, 2010, and who did not sign a document on or about their last day of employment purporting to release claims arising out of their employment with 3M.”

7. Who is excluded from the Settlement Class?

The Settlement Class excludes persons who:

- Were not 46 years or older when they worked for 3M;
- Did not work for 3M between May 10, 2003 and December 31, 2010;
- Worked for 3M only outside Minnesota during the relevant time;
- Worked for 3M only as an executive (above job grade 17) during the relevant time;
- Worked for 3M only as an hourly employee or as a salaried employee entitled to overtime pay (i.e., not as an exempt employee) during the relevant time;
- Signed a document on or about their last day of employment purporting to release claims arising out of their employment with 3M.

WHO ARE THE LAWYERS?

8. Do I have a lawyer in this case?

You do. The Plaintiffs and Settlement Class have been represented in this case since 2004 by the law firm of Sprenger + Lang, PLLC of Washington, DC, including Lead Class Counsel Steven Sprenger and other principal lawyers Michael Lieder and Bryce Miller, and by the AARP Foundation Litigation, including Thomas Osborne, Laurie McCann and Daniel Korhman. You may, at no charge, discuss your rights under the Settlement with Class Counsel, and may reach them at the email address and phone number below:

Telephone: 202-265-8010
E-mail: 3mclasscounsel@sprengerlang.com
Website: WWW.MINNESOTACLASSACTION.COM

All communications with Class Counsel are private and privileged and will not be disclosed to 3M or its counsel without your permission.

9. Should I get my own lawyer?

You do not need to hire a separate lawyer because Class Counsel are legally required to represent all Settlement Class Members. But you may contact your own lawyer, at your own expense, for any assistance that you may require.

10. Who represents the Defendant in this case?

The law firm of Dorsey & Whitney LLP has represented 3M throughout the case. Paul Klaas is currently 3M's lead counsel at Dorsey & Whitney.

WHAT ARE THE CLAIMS IN THE LAWSUITS?

11. What do the Plaintiffs complain about in the lawsuits?

In the lawsuit, Plaintiffs contend that 3M has discriminated against employees age 46 and older in its performance appraisal, leadership development, promotion, compensation and job elimination decisions. Plaintiffs claim that 3M has both engaged in intentional discrimination and has adopted practices that, while neutral on their face, have the effect of discriminating against Settlement Class Members. You can read the complaint on the website listed in response to question 8, above.

12. How does Defendant respond to these claims?

3M strongly denies any wrongdoing or liability whatsoever. The Court has NOT ruled on the merits of Plaintiffs' claims or made any judgment or other determination of any wrongdoing or liability on 3M's part.

13. Has the Court decided who is right?

The Court has not decided whether the Defendant engaged in the claimed age discrimination, or if so, the amount of damages to which the class as a whole or any Settlement Class Member would be entitled. However, Plaintiffs and 3M, understanding the risks inherent in litigation, have determined that it is in their best interests to settle this case. The proposed Settlement was reached through extensive arms-length negotiations between the parties before a neutral, independent, third-party mediator.

WHAT BENEFITS ARE AVAILABLE TO SETTLEMENT CLASS MEMBERS?

14. How much money will be paid under the Settlement?

Although 3M denies any wrongdoing or liability in this matter, 3M agreed to pay a gross settlement sum of up to \$12 million ("Settlement Award") to fully resolve all claims in the Lawsuit. In addition, 3M has agreed to pay the employer's share of employment taxes on class member awards. Other than the employer's share of employment taxes, Settlement Class Members will be responsible for all

taxes associated with payments of individual settlement awards.

15. For what purposes will that money be used?

Of the settlement payment, Class Counsel estimate that about \$5.6 million will be allocated to the awards to Settlement Class Members and for payment of taxes on those awards. To the extent that Settlement Class Members do not submit claim forms, the amount of the awards of those individuals will be returned to 3M, less case contribution awards to the Named Plaintiffs. Subject to Court approval, \$2.9 million will be used to reimburse Class Counsel for their out-of-pocket expenses and \$3.5 million will be used to pay attorneys' fees.

16. What is the amount of my award?

After you have returned your Class Member Declaration, and if you indicate a claim for age discrimination on that form, you will receive a notice of award that will inform you of the total amount of money that has been allocated for your claims.

17. How has the amount of my award been determined?

A formula for determining the awards of every Class Member is contained at pages 13-15 of the Settlement Agreement, which is available for review at the website listed in response to question 8, above. It considers the amount of your compensation increases during the Class Period compared to other employees in your grade, the number of grades by which you were promoted or demoted during the Class Period combined with the number of years you were employed during the Class Period, and whether 3M terminated your employment in a manner that entitled you to severance pay that you turned down by refusing to sign a release of claims. Feel free to contact Class Counsel if you want an additional explanation after reviewing the Settlement Agreement.

18. How do I know that the benefit formula is fair?

The Court will consider the formula, along with all other aspects of the Settlement, at the final settlement approval hearing. You and other Settlement Class Members will have an opportunity to comment on or object to the formula before the Court rules. The Court will approve the formula only if the Court finds that it is fair to the Settlement Class.

19. What do I have to do to receive the award?

All you have to do is sign and return your Class Member Declaration indicating a claim for age discrimination and, later, your Claim Form and Class Member Release, as explained in response to questions 23-25 below.

20. What is the programmatic relief available?

As part of the settlement of this case, 3M has agreed to programmatic relief. Programmatic relief is an agreement to either maintain or change various employment practices for a period of time. A full description of the programmatic relief can be found in the settlement agreement.

21. How much will Class Counsel be paid?

You are **not** required to personally pay any fees or expenses associated with the Settlement. Class Counsel will ask the Court to award attorneys' fees and reimburse out-of-pocket costs from the settlement amount. You may comment on or object to the request. Class Counsel will ask the Court to approve attorneys' fees of \$3.5 million, which is approximately 40% of the fees to which they would be entitled at their normal billing rates. Class Counsel will also seek reimbursement of out-of-pocket expenses incurred litigating this matter since 2003 of \$2.9 million.

HOW DO I SUBMIT A CLAIM FORM?

22. How do I submit a claim sheet?

To submit a claim for a monetary award, you must first sign and return your Class Member Declaration, which accompanies this Notice, and indicate on that Class Member Declaration that you believe you have a claim for age discrimination. A Claim Sheet and Settlement Class Member Release and Notice of Award will then be sent to you. You must sign and return your Claim Sheet and Settlement Class Member Release to the claims administrator by U.S. Mail. Information you provide in your claim form is confidential. You must mail your claim form to:

3M Settlement
c/o Rust Consulting, Inc.
Claims Administrator
625 Marquette Avenue, Suite 880
Minneapolis, MN 55402

(It is recommended, although not required, that you send your claim form by certified mail and that you keep a copy. Do not use Federal Express or any other overnight delivery service, as those services generally cannot deliver to a P.O. Box address.)

23. What is the deadline for submitting a Class Member Declaration?

The postmark deadline to submit your Class Member Declaration is **MONTH DD, 2011**.

WHAT WILL I GIVE UP IF I REMAIN A SETTLEMENT CLASS MEMBER?

24. If I remain a Settlement Class Member, what claims will I be releasing?

If you remain a Settlement Class Member, you will release all age discrimination claims against 3M under the Minnesota Human Rights Act for any period up through **MONTH DD, 2011**. You may consult with Class Counsel (contact information below) or another attorney of your own choosing to help you evaluate the impact of releasing those claims.

25. Will I give up any additional rights if I submit a claim sheet?

By signing and returning the Claim Sheet and Class Member Release and accepting your monetary award, you also give up the right to sue 3M for employment discrimination through the date of your release. A copy of the release that you will have to sign to receive monetary payment can be found on the Class Counsel's website.

HOW DO I EXCLUDE MYSELF FROM THE SETTLEMENT?

26. What are the effects of excluding myself from the Settlement?

If you exclude yourself from the Settlement, you will not be eligible to receive any monetary award. You also will not be permitted to object to the Settlement or be heard at the final settlement approval hearing. But, if you properly request exclusion, you will preserve the rights that you would have given up as described in paragraph 24, above, and will not be bound by any rulings of the Court in connection with this Settlement.

27. How may I exclude myself?

To validly exclude yourself, you must send a letter to the Claims Administrator, at the following address:

3M Settlement
c/o Rust Consulting, Inc.
Claims Administrator
625 Marquette Avenue, Suite 880
Minneapolis, MN 55402

Your request for exclusion must be signed by you personally, and it **must** clearly state: (1) your name, address, telephone number, and email address (if any), and (2) your wish to be excluded from the Settlement. **The postmark deadline to request exclusion is MONTH DD, 2011.** It is recommended that you send your exclusion request by certified mail and that you keep a copy.

HOW MAY I COMMENT ON OR OBJECT TO THE SETTLEMENT?

28. How may I comment in favor of or against the Settlement?

If you are covered by the Settlement, you may comment in writing for or against its fairness and reasonableness. Your statement must include your name and address and, if you are represented by counsel for purposes of objecting to or commenting upon the Settlement, your statement must identify your attorney and his or her contact information. You do not have to submit a claim form in order to be able to comment or object, but you may not comment or object if you exclude yourself from the Settlement. All written statements must be submitted by mail to the claims administrator at the address above, as well as Lead Class Counsel and 3M's Counsel at the following addresses:

Steven M. Sprenger
Lead Class Counsel
Sprenger + Lang, PLLC
1400 Eye Street, N.W.
Suite 500
Washington, DC 20005

Paul Klaas
3M's Lead Counsel
Dorsey & Whitney LLP
50 South Sixth Street
Suite 1500
Minneapolis, MN 55402-1498

All written objections must be postmarked no later than **MONTH DD, 2011**. Late objections/comments may not be considered by the Court. It is recommended, although not required, that you send your comment or objection by certified mail to all three addresses and that you keep a copy.

29. What is the difference between objecting and excluding?

Objecting is simply telling the Court that you don't like something about the Settlement. You can object only if you stay a Settlement Class Member. Excluding yourself is telling the Court that you do not want to be a Settlement Class Member. If you exclude yourself, you have no basis to object because the case no longer affects you.

MAY I PARTICIPATE IN THE FINAL SETTLEMENT APPROVAL HEARING?

30. When will the final settlement approval hearing be held?

A final settlement approval hearing (also called a fairness hearing) will be held on **MONTH DD, 2011** at **__:**__, before the Honorable Gregg E. Johnson of the District Court of the State of Minnesota for Ramsey County. On or after this hearing and based in part on any comments and objections, the Court will determine whether the proposed Settlement is fair, reasonable, and adequate, and should be finally approved by the Court. The Court will also consider at that time Class Counsel's motion for an award of attorneys' fees and reimbursement of out-of-pocket expenses. The Court will consider the presentations of counsel and any comments or objections from Settlement Class Members before making these decisions. The Court may reschedule this hearing without further notice by mail. The website will be updated to reflect any schedule changes related to the hearing.

31. What must I do to speak at the hearing?

If you wish to speak (or have a lawyer speak on your behalf) at the final approval hearing to object or state your comments in person, you must give notice. If you submit a written statement, you can, in that submission, state your intent to appear. If you do not submit a written statement, you must send a written notice to Lead Class Counsel and 3M's Counsel at the addresses provided above in the answer to Question 28, stating your name and address (and the name of your attorney, if one will be attending on your behalf), as well as your intent to appear at the hearing.

32. What happens if the Settlement is not approved or is otherwise terminated?

If the Settlement is not approved by the Court, you will not receive any money under the Settlement and you will not give up any claims that you possess. The case will proceed as if there had never been a proposed settlement. You may log on to www.minnesotaclassaction.com to find out the status of the approval process.

WHAT IF I DO NOTHING?

33. What happens if I do nothing at all?

If you do nothing, you'll get no money from the Settlement. You also won't be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against 3M arising out of alleged age discrimination during the period from May 10, 2003 through December 31, 2010.

ADDITIONAL INFORMATION

34. How can I get additional information?

This Notice provides only a general description of the Lawsuit and this Settlement. To see the complete court file, including the actual Settlement Agreement and Release, you may visit Class Counsel's website at www.minnesotaclassaction.com or, alternatively, you may visit the office of the Ramsey County Civil Court Records Office, Ramsey County Courthouse, Room 650, 15 Kellogg Boulevard West, St. Paul, Minnesota. The Clerk will tell you how to obtain the Lawsuit's file for inspection and copying at your own expense. You may also call Class Counsel, Steven Sprenger, at Sprenger + Lang, PLLC at (202) 265-8010 for additional information.

**PLEASE DO NOT CALL OR WRITE THE COURT, 3M, OR
ITS ATTORNEYS ABOUT THIS NOTICE**

EXHIBIT C

CLASS MEMBER DECLARATION

CLASS MEMBER'S DECLARATION FORM

You, [TYPED NAME] , have been identified as a class member potentially eligible to receive monetary relief under the settlement of *Clifford L. Whitaker et al. v. 3M Company*, Court File No. 62-C4-04-012239. In order to be eligible to receive a monetary payment, you must complete, execute and timely return this form. If you are confirmed as an eligible class member, a Release of Claims form will be sent to you in a future mailing, which you must sign and return in order to receive a monetary award.

The amount you will receive, which will appear on the Release of Claims form, will be determined by a formula that takes into consideration your compensation and job grade as a 3M employee and whether you were promoted, demoted, or terminated as a 3M employee during the relevant time period, as set forth in the Notice. If you are confirmed as eligible to receive an award, your minimum payment will be \$75.

Your identity and the information you provide on this form shall not be shared with anyone other than the Settlement Administrator for this case and select personnel from 3M's legal, tax, finance, and payroll functions, on a need to know basis.

YOU MUST ANSWER ALL QUESTIONS, SIGN AND RETURN THIS FORM NO LATER THAN [DATE CERTAIN (75 DAYS AFTER MAILING)] AS INDICATED BY THE POSTMARK ON THE ENVELOPE.

I. INFORMATION ABOUT YOUR CLAIM

1. Do you believe that your compensation as an employee of 3M Company was adversely affected because of your age?

YES _____ NO _____

If YES, identify the year(s) in which you believe your compensation was adversely affected because of your age. (Note: Only years in which you were age 46 or older during the period from January 1, 2001 to December 31, 2010 qualify.)

2. Do you believe that you were denied one or more promotions as an employee of 3M Company because of your age at any time when you were age 46 or older?

YES _____ NO _____

3. Were you involuntarily demoted by 3M Company when you were age 46 or older during the period [DATE] to [DATE]?

YES _____ NO _____

If YES, identify the position(s) to which you were demoted and the approximate date(s):

4. If you were involuntarily demoted, do you believe that your demotion(s) was (or were) based on your age?

YES _____ NO _____ NOT APPLICABLE _____

5. Was your employment involuntarily terminated by 3M Company when you were age 46 or older during the period January 1, 2001 to December 31, 2010?

YES _____ NO _____

If YES, identify the approximate date: _____

6. If your employment was involuntarily terminated, were you offered a severance payment upon your termination in exchange for a release of claims against 3M?

YES _____ NO _____ NOT APPLICABLE _____

If YES, did you:

_____ Sign the release of claims and receive the severance payment?

_____ Refuse to sign the release of claims and refuse to accept the severance payment?

_____ File a charge of discrimination in connection with your termination of employment with any administrative agency?

7. If your employment was involuntarily terminated, do you believe that your termination was based on your age?

YES _____ NO _____ NOT APPLICABLE _____

II. CONTACT AND DEMOGRAPHIC INFORMATION

3M's records show the following information concerning you:

Full name: [NAME]

Date of Birth: [DATE]

Current Address: [ADDRESS]

Current Telephone Number(s): [NUMBERS]

Check one:

_____ My contact and demographic information is correct.

_____ My contact and demographic information should be corrected as follows:

(Please indicate anticipated changes to any information set forth above on or before [DATE]).

I CERTIFY UNDER PENALTY OF PERJURY THAT THE FOREGOING RESPONSES IN SECTION I, INFORMATION ABOUT YOUR CLAIM, ARE TRUE AND CORRECT.

DATE: _____ SIGNATURE: _____

Return to [ADMINISTRATOR] at the address below postmarked on or before [DATE]:

[ADDRESS]

EXHIBIT D

CLAIM SHEET

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

Case Type: Employment

Court File No. C4-04-12239

Clifford L. Whitaker, et al.,
on behalf of themselves
and all others similarly situated,

Plaintiffs,

v.

3M Company,

Defendant.

**CONFIDENTIAL NOTICE OF
AWARD, CLAIM FORM, AND
SETTLEMENT CLASS MEMBER
RELEASE**

TO: «First_Name» «Last_Name»
«Street_Address»
«City», «State» «Zip_Code»
«Email»

FROM: Claims Administrator

DATE: MONTH DD, 2011

This Confidential Notice of Award, Claim Form, and Settlement Class Member Release informs you of the amount of your court-approved award, its apportionment for tax purposes, and the steps you must take to receive your award.

I. AMOUNT OF AWARD & APPORTIONMENT OF AWARD FOR TAX PURPOSES

The gross amount of your award is \$<<Gross Award>>, which shall be treated as wage income subject to tax withholding. As required by federal and state law, your share of employment taxes will be paid and income taxes will be withheld from your award.

After withholding of required taxes, the net amount of your award is \$<<Net Amount>>.

Nothing herein should be construed as tax advice. You are urged to consult a tax advisor about the taxes that you may owe on your award.

II. CLAIM FORM

To receive your award, you must (1) execute the taxpayer identification number certification below; and (2) carefully read, sign and date the Confidentiality, Settlement Class Member Release, and other provisions below and, and return them to the Claims Administrator no later than **MONTH DD 2011**. *Please be aware that, as a result of timing requirements for the Court and under the applicable court rules in this case, it may take 160 days or more for you to receive a settlement check.*

III. TAXPAYER IDENTIFICATION NUMBER CERTIFICATION

Substitute IRS Form W-9

Enter your Social Security Number: -- --

Under penalties of perjury, I certify that:

1. The social security number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); **and**
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, **and**
3. I am a U.S. person (including a U.S. resident alien).

W-9 Signature

W-9 Signature Date

Note: If you have been notified by the IRS that you are subject to backup withholding, you must cross out item 2 above. **The IRS does not require your consent to any provision of this document other than this Form W-9 certification to avoid backup withholding.**

IV. CONFIDENTIALITY

As a free and voluntary act, I agree that as an essential and material element of the Settlement Agreement in this matter, I will comply with the following provisions regarding confidentiality:

1. I will not disclose or characterize my responses to the Class Member Declaration, the amount of my Settlement Award, or the terms of my release of claims against 3M to any other person or entity, except to my attorneys, spouse, accountants or tax advisors, or as otherwise required by law or legal process, provided that I shall inform my attorneys, spouse, accountants or tax advisors of the terms of this confidentiality provision before making any such disclosure.
2. I agree and acknowledge that any breach of the foregoing provisions concerning confidentiality shall constitute a material breach by me of the Settlement Agreement, and that upon such material breach, 3M's obligations to me under the Settlement Agreement, including but not limited to payment of my Settlement Award, if unpaid, shall cease, and that I shall be liable to 3M in the full amount of the Settlement Award, if any, previously paid by 3M to me, as well as for other equitable and legal relief.

IV. SETTLEMENT CLASS MEMBER RELEASE

In consideration of my receipt of a court-approved monetary award, I hereby agree to be bound by the terms of this Settlement Class Member Release. I understand and acknowledge that the terms of this release are broader than the terms of the release set forth in the Notice of Proposed Class Action Settlement previously mailed to me.

I, on behalf of myself and my agents, heirs, executors, administrators and assigns, and as a free and voluntary act, hereby fully release and forever discharge 3M Company, as well as its past, present and future officers, directors, administrators, shareholders, fiduciaries, employees, agents, attorneys, insurers, and representatives, any potential future successors, past, present or future subsidiaries, parents, affiliated or related corporations, insurers of those entities, and all benefit plans sponsored by 3M, and each of their respective present and former agents, employees, or representatives, insurers, partners, associates, successors, and assigns, in any and all capacities (including but not limited to the fiduciary, representative, or individual capacity of any released person or entity), and any entity owned by or affiliated with any of the above ("Released Parties"), to the fullest extent permitted by law from any and all claims, allegations, debts, liabilities, demands, obligations, guarantees, costs, expenses, attorneys' fees, damages, penalties, actions, or causes of action of every kind or nature, known or unknown, alleging discrimination or retaliation in employment or termination of employment by 3M, including but not limited to those alleged in the Action, or that could have been alleged in the Action, and all such claims that could have been asserted against 3M at any time prior to my execution of this release of claims, pursuant to the Age Discrimination in Employment Act ("ADEA"), Older Workers Benefits Protection Act ("OWBPA"), Title VII of the Civil Rights Act, as amended, 28 U.S.C. § 2000e, et seq.; the Civil Rights Act of 1991, 42 U.S.C. § 1981a; the Americans with Disabilities Act of 1990, as amended; the Family and Medical Leave Act, 29 U.S.C. §§ 2601, et seq.; the Minnesota Human Rights Act, Minn. Stat. §§ 363A.01, et seq.; or any other federal, state, or local statute, law, regulation, rule which prohibits discrimination or retaliation in employment, or under the common law or otherwise, under any legal or equitable theory, including but not limited to allegations or claims of employment discrimination against 3M in any form, whether or not related to promotions, compensation, performance evaluations, training selections or termination, as well as any and all claims of retaliation or reprisal against 3M (the "Released Claims"). I understand that my release includes all age discrimination claims, whether arising under the ADEA, OWBPA, MHRA, or any other federal, state, local or common laws or regulations.

I acknowledge that I may later discover facts in addition to or different from the facts which I now believe to be true with respect to the subject matter of the Released Claims, but that I have fully, finally, and forever settled and released any and all Released Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, which now exist, or heretofore have existed, without regard to the subsequent discovery or existence of such different or additional facts.

I further warrant and represent that I have not filed any claims, charges, complaints or actions encompassed in this Waiver and Release against any Released Party, or assigned or transferred or purported to assign or transfer to any person or entity all or any part of or any interest in any claim released under this Waiver and Release. If any agency or court assumes jurisdiction of any complaints, claims, or actions against any Released Party by or on behalf of me arising out of any act or omission occurring before my execution of this Waiver and Release, I will request that the agency or court withdraw the matter or to dismiss the matter in its entirety, with prejudice, and will execute

all necessary documents to effect such withdrawal and/or dismissal with prejudice. To the extent required by law, nothing contained herein will be interpreted to prevent me from filing a charge with a governmental agency or participating in or cooperating with an investigation conducted by a governmental agency.

California Civil Code § 1542 (for California Employees or Residents Only): I expressly waive any and all rights and benefits which I may have under the provisions of California Civil Code section 1542, which provides as follows: "A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

I understand and specifically acknowledge and agree to the following:

- **I am waiving and releasing claims for age discrimination under the Age Discrimination in Employment Act, and that this waiver and release is knowing and voluntary.**
- **I am waiving and releasing claims under the Minnesota Human Rights Act, and that this waiver and release is knowing and voluntary.**
- **The consideration provided to me for this waiver and release is in addition to anything of value to which I am already entitled, and that this waiver and release does not apply to any rights or claims that may arise after my execution of this waiver and release.**
- **I have the right to reflect on this Release for a period of twenty-one (21) days before executing it, and I have an additional fifteen (15) days after executing it to revoke it under the terms of the Older Workers Benefit Protection Act and the Minnesota Human Rights Act.**
- **Any revocation pursuant to this paragraph must be in writing and delivered by hand or by certified mail, return receipt requested, within the applicable period to the attention of 3M Settlement, c/o Rust Consulting, Inc., Claims Administrator, 625 Marquette Avenue, Suite 880, Minneapolis, MN 55402.**
- **I will not be entitled to any benefits in exchange for this waiver and release, and this waiver and release will not become effective and enforceable until fifteen (15) days following my execution of this waiver and release, unless it is revoked during the fifteen (15) day period, in which case this waiver and release will be ineffective and unenforceable and I will not receive any benefits pursuant to this settlement.**

By my signature below, I represent and warrant that I have been advised of these rights, that I have been advised that I have a right to consult with an attorney, and that I have discussed them with my attorney to the fullest extent I thought necessary. I intend this to be a fully binding and enforceable release of all claims, including claims under the Age Discrimination in Employment Act and Minnesota Human Rights Act. In the event I sign this waiver and release and return it to 3M in less than the 21-day

period identified above, I hereby acknowledge that I have freely and voluntarily chosen to waive the time period allotted for considering this waiver and release.

C. OTHER AGREEMENTS

I also understand and agree to the following:

1. I understand that 3M makes no representations or warranties with respect to the tax consequences to me of my Settlement Award. Other than the employer's share of employment tax withholdings, I agree that I shall be solely responsible for any taxes that may be assessed against me relating to my receipt of a Settlement Award, including but not limited to all federal, state, and/or local taxes, and any other liens, obligations, claims, or consequences that may arise, and that I will not seek any indemnification from 3M with respect thereto. I further agree to indemnify and hold 3M harmless from any claims, demands, deficiencies, judgments or recoveries by any governmental entity against 3M for any amounts claimed in connection with money paid to me pursuant to the Settlement Agreement which are properly taxable to me, including amounts paid by 3M as taxes, attorneys' fees, fines, penalties, interest or otherwise.
2. I shall have one hundred and twenty (120) calendar days to cash or deposit my Settlement Award. My Settlement Award shall be cancelled by 3M if not cashed by me within one hundred and twenty (120) calendar days, at which point my claim will be deemed void and of no further force or effect. My failure to cash my Settlement Award shall have no effect on my Waiver and Release set forth herein.
3. My Settlement Award shall be deemed to be income to me solely in the year in which such payments are received. My Settlement Award shall not entitle me to additional compensation or benefits under any company bonus, contest, or other compensation, stock compensation, incentive, or benefit plan or agreement in place during the period covered by the Settlement, nor will it entitle me to any increased retirement, 401(k) benefits or matching benefits, or deferred compensation or any other benefits. I understand that my Settlement Award is the sole payment to be made by 3M, and that I am not entitled to any new or additional compensation or benefits as a result of having received the Settlement Award.

AGREED:

Date: _____

Sign Name: _____

Print Name: _____

EXHIBIT E

[PROPOSED] FINAL APPROVAL ORDER AND JUDGMENT

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

CASE TYPE: Employment

Clifford L. Whitaker et al.,
on behalf of themselves
and all others similarly situated,

Court File No. C4-04-12239
(The Honorable Gregg E. Johnson)

Plaintiffs,

**[PROPOSED] FINAL
APPROVAL ORDER AND
JUDGMENT**

vs.

3M Company,

Defendant.

On _____, 2011, this Court heard Plaintiffs' and Defendant 3M Company's (collectively "the Parties") joint motion for final approval of the class action settlement. This Court reviewed: (a) the motion and the supporting papers, including the Settlement Agreement and Release ("Agreement"); (b) any objections filed with or presented to the Court; (c) the Parties' responses to any objections; and (d) counsels' arguments. Based of this review and the findings below, the Court finds good cause to grant the motion.

FINDINGS:

For purposes of the Settlement Agreement only, the Court finds:

1. The Agreement is fair, reasonable, and adequate.
2. The Parties adequately performed their obligations under the Agreement.
3. Notice was provided to Class Members in compliance with the Agreement, due process, and Minnesota Rule of Civil Procedure 23.05. The notice: (i) fully and accurately informed Class' Members about the lawsuit and settlement; (ii) provided sufficient information so that Class Members were able to decide whether to accept the benefits offered, opt-out and pursue their own

remedies, or object to the proposed settlement; (iii) provided procedures for Class Members to file written objections to the proposed settlement, to appear at the hearing, and to state objections to the proposed settlement; and (iv) provided the time, date, and location of the final fairness hearing.

4. An award of \$_____ in attorneys' fees and \$_____ in costs to Class Counsel is fair and reasonable in light of the nature of this case, Class Counsel's experience and efforts in prosecuting this Action, and the benefits obtained for the Class.

5. An enhancement award to each Named Plaintiff of \$25,000 is fair and reasonable in light of the Plaintiffs' risks (including financial, professional, and emotional) in commencing this action as the Class Representatives.

IT IS ORDERED THAT:

1. **Class Members.** The Class Members are defined as:

All persons who were 46 or older when employed by 3M in Minnesota in a salaried exempt position below job grade 18 at any time on or after May 10, 2003 through December 31, 2010, and who did not sign a document on or about their last day of employment purporting to release claims arising out of their employment with 3M.

2. **Binding Effect of Order.** This order applies to all causes of action settled under the Agreement, and binds all Class Members, including those who did not properly request exclusion under the order preliminarily approving the class action settlement and provisionally certifying the class. This order does not bind persons who timely and validly requested to be excluded from the Settlement. Attached as **Exhibit 1** is a list of persons who properly requested to be excluded from the Settlement.

3. **Plaintiffs' and the Class Members' Release.** Named Plaintiffs and all Class Members who did not properly request exclusion from the Agreement are (1) deemed to have released 3M and its related entities from all claims released under the Agreement, and (2) permanently enjoined from asserting, instituting, or prosecuting, either directly or indirectly, those claims.

4. **Settlement Fund.** 3M will deposit into the 3M Whitaker Qualified Settlement Fund (“Qualified Settlement Fund”) the Gross Settlement Sum in accordance with the Agreement within five (5) calendar days after the Final Settlement Date, which is defined under the Agreement to mean the later of the following:

(a) if no appeal or request for review are taken, five (5) business days after the expiration of the time to file an appeal pursuant to Minn. R. App. P. 104.01;

(b) if any appeal or request for review are taken, the date on which Plaintiffs serve notice that an appellate court entered an order affirming or denying review of this Final Approval Order and Judgment, and after exhaustion of all appeals or the time for seeking all appeals; or

(c) five (5) calendar days after the latest date for the expiration of any Plaintiff’s revocation period, as set forth in Section 4 of the settlement agreement in *Arthur J. Garcia et al., on behalf of themselves and all others similarly situated v. 3M Company*, Court File No. C09-01943.

5. **Distribution of Settlement Fund.** Within 30 calendar days after the Final Settlement Date, the designated Claims Administrator will distribute money held in the Qualified Settlement Fund in accordance with the Settlement Agreement as follows:

(a) **Enhancement Award.** The Claims Administrator shall pay an Enhancement Award to each Named Plaintiff of \$25,000.

(b) **Administrative Costs.** The Claims Administrator shall pay itself Claims Administrator Costs of \$_____ for all costs, expenses, and time incurred with the administration of this Settlement, including (i) preparing, issuing, printing, mailing, and monitoring all necessary notices, declarations, filings, and tax related documents; (ii) computing the Settlement Awards, applicable taxes, and any other payments to be made out of the Gross Settlement Sum; (iii) establishing or maintaining the Qualified Settlement Fund; (iv) distributing payments out of the Gross Settlement Sum; (v) any related communications with Class Members or Class Counsel; (vi) all costs

associated with the creation and administration of the Qualified Settlement Fund; and (vii) any other obligations mandated by this Agreement for the Claims Administrator or as ordered the Court.

- (c) **Attorneys' Fees and Costs.** The Claims Administrator shall pay _____ to Class Counsel representing Class Counsel's attorneys' fees, and _____ to Class Counsel representing Class Counsel's costs incurred in litigating this Action.
- (d) **Settlement Awards.** The Claims Administrator shall distribute a Settlement Award to each eligible Settlement Class Member who timely returned a Claim Sheet, pursuant to the allocation set forth in the Agreement.
- (e) **Unclaimed or Uncashed Settlement Awards.** The Claims Administrator will redistribute to 3M, or as otherwise may be required by law, all unclaimed and uncashed Settlement Awards in excess of the amounts described in (a) through (d), above.

6. **Order of Dismissal.** This matter is dismissed, with prejudice. The Court shall retain jurisdiction to enforce the provisions of Section 8 of the Settlement Agreement for the duration of the term set forth in Section 8.2 thereof.

7. **Final Judgment.** This is a final judgment. In the event that this Final Judgment Order is determined not to be final, the Court finds and directs, pursuant to Rule 54.02 of the Minnesota Rules of Civil Procedure, that there is no just reason for delaying enforcement or appeal, that judgment should be entered, and that the judgment shall be final and immediately appealable.

DATED: _____

HONORABLE GREGG E. JOHNSON
DISTRICT COURT JUDGE

EXHIBIT F

LIST OF LAWSUITS AND CHARGES

Lawsuits Filed in the Case:

Whitaker, et al., v. 3M Company, Court File No. C4-04-12239

Administrative Charge Filers:

Clifford L. Whitaker
Michael V. Mucci

EXHIBIT G

APPROVED RELEASE TERMS

OWBPA Requirement	Approved Release Provision
<p>The waiver specifically refers to rights or claims arising under the ADEA. 29 U.S.C. § 626(f)(2)(B).</p>	<p><u>What I Am Releasing.</u></p> <p>In consideration for the payments and benefits provided under the 3M _____ Severance Pay Plan, I fully release and discharge 3M from liability for any and all claims, complaints, and liabilities of any kind, known or unknown, based on any action, decision, or event occurring prior to my signing this Release (each a "Claim"). This specifically includes without limitation, all Claims relating to the terms and conditions of my employment with 3M, and the ending of my employment.</p> <p>My release includes any Claim based upon THE AGE DISCRIMINATION IN EMPLOYMENT ACT, 29 U.S.C. §§ 621, <u>ET SEQ.</u></p>
<p>The individual does not waive rights or claims that may arise after the date the waiver is executed. 29 U.S.C. § 626(f)(2)(C).</p>	<p><u>What I Am Not Releasing or Otherwise Giving Up.</u></p> <p>I am not waiving any rights I have with regard to events that occur after the date on which I sign this Release or with regard to claims the law does not permit to be waived or released.</p>
<p>The individual waives rights or claims only in exchange for consideration in addition to anything of value to which the individual already is entitled. 29 U.S.C. § 626(f)(2)(D).</p>	<p><u>Purpose of the Release and My Acknowledgment of Consideration.</u></p> <p>By signing this Release, I will separate from 3M in exchange for the payments and benefits provided under the 3M _____ Severance Pay Plan, which I acknowledge is good and sufficient consideration for my signing this Release. I further agree and acknowledge that I would not be eligible for the payments and benefits set forth and provided under the 3M _____ Severance Pay Plan unless I sign (and then do not rescind) this Release.</p> <p><u>What I Am Not Releasing or Otherwise Giving Up.</u></p> <p>I am not releasing any claims for post-termination benefits, such as retirement benefits, under the provisions of any employee benefit plan 3M maintains.</p>
<p>The individual is advised in writing to consult with an attorney prior to executing the agreement. 29 U.S.C. § 626(f)(2)(E).</p>	<p>Prior to signing this Release, I was advised and encouraged to consult an attorney, and I understand I am hereby being advised again to consult an attorney regarding the terms of this Release.</p>
<p>If a waiver is requested in connection with an exit incentive</p>	<p>I understand that I have at least 45 days after receiving a copy of both this Release and the Summary Plan Description for the</p>

OWBPA Requirement	Approved Release Provision
<p>or other employment termination program offered to a group or class of employees, the individual is given a period of at least 45 days within which to consider the agreement. 29 U.S.C. § 626(f)(2)(F)(ii).</p>	<p>3M _____ Severance Pay Plan to consider whether to sign this Release.</p>
<p>The agreement provides that for a period of at least 7 days following the execution of such agreement, the individual may revoke the agreement, and the agreement shall not become effective or enforceable until the revocation period has expired. 29 U.S.C. § 626(f)(2)(G).</p>	<p>I may revoke this Release within 15 calendar days after signing it, by delivering a written notice or revocation, either personally or by certified mail, postmarked within the 15-day period, to [a specified individual at 3M].</p>

STATE OF MINNESOTA

RECEIVED
Ramsey County
District Court

DISTRICT COURT

COUNTY OF RAMSEY

MAR 18 2011

SECOND JUDICIAL DISTRICT

By _____ Deputy

CASE TYPE: Employment

Clifford L. Whitaker, Michael Mucci, Mark
Swanson, Thomas Bulen, and Robert Coats,

Court File No. C4-04-12239
(The Honorable Gregg E. Johnson)

on behalf of themselves and all others similarly
situated,

Plaintiffs,

vs.

3M Company,

Defendant.

**PLAINTIFFS' MEMORANDUM IN
SUPPORT OF
PRELIMINARY APPROVAL OF THE
CLASS SETTLEMENT**

Plaintiffs Clifford L. Whitaker, Michael Mucci, Mark Swanson, Thomas Bulen, and Robert Coats, by and through their counsel, respectfully request the Court to preliminarily approve the parties' proposed class action settlement. In support of their motion, plaintiffs submit this memorandum for the Court's consideration.

I. INTRODUCTION

This action arises out of plaintiffs' allegations that defendant 3M Company ("3M") discriminated against them and other similarly situated employees on the basis of their age with respect to promotion, compensation, performance evaluation, training selection, and termination decisions. After over six years of litigation and arms-length settlement negotiations spanning nearly three years, the parties have now reached a settlement resolving all claims.

Together, the parties now move this Court for the entry of: (1) an order provisionally certifying the class for purposes of settlement, and appointing class representatives and class counsel; (2) an order preliminarily approving the settlement agreement; and (3) an order approving the provision of notice of the settlement to the class members and setting a date for a fairness hearing.

II. HISTORY OF THE CASE

On December 21, 2004, plaintiffs Clifford Whitaker and Michael Mucci filed a class action complaint initiating this action in Ramsey County District Court alleging class-wide age discrimination in violation of the Minnesota Human Rights Act ("MHRA"). (Settlement Affidavit of Steven Sprenger ("Sprenger Aff."), ¶ 9.) Prior to filing this action, plaintiffs Whitaker and Mucci filed administrative charges with the Minnesota Department of Human Rights. (*Id.*) On January 3, 2006, plaintiffs filed their

Second Amended Complaint and added Mark Swanson, Thomas Bulen and Robert Coats as plaintiffs. (*Id.*; Settlement Affidavit of Daniel Kohrman (“Kohrman Aff.”), ¶ 11.)

On July 7, 2005, the Court denied 3M’s motion to dismiss and the parties embarked on a 17-month period of fact discovery. (Sprenger Aff. ¶ 10.) The discovery process included numerous disputes resulting in motions practice, the production of over 240,000 hard copy and electronic documents as well as statewide company employee data, scores of interrogatories, and more than 46 depositions. (*Id.* at ¶¶ 10-12; Kohrman Aff. ¶ 12.) After the conclusion of fact discovery, the parties engaged in expert discovery, which included numerous expert reports and depositions. (Sprenger Aff. ¶¶ 11-12; Kohrman Aff. ¶ 12.)

This discovery culminated in plaintiffs’ filing of a motion for class certification on September 11, 2007. (Sprenger Aff. ¶ 15; Kohrman Aff. ¶ 14.) The Court held a hearing on class certification on December 12, 2007, and granted plaintiffs’ motion on April 11, 2008. (Sprenger Aff. ¶ 17.) 3M successfully petitioned for discretionary review of the class certification order by the Minnesota Court of Appeals. (*Id.* at ¶ 18.) On April 28, 2009, the Minnesota Court of Appeals reversed the class certification order and remanded the case back to this Court for further proceedings. (*Id.*)

In March and April 2010, the parties submitted supplemental briefing on the issue of class certification to address the issues raised by the Court of Appeals. (*Id.* at ¶ 21.) On May 5 and 6, 2010, this Court held an evidentiary hearing during which it heard nearly eight hours of expert testimony. (*Id.*) The parties appeared back before the Court for final oral argument on August 25, 2010, and the motion has been under advisement since that date. (*Id.*)

After the filing of plaintiffs' motion for class certification, the parties engaged the private mediation services of Hunter R. Hughes, Esq. of Rogers & Hardin to facilitate settlement discussions. (Sprenger Aff. ¶ 16; Kohrman Aff. ¶ 15.) The parties had their first mediation session with Mr. Hughes in February 2008. (Sprenger Aff. ¶ 16.) This was followed by two more mediation sessions with Mr. Hughes in November 2009, and finally two more in July 2010. (*Id.* at ¶¶ 16, 20, 22.) After the mediation sessions in July 2010, the parties continued settlement discussions without the assistance on Mr. Hughes and ultimately agreed on the material terms of a settlement in January 2011. On March 14, 2011, the parties executed the proposed Settlement Agreement. (Sprenger Aff. ¶ 24; Kohrman Aff. ¶ 16.)

III. SUMMARY OF THE SETTLEMENT AGREEMENT PROVISIONS¹

A. Settlement Class Definition

To effectuate their proposed settlement, the parties seek provisional certification of a class defined as follows:

All persons who were 46 years old or older when employed by 3M in Minnesota in a salaried exempt position below job grade 18 any time on or after May 20, 2003, through December 31, 2010, and who did not sign a document on or about their last day of employment purporting to release claims arising out of their employment with 3M.

The parties seek certification pursuant to Minnesota Rule of Civil Procedure 23.02(c).

B. Schedule for Notice and Fairness Hearing

The parties have negotiated and agreed upon a schedule for the issuance of notice, submission of objections, the fairness hearing, their petition for entry of final judgment and dismissal, and distribution of the settlement fund monies. A synopsis of the proposed

¹ The Settlement Agreement is attached as Exhibit 1 to the Parties' Joint Motion for Preliminary Approval.

schedule is as follows:

- a. Within sixty-five (65) days after preliminary approval of the Settlement Agreement defendant will identify all class members and will provide to the claims administrator sufficient information from which to issue notice and calculate settlement awards.
- b. On the ninetieth (90) day after preliminary approval of the Settlement Agreement the claims administrator will issue the Court approved Notice to class members and Class Member Declaration.²
- c. Within seventy-five (75) days after the mailing of notice, class members must return their Class Member Declaration.
- d. Within one hundred (100) days after mailing of the notice class member objections must be submitted in writing to the Court, with copies served on counsel for both parties.
- e. Within one hundred (100) days after mailing of the notice class members who wish to opt-out of the settlement must mail to the claims administrator a written, signed statement indicating their desire to opt-out.
- f. A briefing schedule and final approval hearing date will be set at the Court's convenience. However, the motion for final approval and certification of the settlement class will be ready to be heard on or after December 15, 2011.

C. Programmatic Relief

The parties negotiated and agreed that meaningful programmatic relief will be implemented by defendant, and will remain in place for a period of three years. The programmatic relief includes:

1. EEO Communications and Training.

- (a) 3M will distribute its Equal Employment Opportunity (EEO) and Affirmative Action (AA) policy statement to all new hires and will re-issue the statement to employees annually and post it on a company intranet site that is accessible to all employees. The EEO/AA policy statement will be signed by 3M's Chief Executive Officer and will confirm 3M's commitment to prohibiting unlawful

² The proposed Notice and Class Member Declaration are attached as Exhibits B and C to the Settlement Agreement.

discrimination, including but not limited to discrimination based on age, in all terms and conditions of employment.

- (b) 3M will include in the Company's existing Employment Law for Leaders course content focused on age discrimination and will deliver the course to the eligible population of managers and supervisors every two years.
- (c) 3M will review the company's leadership, supervisory development, and diversity training programs for content on equal employment opportunity and non-discrimination and, to the extent there is no such content or where 3M determines that additional content would clarify the company's commitments, revise the course content to include information regarding 3M's EEO and non-discrimination commitments.

2. Performance Appraisals.

- (a) 3M will not use rating distribution guidelines or quotas in connection with its performance appraisal processes.
- (b) 3M will provide additional guidance to supervisors to clarify criteria for placement recommendations and high potential designations used in connection with the performance appraisal process.
- (c) 3M will support a review and appeal process for employee EC&DP ratings, through which employees can challenge contribution codes, leadership attribute ratings, high potential designations and/or placement recommendations.

3. Promotions/Transfers/Development/Training Opportunities.

- (a) 3M will post Black Belt positions internally and will accept applications for those positions.
- (b) 3M will post on an intranet site accessible to employees program descriptions and the selection criteria and process for the ALDP I, ALDP II, and Leadership Development for Growth ("LDG") leadership development programs.
- (c) 3M will publish job posting guidelines on an intranet site accessible by employees. Pursuant to the published posting guidelines, 3M will increase the minimum posting period for positions required to be posted to five days and will agree to post all open positions below the L3 job grade with limited exceptions where there is an important business need.

- (d) 3M will not preclude employees who receive a 2 level of contribution rating through the EC&DP process from applying for open positions in the company. 3M will make available to hiring managers and/or recruiters the past three years of EC&DP ratings for internal candidates applying for open positions.

4. Job Eliminations/Terminations of Employment/Releases.

- (a) 3M will use a form of release in connection with its severance plans and/or any group reductions in force which includes terms that are not materially different from those set forth in Exhibit G ("Approved Release Terms"), except as necessary to comply with changes in law, including but not limited to changes in the OWBPA or judicial opinions interpreting legal requirements, or otherwise as necessary to comply with 3M's legal obligations. As of the Execution Date, and subject to changes in the OWBPA, the parties acknowledge that the Approved Release Terms comply with OWBPA. 3M also will describe the decisional unit on any eligible/ineligible lists in a manner that will allow employees affected by a group reduction to understand the contours of the affected group.
- (b) 3M will maintain a termination review process that requires approval of all terminations of employment, including those due to job elimination, by designated levels of business and human resources management. Part of the approval process will include confirmation that the selection process and resulting job elimination decisions were implemented in a manner consistent with principles of non-discrimination.
- (c) 3M will comply fully with the OWBPA, including with its requirements regarding releases of claims, and will train human resources personnel on the construction of eligible/ineligible lists under the OWBPA.

5. Implementation.

- (a) 3M's human resources function will be responsible for implementing the programmatic relief set forth in this Section 8 and for ensuring that 3M's policies regarding equal employment opportunity and non-discrimination are enforced. 3M's Senior Vice President, Human Resources, will be ultimately responsible for implementation of Section 8 of this Agreement.
- (b) 3M will continue to maintain the company's internal grievance process through which employees have multiple channels to raise concerns and complaints, including concerns or complaints

regarding unlawful discrimination, retaliation, or alleged noncompliance with this decree. 3M will increase communications to employees concerning its grievance process. 3M's grievance process will not preclude or discourage employees from complaints or expressing concerns directly to the EEOC or class counsel.

- (c) 3M's Counsel shall report to Class Counsel every twelve (12) months for a period of three (3) years from the Execution Date as to steps taken by 3M to comply with these injunctive provisions, which reports shall be maintained on a Confidential basis as defined in the stipulated protective order in the Action, which is incorporated as if set forth fully herein. Unless a different person is otherwise designated by Class Counsel, in writing, the reports set forth in this section shall be deemed duly given if addressed to Steven M. Sprenger and personally delivered, sent by U.S. Mail, or sent by confirmed facsimile or other agreed upon method. Class Counsel shall provide written notice to 3M's Counsel of any noncompliance by 3M with the terms of this Section, and 3M and Class Counsel shall attempt to informally resolve any allegation of noncompliance prior to any effort by Class Counsel to enforce the terms of this Section. Only Class Counsel shall have standing to seek relief from the Court for alleged violations of this section.
- (d) 3M shall not retaliate against any Settlement Class Member for appealing any EC&DP rating or complaining about 3M's alleged failure to comply with the terms of the Decree.

D. The Settlement Fund

The parties negotiated and agreed that defendant will deposit up to \$12 million into a Qualified Settlement Fund. The Qualified Settlement Fund will:

- a. Cover all amounts to be paid to class members, including plaintiffs;
- b. Cover all of Class Counsel's fees and costs, including those in connection with securing court approval of the settlement, the claims process and implementing programmatic relief in the settlement agreement; and
- c. Cover all costs in connection with the settlement fund including, but not limited to, those related to notice, claims processing, legal advice relating to the establishment of the qualified settlement fund and tax treatment and tax reporting of awards to claimants, preparation of tax returns (and the taxes associated with such tax returns as defined below), and other fees

and expenses.³

Rust Consulting, Inc. (“Rust”) of Minneapolis, Minnesota will serve as the Claims Administrator and serve as the trustee of the Qualified Settlement Fund. Rust has substantial experience and expertise carrying out these duties. It will supervise all aspects of the claims administration process including, but not limited to: the distribution of Notice and Class Member Declarations to class members; the calculation of Settlement Awards; the distribution of Claim Sheets; the issuance and distribution of settlement checks to class members returning claim sheets; and, compliance with all applicable tax reporting, withholding and/or remitting requirements.

E. Named Plaintiff and Class Member Monetary Awards

For each class member, the Claims Administrator will calculate/allocate a settlement award pursuant to a formula described in Section 7.1(d) of the Settlement Agreement. In order to claim his or her settlement award, a class member must return the Class Member Declaration affirming a belief that he or she has been subjected to age discrimination in connection with compensation, promotion/demotion, and/or termination. After a class member returns the Class Member Declaration, he or she will also need to return the Claims Sheet to receive payment.

The settlement award formula considers factors that have been identified by Class Counsel as significant to assessing the value of each class member’s potential claims. The settlement funds were divided between the three types of claims (compensation, promotions/demotion/selection for training, and termination claims) according to Class Counsel’s evaluation of the strength and value of each claim from the report prepared by

³ Defendant will be responsible for its share (i.e., the employer’s portion) of payroll taxes and will pay the same separate and apart from the settlement fund.

the plaintiffs' expert. Awards for compensation claims are dependent upon each individual's salary and the difference between their salary and the average salary for employees in their grade level. Awards for promotion, demotion and selection for training claims are dependent upon each individual's salary and whether they were promoted or selected for special training during the class period. If an employee obtained a promotion or was selected for training, then their awards will be given less value than those employees who were not promoted or selected for training or were demoted. Awards for termination claims are dependent upon the offer of compromise made by 3M in the form of a severance payment for members of the class who had a termination award.⁴ Further, class members who took a step toward asserting their legal rights by either filing an administrative charge or this lawsuit were given priority.

In addition to their settlement award, each named plaintiff will receive a \$25,000.00 enhancement award. The enhancement award is in consideration of the substantial contribution of the named plaintiffs in pursuing this action on behalf of the class.⁵ (*See Sprenger Aff.* ¶ 13.) These awards will not diminish the amount of money available for determining each class member's settlement award.

⁴ Very few members of the class have a termination claim since the overwhelming majority of 3M employees accepted a severance payment and signed a release, thereby being excluded from the class.

⁵ The contributions of the named plaintiffs to the case were evaluated in light of "actions plaintiff took to protect class's interest, [the] degree to which the class has benefitted from those actions, and the amount of time and effort plaintiff expended in pursuing litigation." *Zilhaver v. UnitedHealth Group, Inc.*, 646 F. Supp.2d 1075, 1085 (D. Minn. 2009) (citations omitted).

F. Attorneys' Fees & Expenses

The parties negotiated and agreed that Class Counsel may petition the Court for an award of attorneys' fees of up to a maximum of \$3.5 million, plus the actual costs incurred in litigating this Action, up to a maximum \$2.9 million, with the combined total attorneys' fees and costs not to exceed \$6.4 million.

IV. LEGAL ARGUMENT

A. The Proposed Class Should Be Certified For Settlement Purposes

This Settlement Class is defined as

All persons who were 46 or older when employed by 3M in Minnesota in a salaried exempt position below job grade 18 at any time on or after May 10, 2003 through December 31, 2010, and who did not sign a document on or about their last day of employment purporting to release claims arising out of their employment with 3M.

For settlement purposes, the Class satisfies the requirements of Rule 23.01, and should be certified under Rule 23.02(c). The proposed settlement class is the same class that has been certified once by this Court and, following remand by the Court of Appeals, the subject of supplemental briefing and an evidentiary hearing. Although confident that the Court has received ample evidence and argument to certify a settlement class, plaintiffs briefly summarize their arguments why class certification is appropriate below.

B. The Proposed Settlement Class Satisfies Rule 23.01

Under Minn. R. Civ. P. 23.01, a class may be certified when (a) the class is so numerous that joinder of all members is impracticable; (b) there are questions of law or fact common to the class; (c) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (d) the representative parties will fairly and adequately protect the interests of the class." Minn. R. Civ. P. 23.01. The proposed

settlement class meets each of these requirements.

1. Numerosity is Satisfied.

Based on the data produced by defendant and updated representations during the settlement negotiations, the parties agree that the class consists of over 6,000 current and former 3M employees. A class satisfies the numerosity requirement when it is so large that joinder of all members is impracticable. *Glen Lewy 1990 Trust v. Investment Advisors, Inc.*, 650 N.W.2d 445, 452 (Minn. Ct. App. 2002). Given the size of the class, joinder is impracticable.

2. There are Questions of Law and Fact Common to the Class.

A class satisfies the commonality requirement when “there are questions of law or fact common to the class.” “The threshold for commonality is *not high* and requires only that the resolution of the common questions affect all or a substantial number of class members.” *Streich v. American Family Mut. Ins. Co.*, 399 N.W.2d 210, 214 (Minn. Ct. App. 1987) (emphasis added). “[F]actual variations” among plaintiffs do not defeat commonality. *Paxton v. Union Nat’l Bank*, 688 F.2d 552, 561 (8th Cir. 1982).

Whether defendant adopted and maintained a policy or practice of discrimination in the terms and conditions of employment for its older employees is a question of fact and law that is common across the class. The resolution of this question would affect all or a significant number of class members. Accordingly, commonality is established.

3. Plaintiffs’ Claims are Typical of the Class Claims.

The claims asserted by the named plaintiffs are “typical of the claims or defenses of the class.” Rule 23.01(c). “The ‘typicality’ requirement is met when the claims of the named plaintiffs arise from the same event or are based on the same legal theory as the

claims of the class members.... A ‘strong similarity of legal theories’ satisfies the typicality requirement even if substantial factual differences exist.” *Glen Lewy*, 650 N.W.2d at 453 (citations omitted).

Typicality is satisfied because the plaintiffs and class together allege that they have been subjected to the same company-wide policies and practices of age discrimination in employment. Further, the plaintiffs and class each claim they have been adversely affected by the same policies and practices of age discrimination which have resulted in their younger counterparts receiving more favorable treatment in the terms and conditions of their employment. Finally, the named plaintiffs’ and class’ claims are based on the same legal theories of liability and recovery.

4. Adequacy of Representation is Satisfied.

The adequacy requirement of Rule 23.01(d) means that “plaintiffs’ interests must coincide with the interests of other class members and that plaintiffs and their counsel will competently and vigorously prosecute the lawsuit.” *Ario v. Metropolitan Airports Comm’n*, 367 N.W.2d 509, 513 (Minn. 1985). These factors are present here. By satisfying the typicality requirement, plaintiffs have shown that their interests coincide with those of the absent class members. They have no unique claims and are not subject to any counterclaims or unique defenses that might create “any interests that conflict with the objective of the class they represent.” *Glen Lewy*, 650 N.W.2d at 454. Class counsel are experienced class employment discrimination litigators who have litigated and successfully resolved numerous employment discrimination class actions. (See Sprenger Aff. ¶¶ 4-7; Kohrman ¶¶ 4-9.) Accordingly, class counsel satisfy the adequacy requirement.

The interests of the plaintiffs do not conflict with those of the class. The plaintiffs' allegations with respect to discrimination in the terms and conditions of their employment are nearly identical to the class. Plaintiffs have diligently advanced the interests of the entire class and have competently aided class counsel in prosecuting their claims. Accordingly, plaintiffs are adequate representatives for the class.

C. The Proposed Settlement Class Satisfies 23.02(c)

A class action is properly maintained pursuant to Minn. R. Civ. P. 23.02(c) if the Court finds that questions of law or fact common to class members predominate over questions affecting only individual members and the class action is the superior method of adjudicating the controversy. Although the plaintiffs have individual claims which are separate and apart from the class claims, the common questions of law and fact – 3M's alleged discriminatory practices toward older employees in connection with promotions, compensation, performance evaluations, training selections, and terminations – predominate. The parties' negotiations and resulting settlement and programmatic relief are related to the questions law and fact which are common to the class.

Because the proposed settlement class satisfies the requirements of Minn. R. Civ. P. 23.01 and 23.02, the Court should certify the proposed class for settlement purposes.

V. THE COURT SHOULD PRELIMINARILY APPROVE THE PROPOSED SETTLEMENT

A. Standard for Preliminary Approval of a Class Settlement

Approval of a class action settlement is governed Minn. R. Civ. P. 23.05. Rule 23.05 provides, in relevant part, that:

- (1) A settlement, voluntary dismissal, or compromise of the claims, issues, or defenses of a certified class is effective only if approved by the court.

(2) The court must direct notice in a reasonable manner to all class members who would be bound by a proposed settlement, voluntary dismissal, or compromise.

(3) The court may approve a settlement, voluntary dismissal, or compromise that would bind class members only after a hearing and on finding that the settlement, voluntary dismissal, or compromise is fair, reasonable, and adequate.

Court approval of a class settlement typically follows a two-stage process. *Armstrong v. Bd. of School Directors*, 616 F.2d 305, 314 (7th Cir. 1980). The first step is a preliminary review by the Court to determine whether the proposed settlement is "within the range of possible approval." *Id.* (internal citations omitted). Through the preliminary evaluation, the Court must ascertain whether there is reason to notify the class members of the proposed settlement and to proceed with a fairness hearing. *Id.* (citing *Manual for Complex Litigation* § 1.46, at 53-55 (West 1977)); *Manual for Complex Litigation, Fourth*, § 13.14 (Fed. Jud. Ctr. 2004) ("*Manual Fourth*"). At the second stage, the Court directs counsel to issue notice of the settlement to all class members and schedules a fairness hearing where all interested parties, including all class members, are afforded the opportunity to be heard on the proposed settlement. The ultimate purpose of the fairness hearing is for the Court to make a final determination that the proposed settlement is "fair, reasonable, and adequate" as required by Minn. R. Civ. P. 23.05(3).

In determining whether a proposed class settlement satisfies the "fair, adequate and reasonable" standard, the Court should consider a number of factors, including (1) the strength of the class claims on the merits balanced against the benefits offered in settlement; (2) the complexity, length, and expense of further litigation; (3) the extent of discovery completed and the stage of the proceedings; and, (4) the opinions of the

participants, including class counsel, class representatives and class members. *See, e.g., EEOC v. McDonnell Douglas Corp.*, 894 F. Supp. 1329, 1333 (E.D. Mo. 1995) (citations omitted); *White v. NFL*, 822 F. Supp. 1389, 1417 (D. Minn. 1993) (citations omitted); *In re Employee Benefit Plans Sec. Litigation.*, Case No. 92-708, 1993 WL 330595, *3-5 (D. Minn. June 2, 1993) (citations omitted). Moreover, these factors should be analyzed in light of the strong general policy favoring settlement of class actions. *Holden v. Burlington Northern, Inc.*, 665 F. Supp. 1398, 1407 (D. Minn. 1987).

B. The Settlement is Fair, Reasonable and Adequate

1. The Strength of the Class Claims When Balanced Against the Benefits Provided by the Injunctive Relief Favors Approval of the Proposed Settlement.

The balance between the strength of the case for a plaintiff class on the merits and the value of benefits offered in a proposed settlement is the single most important factor in evaluating whether a class settlement should be approved. *Grunin v. International House of Pancakes*, 513 F.2d 114, 124 (8th Cir. 1975). The amount offered in settlement includes a total of up to \$12 million cash plus considerable programmatic relief.

Balanced against the substantial benefits of the proposed settlement, including the substantial programmatic relief, is the strength of the various class claims with respect to both liability and damages. Plaintiffs believe they have a strong case for liability, but recognize that their claims are far from perfect. Further, plaintiffs have many litigation hurdles that remain to be cleared, such as certification of the class and protecting such certification on appeal, and prevailing at trial. Further, if their statistical analyses were to be rejected, which was hotly contested during the class certification evidentiary hearing, they would be almost certain to lose.

2. The Complexity, Length and Expense of Continued Litigation Favor Approval of the Proposed Settlement.

In the absence of an approved settlement, the parties would face a long litigation course, including further motions and appeals related to class certification, further discovery on the merits, more motions for summary judgment, trial and potential appellate proceedings that would consume time and resources and present each of them with ongoing litigation risks and uncertainties. (Sprenger Aff. ¶ 25; Kohrman Aff. ¶ 17.) It is desirable to avoid these risks and uncertainties, as well as the consumption of time and resources, and ultimately determine that an amicable settlement pursuant to the terms and conditions of the attached Settlement Agreement would be more beneficial to parties than continued litigation. (Sprenger Aff. ¶ 25; Kohrman Aff. ¶ 17.) Class counsel believe that the terms of the Settlement Agreement are in the best interests of the class and are fair, reasonable, and adequate. (Sprenger Aff. ¶ 32; Kohrman Aff. ¶ 23.)

3. The Completion of Discovery and All Final Pretrial Preparations Favor Approval of the Proposed Settlement.

Prior to reaching the settlement, class counsel had conducted a full and complete investigation of the class claims. Initially, class counsel investigated the merits of the claims informally by interviewing numerous witnesses before filing suit. (Sprenger Aff. ¶ 9; Kohrman Aff. ¶ 11.) Thereafter, class counsel conducted an enormous amount of formal discovery. Class counsel took or defended more than 46 depositions of 3M decision-makers and experts, reviewed over 240,000 documents, analyzed numerous electronic data sets produced by 3M, and consulted with two experts. (Sprenger Aff. ¶¶ 10-12; Kohrman Aff. ¶ 11.) Class counsel's participation in a two-day evidentiary hearing and numerous mediation sessions also aided their understanding of the relative

strengths and weaknesses of parties' positions. In sum, class counsel is well positioned to balance the benefits of the settlement against the strengths and weakness of the class claims.

4. The Opinions of Class Counsel and the Class Representatives Favor Approval of the Proposed Settlement.

Class counsel is well experienced in the area of employment discrimination class actions. (Sprenger Aff. ¶ 4-6; Kohrman Aff. ¶¶ 4-9.) Indeed, there are only a handful of attorneys and firms in the country that possess comparable experience and expertise in such cases. Therefore, the Court should give considerable weight to class counsel's evaluation of the merits of the settlement. *White v. National Football League*, 822 F. Supp. 1389, 1420 (D. Minn. 1993). Class counsel strongly believes that the settlement is fair, reasonable and in the best interests of the class. (Sprenger Aff. ¶ 32 Kohrman Aff. ¶ 23.) The class representatives believe likewise. (Statements of Support from Named Plaintiffs, Sprenger Aff. ¶ 33 and Exs. A-E.) This support and the lack of any fraud or collusion strongly favor approval of the settlement.

5. The Fee Award and Litigation Expense Reimbursement Provisions of the Settlement Agreement are Fair and Reasonable.

The allocation of the Settlement Fund between members of the class, named plaintiffs, and class counsel is fair and reasonable. Class counsel will request past and anticipated future attorneys' fees in the amount of \$3.5 million; and (2) reimbursement class counsel for advanced "out of pocket" litigation expenses in the amount of \$2.9 million. Class counsel will file their motion for attorneys' fees and litigation expenses contemporaneously with the Motion for Final Approval.

(a) *The Attorneys' Fee Provision of the Settlement Agreement Is Fair and Reasonable Under Either the Lodestar or Common Fund Methodology.*

District courts within the Eighth Circuit have utilized either the “lodestar” or “common fund” (sometimes referred to as the “percentage of the benefit”) methodology for analyzing a request for attorneys’ fees in connection with a class action settlement. *Johnston v. Comerica Mortg. Corp.*, 83 F.3d 241, 244-46 (8th Cir. 1996). Each methodology has its own merits. The advantage of the common fund approach is that “it is thought to equate the interest of class counsel with those of the class members and encourage class counsel to prosecute the case in an efficient manner.” *In re Xcel Energy, Inc. Securities, Derivative & “ERISA” Litigation*, 364 F. Supp. 2d 980, 991 (D. Minn. 2005). The advantage of the lodestar method is that “it is reasonably objective, neutral, and does not require making monetary assessments of intangible rights.” *Id.* at 245 (citing Third Circuit Task Force Report, 108 F.R.D. 237, 255). Although not required, some courts that utilize the common fund method cross-check its result against the result produced under the lodestar method. *Id.* at 998.

(1) *Common Fund*

Under the common fund methodology, the Court must first value the total benefit of the settlement obtained by the class, including the programmatic relief. If the value of such programmatic relief is not given some consideration in determining an attorneys’ fee award, then attorneys will have little incentive to negotiate such provisions in employment discrimination class action settlements, even though they are arguably more important in creating an equal opportunity work environment than are monetary awards. Of course, there is no uniformly accepted methodology for valuing the type of

programmatic relief obtained here. How one values the programmatic relief depends on one's perspective. Class members who are currently employed by 3M may well view the programmatic relief as having equal or greater value than monetary relief. Class members who are no longer employed by 3M may view the programmatic relief as having significantly less value than the monetary relief. And 3M likely views the programmatic relief as having a value equal to its costs to implement and maintain its various component parts over the three year period of the injunctive relief provided in the settlement. Accordingly, the total benefit of the settlement exceeds \$12 million, but it is not possible to determine by how much.

Setting aside the value of programmatic relief, class counsel's fee request of \$3.5 million is the equivalent of slightly more than 29% of the total settlement benefit. In *Hawkins v. Thorp Loan and Thrift Co.*, a Hennepin County District Court Judge found that the benchmark for attorneys fees in common fund cases is between 20-30%. Case No. 85-6074, 1992 WL 589727, *4 (Hennepin Cty, Minn.) (Feb. 21, 1992). The Eighth Circuit has previously approved higher percentage fee awards in cases involving monetary and non-monetary relief. *See, e.g., In re U.S. Bancorp Litigation*, 291 F.3d 1035 (8th Cir. 2002) (affirming fee award of 36% in privacy rights class action); *Elliott v. Sperry Rand Corp.*, 680 F.2d 1225 (8th Cir. 1982) (affirming fee award equal to 36% of monetary component of settlement in Title VII class action). A recent decision by Judge Kyle of the United States District Court for the District of Minnesota approving a common fund fee award of 33% supports class counsel requested fee in this case. *Yarrington v. Solvay Pharmaceuticals, Inc.*, 697 F.Supp.2d 1057, 1061-62 (D. Minn. 2010) (approving a award of 33% of the common fund while noting that "courts [of the

Eighth Circuit] have routinely awarded attorneys fees ranging from 25% to 36% of a common fund.”).

(2) *The Lodestar Methodology*

Under the lodestar approach, the hours expended by an attorney (or other timekeeper) are multiplied by an hourly rate so as to produce a fee amount which can be adjusted, up or down, to reflect the individualized characteristics of a given action. In the context of cases brought under fee shifting statutes such as this one, the United States Supreme Court has held that the lodestar calculation provides a presumptively reasonable attorneys’ fee award. *Blum v. Stenson*, 465 U.S. 886, 901 (1984) (citing *Hensley v. Eckerhart*, 461 U.S. 424, 431 (1983)); *Milner v. Farmer Ins. Exch.*, 748 N.W.2d 608, 620-21 (Minn. 2008) (Minnesota follows the procedure set forth in *Hensley* when determining a reasonable rate under the lodestar methodology). Although the Court has rejected the position that an upward adjustment of the lodestar fee is never permissible, it has stated that such enhancements should be limited to cases of “exceptional success.” *Blum*, 465 U.S. at 901. The Court has specifically ruled out the possibility that “contingency risk” alone may support a lodestar enhancement, finding that an attorney’s hourly billing rate should sufficiently account for that risk. See *City of Burlington v. Dague*, 505 U.S. 557, 565 (1992) (“An attorney operating on a contingency-fee basis pools the risk presented by his various cases: cases that turn out to be successful pay for the time he gambled on those that did not.”); *Blum*, 465 U.S. at 902 (“the special skill and experience of counsel should be reflected in the reasonableness of the hourly rates”; “‘quality of representation,’ however, generally is reflected in the reasonable hourly rate.”).

Class counsel expended 27,655 hours investigating and prosecuting this action over an eight year period. (Sprenger Aff. ¶ 34; Kohrman Aff. ¶ 24.) At its current hourly rates which are consistent with the rates charged by the handful of law firms that engage in a contingent national employment class action practice and other law firms in Washington, D.C., these hours have a lodestar value of \$10,893,415.57. (Sprenger Aff. ¶ 34; Kohrman Aff. ¶ 24.) Class counsel's attorney fees under the settlement agreement represent less than 35% of its lodestar fee. Accordingly, the attorneys' fee provision in the settlement agreement is fair, adequate, and reasonable.

(b) *The Litigation Expense Provision of the Settlement Agreement Is Fair and Reasonable.*

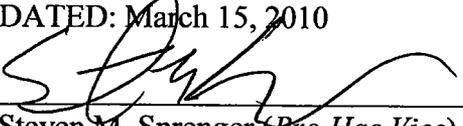
The Settlement Agreement provides for class counsel to request up to \$2.9 million as reimbursement for the "out of pocket" litigation expenses it reasonably incurred and paid in connection with investigating, prosecuting and settling this action. These expenses for experts, consultants and mediation, court and witness fees, court reporters, travel and lodging, and numerous other costs ordinarily paid for by clients were reasonably necessary to prosecute successfully this action. (Sprenger Aff. ¶ 35; Kohrman Aff. ¶ 25.) Accordingly, the litigation expense provision is fair, adequate, and reasonable.

VI. CONCLUSION

Because the entire Settlement Agreement is fair, reasonable and adequate, the Court should grant preliminary approval and order that notice of a formal fairness hearing be given pursuant to Minn. R. Civ. P. 23.05. For the foregoing reasons, plaintiffs respectfully request that the Court enter the following: (1) an order provisionally certifying the class for purposes of settlement, and appointing class

representatives and class counsel; (2) an order preliminarily approving the settlement agreement; and (3) an order approving the provision of notice of the settlement to the class members and setting a date for a fairness hearing.

DATED: March 15, 2010



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*Attorneys for Plaintiffs & the Settlement
Class*

STATE OF MINNESOTA
COUNTY OF RAMSEY

RECEIVED
Ramsey County
District Court

EMPLOYMENT
DISTRICT COURT
SECOND JUDICIAL DISTRICT

MAR 18 2011

Clifford L. Whitaker, et al., on behalf of
themselves and all others similarly
situated,

Court File No. 62-C4-04-012239
[G. Johnson]

By _____ Deputy

Plaintiffs,

AFFIDAVIT OF STEVEN M. SPRENGER

vs.

3M Company,

[Class Action]

Defendant.

I, Steven M. Sprenger, hereby affirm and state, as follow:

Introduction

1. I am over the age of eighteen years. I have personal knowledge of the facts set forth herein, and am competent to testify thereto.

2. I am counsel for the plaintiffs and proposed lead counsel for the settlement class in the above-referenced action.

3. I am making this affidavit in connection with the parties' joint motion for preliminary approval of the proposed class settlement, and class counsel's motion for an award of attorneys' fees and expenses.

Qualifications of Proposed Co-Lead Class Counsel

4. I graduated with high distinction from the University of Iowa College of Law in 1988, and served as a member of the Iowa Law Review and Iowa Moot Court Board. Following graduation from law school, I was employed as an associate attorney by Arent Fox Kintner Plotkin & Kahn in Washington, D.C. from 1988 until 1992, and by Shook Hardy & Bacon in Kansas City, Missouri from 1992 until 1993. Thereafter, I founded my own private practice in

Kansas City, Missouri focusing on the representation of plaintiffs primarily in the area of individual and class employment litigation in federal court. In 2000, I joined Sprenger + Lang, PLLC (“S+L”). I became the firm’s managing partner in 2005. In 2007, I was recognized by *Lawdragon Magazine* (Jan./Feb. 2007) as being one of “500 Leading Plaintiffs’ Lawyers In America.” I have a Martindale-Hubbell AV peer rating.

5. I currently serve or have previously served as lead class counsel or co-lead class counsel for certified plaintiff classes in *Carter, et al. v. Wells Fargo Advisors, LLC*, No. 1:09-CV-01752 (D.D.C.) (gender discrimination); *Pfeiffer v. Spellings, et al.*, No. 1:07-cv-00522-EGS (D.D.C.) (breach of student loan contract); *Augst-Johnson, et al. v. Morgan Stanley & Co. Incorporated*, No. 1:06-cv-01142 (RWR/DAR) (D.D.C.) (gender discrimination); *Carlson, et al. v. C.H. Robinson Worldwide, Inc.*, No. 02-3780 (D. Minn.) (gender discrimination); *Nauman, et al. v. Abbott Laboratories and Hospira, Inc.*, No. 04C7199 (N.D. Ill.) (ERISA); *Turner v. Torotel, Inc.*, No. 96-0646-CV-W-5 (W.D. Mo.) (race discrimination); and, *Eickhoff v. City of Kansas City, Kansas*, No. 98-2372-KHV (D. Kan.) (race, gender and national origin discrimination). In addition, I currently serve or have previously served as class counsel for the certified plaintiff classes in *In re: TV Writers Cases*, Case No. BC 268836 & Related Cases (L.A. Cty. Super. Ct.) (age discrimination) and *Kosen v. American Express Financial Advisors, Inc.*, No. 1:02CV00082 (HHK) (D.D.C.) (gender discrimination).

6. With the exception of the *Nauman* case which is currently on appeal following a nine day bench trial, all of the above-referenced class actions resulted in successful recoveries of monetary or injunctive/programmatic relief, or both, for class members.

7. I have previously served as trial counsel in more than ten trials in federal and state courts, including as lead trial counsel in five jury trials.

Factual History

8. Sprenger + Lang, PLLC was first approached about pursuing an age discrimination class action against 3M in 2002. As with all matters that Sprenger + Lang, PLLC accepts for prosecution on a contingency fee basis, we conducted substantial factual investigation including, but not limited to, interviewing numerous individuals regarding their employment experiences with 3M with a focus on information relevant to a potential claim of systemic age discrimination.

9. After approximately two years of factual and legal investigation, we concluded that there was significant anecdotal evidence of systemic age discrimination at 3M. Thereafter, we assisted plaintiffs Clifford Whitaker and Michael Mucci in filing administrative charges of age discrimination with the Minnesota Department of Human Rights. After exploring the possibility of an early settlement resolution, we filed the above-captioned action on December 21, 2004. On January 3, 2006, we filed the Second Amended Complaint adding Mark Swanson, Thomas Bulen and Robert Coats as plaintiffs.

10. After defeating initial motions to dismiss, we engaged in an intense, hard-fought 17-month period of discovery. During the discovery period, we produced approximately 13,000 pages of documents on behalf of the plaintiffs, and 3M produced approximately 240,000 documents in addition to electronically stored information such as its human resource/employment history databases and email communications. Class counsel reviewed and coded each and every document and piece of electronically stored information produced in discovery.

11. Class counsel also engaged the services of and worked closely with Dr. Janet Thornton of ERS Group to conduct analyses of 3M's employment data relevant to the statistical

proof of age discrimination and potential damages. In addition, class counsel engaged the services of and worked closely with Prof. David Neumark to respond to opinion testimony proffered by 3M's labor economist expert. Both plaintiffs' experts produced numerous reports.

12. During the discovery period, class counsel took or defended 46 depositions of 3M executive and/or management personnel, 3M's expert witnesses, the depositions of each of the plaintiffs, plaintiffs' experts and other potential witnesses.

13. Throughout this case, and particularly during discovery, the named plaintiffs performed exceptional service on behalf of the class, which is highlighted by:

- a. During large portions of the litigation, they were involved in monthly conference calls to advise class counsel;
- b. They attended nearly every hearing in the matter; and,
- c. Most importantly, they served as an excellent conduit between the class and class counsel.

14. Throughout the litigation, we worked with a public relations firm, Infinite PR, and maintained an internet website dedicated to the case, to obtain media coverage for the purposes of encouraging potential favorable witnesses to come forward and to put public pressure on 3M.

15. From the evidence discovered, class counsel prepared and filed plaintiffs' motion for class certification on September 11, 2007.

16. While plaintiffs' class motion was pending, the parties engaged the private mediation services of Hunter R. Hughes, Esq. of Rogers & Hardin to facilitate settlement discussions. The parties participated in their first mediation session with Mr. Hughes in February 2008.

17. On April 11, 2008, this Court granted plaintiffs' motion for class certification.

18. Shortly thereafter, 3M petitioned the Minnesota Court of Appeals for discretionary review of the class certification ruling. The appeals court accepted the petition, and on April 28, 2009, reversed and remanded for further proceedings.

19. In May 2009, class counsel filed a multi-plaintiff collective action in federal court styled *Garcia, et al. v. 3M Company*. The allegations in *Garcia* were substantially the same as those in *Whitaker*, except the action was filed under the federal Age Discrimination in Employment Act on behalf of 3M employees (mostly former employees) whose claims were not subsumed within the *Whitaker* action. The action also challenged the validity of releases signed by many of the plaintiffs.

20. After the Court of Appeals' ruling and the filing of the *Garcia* case, the parties renewed their mediation efforts. Additional mediation sessions were conducted by Mr. Hughes in November 2009.

21. In March and April 2010, the parties submitted additional briefing to this Court on the issue of class certification. The Court then held a two day evidentiary hearing on May 5 and 6, 2010, and heard final oral argument on plaintiffs' renewed class motion on August 25, 2010.

22. In July 2010, the parties participated in two more mediation sessions with Mr. Hughes. During the last mediation session, Mr. Hughes made a "mediator's proposal" for settlement of the *Whitaker* case which called for 3M to pay up to \$12 million dollars of which \$6.5 million would be available for attorneys' fees and case expenses and \$5.5 million would be available to class members, but unclaimed settlement awards would be subject to reversion to 3M. It is this "mediator's proposal" that forms the basis for the monetary aspects of the parties' proposed settlement.

23. After the mediations in July 2010, the parties continued to engage in settlement discussions but without the aid of a private mediator. In November 2010, these discussions led to an agreement on the contours of programmatic relief. Thereafter, the parties negotiated the finer points of their proposed settlement as well as the language of the settlement agreement.

24. On March 14, 2011, the parties executed the proposed Settlement Agreement.

25. I believe all parties and their counsel recognize that, in the absence of an approved settlement, they would face a long litigation course, including further motions and appeals related to class certification, formal discovery on the merits, summary judgment, and trial that would consume time and resources and present each of them with ongoing litigation risks and uncertainties. I further believe that the parties recognize the risk associated with evolving case law, and desire to avoid these risks and uncertainties, as well as the consumption of time and resources, in favor of an amicable settlement pursuant to the terms and conditions of the Settlement Agreement which would be more beneficial to them than continued litigation.

Opinion that Settlement is Fair, Reasonable and Adequate

26. Under the terms of the Settlement Agreement, defendant 3M Company has agreed to pay up to a total of \$12 million (plus the employer portion of FICA and Medicare on distributions to members of the settlement class) to a settlement class consisting of approximately 6,000 employees age 46 and older, the vast majority of whom are currently employed by 3M.

27. As a result of the parties' participation in six years of litigation and fully understanding their adversary's statistical analyses with respect to liability and damages, they were well positioned to evaluate each other's respective positions as well as the costs and risks of

continued litigation. During the course of all negotiations, counsel bargained vigorously on behalf of their respective clients. All negotiations were conducted in good faith.

28. In evaluating the fairness, reasonableness, and adequacy of the monetary relief, plaintiffs' counsel determined damages for the class promotion and compensation claims, relying on the statistical analyses of plaintiffs' experts. We calculated these class damages to be in the range of \$11.4 million (a conservative approach using time-in-grade and performance controls) to \$47.1 million (an extremely aggressive approach eliminating potentially tainted variables and assuming the establishment of a "continuing violation").¹ After applying appropriate discounts for litigation risk associated with class certification and a liability trial, plaintiffs' counsel believe that the proposed monetary relief is well within the range of reasonableness. Indeed, we believe that all of our models probably overstate the class damages because we assumed that damages continued to accrue through 2010, even though our liability theory is based primarily on the actions of CEO Jim McNerney, who left the company in 2005.

29. The monetary relief obtained in this settlement is significant when compared to other private plaintiff employment discrimination class settlements. According to Seyfarth Shaw's *Annual Class Action Workplace Litigation Report*, in 2009, this settlement would have been the third highest employment discrimination class action settlement and highest age discrimination settlement; and in 2010, this settlement would have been the sixth highest employment discrimination class action settlement and second highest age discrimination settlement.

¹ Our two moderate approaches to class damages both produced an estimate of approximately \$24 million.

30. The hallmark of this settlement is meaningful programmatic relief. As described more fully in the Settlement Agreement, 3M has agreed to do the following during the three-year term of the agreement:

1. EEO Communications and Training.

- (a) 3M will distribute its Equal Employment Opportunity (EEO) and Affirmative Action (AA) policy statement to all new hires and will re-issue the statement to employees annually and post it on a company intranet site that is accessible to all employees. The EEO/AA policy statement will be signed by 3M's Chief Executive Officer and will confirm 3M's commitment to prohibiting unlawful discrimination, including but not limited to discrimination based on age, in all terms and conditions of employment.
- (b) 3M will include in the Company's existing Employment Law for Leaders course content focused on age discrimination and will deliver the course to the eligible population of managers and supervisors every two years.
- (c) 3M will review the company's leadership, supervisory development, and diversity training programs for content on equal employment opportunity and non-discrimination and, to the extent there is no such content or where 3M determines that additional content would clarify the company's commitments, revise the course content to include information regarding 3M's EEO and non-discrimination commitments.

2. Performance Appraisals.

- (a) 3M will not use rating distribution guidelines or quotas in connection with its performance appraisal processes.
- (b) 3M will provide additional guidance to supervisors to clarify criteria for placement recommendations and high potential designations used in connection with the performance appraisal process.
- (c) 3M will support a review and appeal process for employee EC&DP ratings, through which employees can challenge contribution codes, leadership attribute ratings, high potential designations and/or placement recommendations.

3. Promotions/Transfers/Development/Training Opportunities.

- (a) 3M will post Black Belt positions internally and will accept applications for those positions.
- (b) 3M will post on an intranet site accessible to employees program

descriptions and the selection criteria and process for the ALDP I, ALDP II, and Leadership Development for Growth (“LDG”) leadership development programs.

- (c) 3M will publish job posting guidelines on an intranet site accessible by employees. Pursuant to the published posting guidelines, 3M will increase the minimum posting period for positions required to be posted to five days and will agree to post all open positions below the L3 job grade with limited exceptions where there is an important business need.
- (d) 3M will not preclude employees who receive a 2 level of contribution rating through the EC&DP process from applying for open positions in the company. 3M will make available to hiring managers and/or recruiters the past three years of EC&DP ratings for internal candidates applying for open positions.

4. Job Eliminations/Terminations of Employment/Releases.

- (a) 3M will use a form of release in connection with its severance plans and/or any group reductions in force which includes terms that are not materially different from those set forth in Exhibit G (“Approved Release Terms”), except as necessary to comply with changes in law, including but not limited to changes in the OWBPA or judicial opinions interpreting legal requirements, or otherwise as necessary to comply with 3M’s legal obligations. As of the Execution Date, and subject to changes in the OWBPA, the parties acknowledge that the Approved Release Terms comply with OWBPA. 3M also will describe the decisional unit on any eligible/ineligible lists in a manner that will allow employees affected by a group reduction to understand the contours of the affected group.
- (b) 3M will maintain a termination review process that requires approval of all terminations of employment, including those due to job elimination, by designated levels of business and human resources management. Part of the approval process will include confirmation that the selection process and resulting job elimination decisions were implemented in a manner consistent with principles of non-discrimination.
- (c) 3M will comply fully with the OWBPA, including with its requirements regarding releases of claims, and will train human resources personnel on the construction of eligible/ineligible lists under the OWBPA.

5. Implementation.

- (a) 3M’s human resources function will be responsible for implementing the programmatic relief set forth in this Section 8 and for ensuring that 3M’s policies regarding equal employment opportunity and non-discrimination are enforced. 3M’s Senior Vice President, Human Resources, will be ultimately responsible for implementation of Section 8 of this Agreement.

- (b) 3M will continue to maintain the company's internal grievance process through which employees have multiple channels to raise concerns and complaints, including concerns or complaints regarding unlawful discrimination, retaliation, or alleged noncompliance with this decree. 3M will increase communications to employees concerning its grievance process. 3M's grievance process will not preclude or discourage employees from complaints or expressing concerns directly to the EEOC or class counsel.
- (c) 3M's Counsel shall report to Class Counsel every twelve (12) months for a period of three (3) years from the Execution Date as to steps taken by 3M to comply with these injunctive provisions, which reports shall be maintained on a Confidential basis as defined in the stipulated protective order in the Action, which is incorporated as if set forth fully herein. Unless a different person is otherwise designated by Class Counsel, in writing, the reports set forth in this section shall be deemed duly given if addressed to Steven M. Sprenger and personally delivered, sent by U.S. Mail, or sent by confirmed facsimile or other agreed upon method. Class Counsel shall provide written notice to 3M's Counsel of any noncompliance by 3M with the terms of this Section, and 3M and Class Counsel shall attempt to informally resolve any allegation of noncompliance prior to any effort by Class Counsel to enforce the terms of this Section. Only Class Counsel shall have standing to seek relief from the Court for alleged violations of this section.
- (d) 3M shall not retaliate against any Settlement Class Member for appealing any EC&DP rating or complaining about 3M's alleged failure to comply with the terms of the Decree.

31. Class counsel is confident that these programmatic changes will enhance equal opportunity for all Minnesota-based 3M employees, but particularly those who are in their 40s, 50s, 60s or 70s.

32. It is my opinion, shared by all counsel of record for plaintiffs, that the Settlement Agreement is fair, reasonable and adequate in light of all of the facts and circumstances.

33. The named plaintiffs unanimously support judicial approval of the Settlement Agreement. *See Exs. A-E (statements of named plaintiffs).*

Calculation of Class Counsel's Lodestar Attorneys' Fees & Expenses
Through February 28, 2011

34. As of February 28, 2010, Sprenger + Lang, PLLC had devoted 10,355.05 hours to the representation of the plaintiffs and proposed plaintiff settlement class. As reflected in the table below, at our current regular hourly billing rates, our firm's aggregate lodestar as of February 28, 2011 was \$10,287,100.95.^{2, 3}

Timekeeper/Position	Current Hourly Rate	3M Minnesota	3M General	Lodestar⁴
Steve Sprenger , managing member of S+L, admitted to bar in 1988	\$ 695.00	335.50	118.10	\$ 274,212.25
Mike Lieder , of counsel, former member and partner, admitted to bar in 1984	\$ 695.00	1,908.60	1,089.40	\$ 1,705,043.50
Larry Schaefer , former member and partner, admitted to bar in 1988	\$ 625.00	172.25	0.00	\$ 107,656.25
Mara Thompson , currently of counsel, former partner, admitted to bar in 1988	\$ 625.00	297.50	14.95	\$ 190,609.38
Susan Coler , former of counsel, former partner, admitted to bar in 1989	\$ 625.00	3,612.25	1,583.25	\$ 2,752,421.88
Tom Henderson , former of counsel, former partner, admitted to bar in 1977.	\$ 625.00	1,882.40	1,373.85	\$ 1,605,828.75
Dan Bryden , former partner of S+L, admitted to bar in 2000	\$ 500.00	173.80	653.90	\$ 250,375.00
Eden Gaines , former partner, admitted to bar in 1998	\$ 500.00	1,391.90	77.70	\$ 715,375.00
Mark Amadeo , former partner, admitted to bar in 1996	\$ 500.00	439.00	43.75	\$ 230,437.50
Douglas Micko , former associate, admitted to bar in 1999	\$ 500.00	155.10	95.25	\$ 101,362.50
Cynthia Totten , former associate, admitted to bar in 1997	\$ 500.00	41.25	0.00	\$ 20,625.00
Kell Simon , former associate, admitted to bar in 1997	\$ 500.00	175.40	566.85	\$ 229,412.50
Christian Levesque , former associate, admitted to bar in 2001	\$ 475.00	311.75	86.60	\$ 168,648.75
Bryce Miller , associate, admitted to bar in 2006	\$ 375.00	407.20	227.00	\$ 195,262.50

² Our firm created three billing accounts for the purpose of recording time and expenses for the *Whitaker* and *Garcia* cases: 3M Minnesota, which was used to record time and expenses that benefitted only the *Whitaker* case; 3M Federal, which was used to record time and expenses that benefitted only the *Garcia* case; and, 3M General, which was used to record time and expenses that benefitted both cases. For purposes of the above lodestar fee and case expense calculations, I have allocated equally between 3M Minnesota and 3M Federal the time and expenses billed to 3M General.

³ For purposes of our lodestar calculation, we have excluded 20 timekeepers who recorded less than 20 hours.

⁴ Lodestar = Current Hourly Rate (3M Minnesota + (3M General/2)).

Senior Legal Assistants & Paralegals, Carol Cesar Finck, Deborah Toms, Denise Adams, Jackie Olson, and Patty Zellman	\$ 230.00	3367.95	1890.75	\$ 992,064.75
Legal Assistants & Paralegals, Brian Kasoro, Corinne Rucker, Douglas Olson, Sean McGew, John O'Brien, Lynne Musil, Leslie Rusnacko, Tiffany McKinney, and Kristin Berger	\$190.00	2184.15	1,198.65	\$ 528,860.25
Law Clerks, Alexi Nunn, Amy Pascoe, Ann Murray, Bonnie Wittenburg, Daniel Portnoy, Emily Rickaby, Michael Kind, Shata Stucky, Toya Carmichael, and Zeeshan Hafeez	\$200.00	427.00	1,335.05	\$ 218,905.20
TOTAL		17,300.25	10,355.05	\$10,287,100.95

The fee we are requesting – \$3.5 million – represents less than 35% of our lodestar and would provide a blended rate return of approximately \$155 per hour.

35. As of February 28, 2011, class counsel had advanced case expenses of more than \$3 million in connection with their representation of plaintiffs and the proposed settlement class.⁵ As reflected in the table below, the vast majority of the case expenses – that is, approximately \$2.4 million – were for the services of expert witnesses.

Expense Category	3M MN	3M GENERAL	TOTAL⁶
Court and Witness Fees	\$ 2,828.60	--	\$ 2,828.60
Court Reporter Fees	\$ 15,737.65	\$ 44,978.10	\$ 38,226.70
Electronic/Computer Research	\$ 14,300.87	\$ 6,075.10	\$ 17,338.42
Experts/Consultants Fees	\$ 2,452,375.22	--	\$ 2,452,375.22
Express Mail/Messenger	\$ 4,663.30	\$ 1,283.16	\$ 5,304.88
External Photocopying	\$ 17,171.95	\$ 17,627.92	\$ 25,985.91
Interest Accrual	\$ 371,470.06	\$ 21,830.55	\$ 382,385.33
Internal Photocopying at 18 cents per page	\$ 26,787.64	\$ 31,657.68	\$ 42,616.48
Mediation Fees	--	\$ 27,007.89	\$ 13,503.95
Travel	\$ 26,939.86	\$ 28,609.58	\$ 41,244.65
TOTAL	\$ 2,932,275.15	\$ 179,069.98	\$ 3,021,810.14

In my opinion, these expenses were reasonably necessary to adequately represent the plaintiffs and the class in this case. The expense reimbursement we are requesting – \$2.9 million – is almost \$125,000.00 less than our actual out-of-pocket expenses.

⁵ We have not included long distance telephone charges, fax charges or postage charges.

⁶ Total = 3M Minnesota + (3M General/2).

36. We are willing and able to provide for *in camera* inspection any detail requested by the Court regarding our time entries and case expenses prior to or at a final fairness hearing.

Estimate of Future Lodestar Attorneys' Fees & Expenses

36. I anticipate that class counsel will perform substantial additional legal work in connection with the settlement – most notably, preparing for and participating in the final approval hearing, and responding to settlement class member inquiries regarding the settlement. I further anticipate that class counsel will perform additional work monitoring the implementation of and enforcing compliance with the settlement throughout the three year term of the settlement agreement.

37. I anticipate that class counsel will advance additional expenses in connection with the settlement. These expenses will include costs related to the fairness hearing, settlement class member communications (i.e., long distance and postage charges) and monitoring the settlement (i.e., travel costs) over a three year period.



Steven M. Sprenger

* * *

Sworn and subscribed before me this 14th day of March, 2011. My commission expires

12/14/2011



Denise A. Adams
Notary Public Notary Public, District of Columbia

Exhibit “A”

STATE OF MINNESOTA
COUNTY OF RAMSEY

EMPLOYMENT
DISTRICT COURT
SECOND JUDICIAL DISTRICT

Clifford L. Whitaker, et al., on behalf of)
themselves and all others similarly)
situated,)

Plaintiffs,)

vs.)

3M Company,)

Defendant.)

Court File No. 62-C4-04-012239
[G. Johnson]

STATEMENT OF CLIFFORD L.
WHITAKER

[Class Action]

I, Clifford L. Whitaker, hereby state that the following is true and accurate:

1. I am a resident of Mahtomedi, Minnesota, am over the age of majority, and make this statement freely and truthfully. I have first-hand, personal knowledge of the facts I describe and could testify to these facts.

2. I began working for 3M in 1967, and by 1988 I was Laboratory Manager in the Research and Development organization. I received consistently good evaluations and was assessed as capable of advancing to a Director-level position. Since 2001, my career at 3M has been damaged as a result of 3M's discrimination.

3. On December 21, 2004, I became a named plaintiff in this case when the Complaint was filed with the Court.

4. I believe 3M discriminated against me and others on the basis of age.

5. I understand that my attorneys are asking for the Court's approval of a proposed class action settlement. I have carefully reviewed the settlement agreement (and attached exhibits) which requires 3M to make certain changes to its employment

policies and practices and to pay up to \$12 million into a settlement fund to be distributed to the named plaintiffs, eligible class members and class counsel for attorneys' fees and costs.

6. I support the approval the proposed settlement. I believe it provides a fair, adequate and reasonable resolution of the claims involved in this matter considering the risks and delay that would come with continued litigation.

7. I also understand that the determination of the settlement awards for each class member will be determined based on a mathematical formula applied uniformly to all class members. I believe that a consistently and uniformly-applied formula is a fair, reasonable, and adequate way of distributing the monies to eligible class members and plaintiffs.

8. I also understand that the settlement agreement provides for an enhancement award in recognition of my participation in the prosecution of this litigation, such as becoming a named plaintiff, submitting documents and other information at my attorneys' requests, responding to interrogatories and document requests, appearing at a deposition, and assisting with information gathering and referring other people with knowledge about the claims to my attorneys. I believe it is fair and reasonable to grant an enhancement award to the named plaintiffs.

9. My support of this settlement is based largely on my concern that the liability risk and financial obligations for the class in proceeding further in this litigation are too great, and class counsel has very effectively and persuasively described those risks to me in detail. While I therefore support the settlement terms, I have the following concerns about the resolution of this case which I would like to convey to the Court: (a) I

don't believe the injunctive relief is sufficient to effectively change the ongoing age discriminatory pattern of behavior at 3M; (b) 3M's management witnesses have offered sworn testimony in deposition in this case which is demonstrably false, and I don't believe the monetary component of this settlement is sufficient to deter this kind of conduct in the future; (c) I believe 3M made a corporate decision to engage in systemic age discrimination, beginning with its decision to hire James McNerny as CEO from General Electric, and its subsequent commitment to and focus on the Six-Sigma program at Mr. McNerny's behest. This program was from the start designed as a device to screen out and disadvantage older employees and had little to do with actual "quality improvement." I believe this decision was motivated in many ways by economics, as older employees cost a corporation more money, based on higher salaries and pension obligations alone. I believe that 3M has saved billions of dollars over the years by terminating or otherwise forcing out so many long-tenured, loyal, productive employees, and the payment reflected by this settlement to the class is disappointing. While I believe all of this to be true, I nonetheless support this settlement as reasonable given all of the unfavorable obstacles that 3M could continue to present to getting at the real truth of what occurred, as it has in the past. In other words, I recognize this settlement as a reasonable achievement which does benefit the class, and support it with this in mind, and not based on any extremely modest financial benefit to me, which doesn't begin to adequately cover the monetary loss I believe I have personally experienced in the latter parts of my distinguished career due to 3M's age discrimination.

10. I also understand that class counsel will seek reimbursement of up to \$2.9 million in expenses they have incurred in prosecuting this case, as well as up to \$3.5 million for attorneys' fees. I believe this is a fair, reasonable and adequate amount to award to class counsel for fees and costs incurred in prosecuting this case for over eight years.

Dated: 3-14-2011

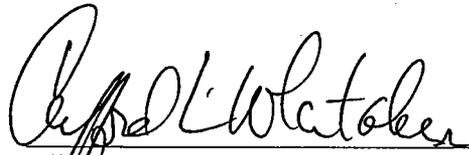

Clifford L. Whitaker

Exhibit “B”

STATE OF MINNESOTA
COUNTY OF RAMSEY

EMPLOYMENT
DISTRICT COURT
SECOND JUDICIAL DISTRICT

Clifford L. Whitaker, et al., on behalf of)
themselves and all others similarly)
situated,)

Plaintiffs,)

vs.)

3M Company,)

Defendant.)

Court File No. 62-C4-04-012239

[G. Johnson]

STATEMENT OF MICHAEL V. MUCCI

[Class Action]

I, Michael V. Mucci, hereby state that the following is true and accurate:

1. I am a resident of Hudson, Wisconsin, am over the age of majority, and make this statement freely and truthfully. I have first-hand, personal knowledge of the facts I describe and could testify to these facts.

2. I began working for 3M in 1977, and continued my employment until September 30, 2004. By 1999, I was instrumental in the development of a new product for 3M and held the position of Senior Specialist Special Projects in the Technical Services group. In 2000, I accepted a choice to transfer to the Product Development group as a Senior Specialist Technical Services with the understanding that my duties and functions would not materially change. Since 2001, my career at 3M has been damaged as a result of 3M's discrimination, culminating in my termination when 3M eliminated my job effective September 30, 2004.

3. On December 21, 2004, I became a named plaintiff in this case when the Complaint was filed with the Court.

4. I believe 3M discriminated against me and others on the basis of age.

5. I understand that my attorneys are asking for the Court's approval of a proposed class action settlement. I have carefully reviewed the settlement agreement (and attached exhibits) which requires 3M to make certain changes to its employment policies and practices and to pay up to \$12 million into a settlement fund to be distributed to the named plaintiffs, eligible class members and class counsel for attorneys' fees and costs.

6. I support the approval the proposed settlement. I believe it provides a fair, adequate and reasonable resolution of the claims involved in this matter considering the risks and delay that would come with continued litigation.

7. I also understand that the determination of the settlement awards for each class member will be determined based on a mathematical formula applied uniformly to all class members. I believe that a consistently and uniformly-applied formula is a fair, reasonable, and adequate way of distributing the monies to eligible class members and plaintiffs.

8. I also understand that the settlement agreement provides for an enhancement award in recognition of my participation in the prosecution of this litigation, such as becoming a named plaintiff, submitting documents and other information at my attorneys' requests, responding to interrogatories and document requests, appearing at a deposition, and assisting with information gathering and referring other people with knowledge about the claims to my attorneys. I believe it is fair and reasonable to grant an enhancement award to the named plaintiffs.

9. I also understand that class counsel will seek reimbursement of up to \$2.9 million in expenses they have incurred in prosecuting this case, as well as up to \$3.5 million for attorneys' fees. I believe this is a reasonable and adequate amount to award to class counsel for fees and costs incurred in prosecuting this case for over eight years.


Michael V. Mucci

Exhibit “C”

STATE OF MINNESOTA
COUNTY OF RAMSEY

EMPLOYMENT
DISTRICT COURT
SECOND JUDICIAL DISTRICT

Clifford L. Whitaker, et al., on behalf of
themselves and all others similarly
situated,)

Plaintiffs,)

vs.)

3M Company,)

Defendant.)

Court File No. 62-C4-04-012239
[G. Johnson]

STATEMENT OF MARK D. SWANSON

[Class Action]

I, Mark D. Swanson, hereby state that the following is true and accurate:

1. I am a resident of River Falls, Wisconsin, am over the age of majority, and make this statement freely and truthfully. I have first-hand, personal knowledge of the facts I describe and could testify to these facts.

2. I began working for 3M in 1980, initially as a facilities analyst. After completing an MBA program in marketing in 1993, I moved into Marketing at 3M. I worked in the Medical Division since 1995, achieving the position of Global Market Development Manager. Since 2001, my career at 3M have been damaged as a result of 3M's discrimination, including unfair performance evaluations, being placed on corrective action plans, and a recent demotion of two job grade levels from management to an administrative position.

3. On January 3, 2006, I became a named plaintiff in this case when the Second Amended Complaint was filed with the Court.

4. I believe 3M discriminated against me and others on the basis of age.

5. I understand that my attorneys are asking for the Court's approval of a proposed class action settlement. I have carefully reviewed the settlement agreement (and attached exhibits) which requires 3M to make certain changes to its employment policies and practices and to pay up to \$12 million into a settlement fund to be distributed to the named plaintiffs, eligible class members and class counsel for attorneys' fees and costs.

6. I support the approval the proposed settlement. I believe it provides a fair, adequate and reasonable resolution of the claims involved in this matter considering the risks and delay that would come with continued litigation.

7. I also understand that the determination of the settlement awards for each class member will be determined based on a mathematical formula applied uniformly to all class members. I believe that a consistently and uniformly-applied formula is a fair, reasonable, and adequate way of distributing the monies to eligible class members and plaintiffs.

8. I also understand that the settlement agreement provides for an enhancement award in recognition of my participation in the prosecution of this litigation, such as becoming a named plaintiff, submitting documents and other information at my attorneys' requests, responding to interrogatories and document requests, appearing at a deposition, and assisting with information gathering and referring other people with knowledge about the claims to my attorneys. I believe it is fair and reasonable to grant an enhancement award to the named plaintiffs.

9. I also understand that class counsel will seek reimbursement of up to \$2.9 million in expenses they have incurred in prosecuting this case, as well as up to \$3.5 million for attorneys' fees. I believe this is a fair, reasonable and adequate amount to award to class counsel for fees and costs incurred in prosecuting this case for over eight years.

Dated: 3/14/11


Mark D. Swanson

Exhibit “D”

STATE OF MINNESOTA
COUNTY OF RAMSEY

EMPLOYMENT
DISTRICT COURT
SECOND JUDICIAL DISTRICT

Clifford L. Whitaker, et al., on behalf of
themselves and all others similarly
situated,

Plaintiffs,

vs.

3M Company,

Defendant.

Court File No. 62-C4-04-012239

[G. Johnson]

STATEMENT OF THOMAS R. BULEN

[Class Action]

I, Thomas R. Bulen, hereby state the following is true and accurate:

1. I am a resident of White Bear Lake, Minnesota, am over the age of majority, and make this statement freely and truthfully. I have first-hand, personal knowledge of the facts I describe and could testify to these facts.

2. I began working for 3M in 1985 as an Advanced Technical Service Engineer for the 3M Health Care Sector business unit. I was promoted to Senior Technical Service Engineer in 1996. I continued to work for 3M until I was terminated on April 1, 2007.

3. On January 3, 2006, I became a named plaintiff in this case when the Second Amended Complaint was filed with the Court.

4. I believe 3M discriminated against me and others on the basis of age.

5. I understand that my attorneys are asking for the Court's approval of a proposed class action settlement. I have carefully reviewed the settlement agreement (and attached exhibits) which requires 3M to make certain changes to its employment

policies and practices (“Programmatic Relief”) and to pay up to \$12 million into a settlement fund to be distributed to the named plaintiffs, eligible class members and class counsel..

6. I support the approval of the proposed settlement. I believe it provides an adequate resolution of the claims involved in this matter considering the risks and delay that would come with continued litigation.

7. I also understand that the determination of the settlement awards for each class member will be made using a mathematical formula applied uniformly to all class members.

8. I also understand that the settlement agreement provides for an enhancement award in recognition of my participation in the prosecution of this litigation, such as becoming a named plaintiff, submitting documents and other information at my attorneys’ requests, responding to interrogatories and document requests, appearing at a deposition, and assisting with information gathering and referring other people with knowledge about the claims to my attorneys. I believe it is fair and reasonable to grant an enhancement award to the named plaintiffs.

9. I also understand that class counsel will seek reimbursement of up to \$2.9 million in expenses, although actually higher, they have incurred in prosecuting this case, as well as up to \$3.5 million for attorneys' fees. I believe this is a reasonable amount to award to class counsel for fees and costs incurred in prosecuting this case for over eight years.

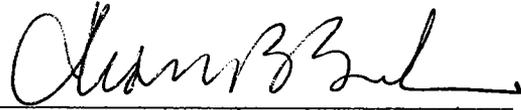

Thomas R. Bulen 2/20/2011

Exhibit “E”

STATE OF MINNESOTA
COUNTY OF RAMSEY

EMPLOYMENT
DISTRICT COURT
SECOND JUDICIAL DISTRICT

Clifford L. Whitaker, et al., on behalf of)
themselves and all others similarly)
situated,)

Plaintiffs,)

vs.)

3M Company,)

Defendant.)

Court File No. 62-C4-04-012239
[G. Johnson]

STATEMENT OF ROBERT W. COATS

[Class Action]

I, Robert W. Coats, hereby state that the following is true and accurate:

1. I am a resident of St. Paul, Minnesota, am over the age of majority, and make this statement freely and truthfully. I have first-hand, personal knowledge of the facts I describe and could testify to these facts.

2. I began working for 3M in 1969. I worked in sales, training and management at 3M, achieving the position of Global Marketing Manager in the Industrial Tape and Specialties division in 1996. In 1999, 3M moved me from a management to sales position. Since 2001, despite my consistent exemplary performance, I experienced discriminatory treatment, and its adverse effect on my career caused me to retire from 3M in January 2005.

3. On January 3, 2006, I became a named plaintiff in this case when the Second Amended Complaint was filed with the Court.

4. I believe 3M discriminated against me and others on the basis of age.

5. I understand that my attorneys are asking for the Court's approval of a proposed class action settlement. I have carefully reviewed the settlement agreement (and attached exhibits) which requires 3M to make certain changes to its employment policies and practices and to pay up to \$12 million into a settlement fund to be distributed to the named plaintiffs, eligible class members and class counsel for attorneys' fees and costs.

6. I support the approval the proposed settlement. I believe it provides a fair, adequate and reasonable resolution of the claims involved in this matter considering the risks and delay that would come with continued litigation.

7. I also understand that the determination of the settlement awards for each class member will be determined based on a mathematical formula applied uniformly to all class members. I believe that a consistently and uniformly-applied formula is a fair, reasonable, and adequate way of distributing the monies to eligible class members and plaintiffs.

8. I also understand that the settlement agreement provides for an enhancement award in recognition of my participation in the prosecution of this litigation, such as becoming a named plaintiff, submitting documents and other information at my attorneys' requests, responding to interrogatories and document requests, appearing at a deposition, and assisting with information gathering and referring other people with knowledge about the claims to my attorneys. I believe it is fair and reasonable to grant an enhancement award to the named plaintiffs.

9. I also understand that class counsel will seek reimbursement of up to \$2.9 million in expenses they have incurred in prosecuting this case, as well as up to \$3.5 million for attorneys' fees. I believe this is a fair, reasonable and adequate amount to award to class counsel for fees and costs incurred in prosecuting this case for over eight years.


Robert W. Coats

STATE OF MINNESOTA
COUNTY OF RAMSEY

EMPLOYMENT
DISTRICT COURT
SECOND JUDICIAL DISTRICT

Clifford L. Whitaker, et al., on behalf of)
themselves and all others similarly)
situated,)

Court File No. 62-C4-04-012239
[G. Johnson]

Plaintiffs,)

RECEIVED
Ramsey County
District Court

AFFIDAVIT OF DANIEL B. KOHRMAN

MAR 18 2011

vs.)

3M Company,)

By _____ Deputy

[Class Action]

Defendant.)

I, Daniel B. Kohrman, hereby affirm and state, as follow:

Introduction

1. I am over the age of eighteen years. I have personal knowledge of the facts set forth herein, and am competent to testify thereto.
2. I am one of the counsel for the plaintiffs and the settlement class in the above-referenced action.
3. I am making this affidavit in connection with the parties' joint motion for preliminary approval of the proposed class settlement, and class counsel's motion for an award of attorneys' fees and expenses.

Qualifications of Class Co-Counsel, Attorneys with AARP Foundation Litigation

4. Since July 2001, I have been a Senior Attorney with AARP Foundation Litigation ("AFL"). AARP Foundation ("Foundation"), of which AFL is a part, is AARP's affiliated charity. AARP is a non-partisan, non-profit organization dedicated to addressing the needs and interests of people age 50+ throughout the United States.

5. I graduated from Columbia Law School in 1984, where I was a Stone Scholar and a member of the Human Rights Law Review. From 1984 to 1985, I served as a judicial law clerk for the Hon. Stanley S. Brotman, U.S. District Court for the District of New Jersey. From 1985 to 1993, I was a litigation associate with the law firm of Hogan & Hartson, LLP, in Washington DC. From 1993 to 1995, I held the position of counsel with that firm. My practice at the Hogan firm primarily consisted of complex civil rights litigation on behalf of urban school systems attempting to implement court-ordered school desegregation obligations by securing contributions to effective remedial measures from state governmental entities. I also represented plaintiffs in several class action civil rights cases, including employment discrimination matters, on a pro bono basis. From 1996 to 1998, I served as Supervising Attorney for National Litigation with the national office of the Lawyers' Committee for Civil Rights Under Law, in Washington, DC. From 1998 to 2001, I worked as a Trial Attorney in the Civil Rights Division of the U.S. Department of Justice, also in Washington, DC. In both of these positions, I worked almost exclusively on complex civil rights litigation on behalf of plaintiffs (private and governmental), including numerous class action cases.

6. Throughout my career, I have had extensive experience in class actions and other complex civil litigation, most of it affirmative civil rights litigation against large corporate and governmental defendants. In the course of such work, I have served as lead or co-lead counsel in numerous civil rights class action cases in the fields of education and employment, and I have participated as first or second chair in eight federal trials of a week or more in length. In the past nine-plus years, the bulk of my practice has consisted of employment discrimination litigation, and in particular age discrimination cases, on behalf of plaintiffs. This work has included *amicus* briefs submitted at all levels of the U.S. courts, and a jury trial in an individual employment discrimination case. Since 2007, I have served on the national executive board of the National Employment Lawyers Association (the nation's largest organization of plaintiffs' employment attorneys). In

January of this year, I stepped down after three years as volunteer chair of the Legal Advocacy Subcommittee of the American Diabetes Association.

7. I currently serve as co-counsel for plaintiffs in two certified age discrimination collective actions: *Merritt, et al. v. Wellpoint, Inc., et al.*, No. 08-272 (E.D. Va., pending) (ADEA collective action on behalf of former employees terminated in RIF); and *Peterson, et al. v. Seagate U.S. LLC, et al.*, No. 07-2502 (D. Minn., pending) (same). I previously served as co-counsel for plaintiffs in certified age discrimination collective actions in *Williams v. Sprint/United Management Co.*, No. 03-2200 (D. Kan); and *Feltman, et al. v. Capital One Services, Inc.*, No. C.A. 3:02CV894 (E.D. Va.) (same). I also previously served as class co-counsel for plaintiffs in certified class actions including *Californians for Disability Rights, Inc., v. California Department of Transportation*, No. C-06-5125 SBA (N.D. Ca.) (Americans with Disabilities Act and Rehabilitation Act case concerning discrimination against mobility and vision-impaired plaintiffs in regards to rights-of-way along state highways in California) (settled in 2010 for \$1.1 billion in equitable relief to be applied to sidewalk improvements over the next 30 years), *Hoots v. Commonwealth of Pennsylvania*, Civ. No. 71-538 (1995-98) (W.D. Pa.) (school desegregation), and *Vaughns v. Board of Education of Prince George's County*, Civ. Nos. PJM 72-325, PJM 81-2597 (D. Md.) (1992-98) (same).

8. Age discrimination cases in which I have authored or co-authored *amicus curiae* briefs include: *Gomez-Perez v. Potter*, No. 06-1321 (U.S.); *Sprint/United Mgmt. Co. v. Mendelsohn*, No. 06-1221 (U.S.); *Meacham v. Knolls Atomic Power Lab.*, 06-1505 (U.S.); *Smith v. City of Jackson*, No. 03-1160 (U.S.); *General Dynamics Land Sys. v. Cline*, No. 02-1080 (U.S.); *Adams v. Florida Power Corp.*, No. 01-584 (U.S.); *EEOC v. TIN, Inc.*, No. 08-16749 (9th Cir.); *Inman v. Klockner*, 08-1882 (4th Cir.); *Sisk v. Falcon Prods.*, Nos. 04-5407, 5876 (6th Cir.); and *Flannery v. Recording Indus. Ass'n of America*, No. 03-1591 (7th Cir.).

9. Two colleagues at AARP Foundation Litigation, Thomas Osborne and Laurie McCann, also performed significant work on behalf of the plaintiffs in this case.

a. Mr. Osborne has been a trial and appellate lawyer for 35 years. He has been an employment attorney exclusively, and for AARP Foundation Litigation (AFL), since 1992. Mr. Osborne graduated from the University of Maryland Law School in 1976. In addition to serving as plaintiffs' co-counsel in the *Merritt, Peterson, Williams* and *Feltman* cases summarized above, he has served as plaintiffs' co-counsel in class action age discrimination litigation in state court in Ohio against Goodyear Tire & Rubber Co., in state court in Michigan against the Ford Motor Co., in federal court in Illinois against the John Deere Co., and in federal court in Pennsylvania against the Allstate Insurance Co. For a major portion of this career prior to his work for AFL, Mr. Osborne served as a trial attorney with the U.S. Department of Justice. He has served as lead trial counsel in more than 15 civil cases, including three jury trials. From 2003-08, he served as an adjunct professor of law at the George Washington Law Center, where he taught Elder Law. During his time at AFL, Mr. Osborne also has been the author or co-author of numerous *amicus curiae* briefs in the U.S. Supreme Court, the U.S. Courts of Appeals and U.S. District Courts concerning age discrimination issues and interpretation of the Age Discrimination in Employment Act.

b. Ms. McCann graduated cum laude from Georgetown University Law Center in 1992, after receiving an undergraduate degree from the College of William and Mary. Since 1992, Ms. McCann has worked for AARP Foundation Litigation (AFL) handling trial and appellate age discrimination matters. In addition to serving as plaintiffs' co-counsel in the *Merritt, Peterson* and *Feltman* cases summarized above, she has served as plaintiffs' co-counsel in class action age discrimination litigation in state court in Ohio against Goodyear Tire & Rubber Co., in state court in Michigan against the Ford Motor Co., in federal court in Kansas against Sprint/United Management Co., and in federal court in Illinois against the John Deere Co. During her tenure at AFL, Ms.

McCann also represented AARP in litigation challenging EEOC's exemption from the ADEA of employers' decisions to reduce or eliminate retiree health benefits at age 65. She has been author or co-author of numerous *amicus curiae* briefs in the U.S. Supreme Court, the U.S. Courts of Appeals and U.S. District Courts concerning issues of age discrimination and interpretation of the Age Discrimination in Employment Act. Her publications include *The ADEA and the Eleventh Amendment*, 2 EMPLOYEE RIGHTS AND EMPLOYMENT POLICY JOURNAL 241 (1998). Prior to her work for AFL, Ms. McCann was employed from 1986-92 as a senior program specialist in AARP's Worker Equity Department. In 1985 she worked as a member of the staff of the Select Committee on Aging in the U.S. House of Representatives. Finally, she earned a M.S. degree in Gerontology (with emphases in industrial gerontology and public policy) from the University of Southern California in 1986.

History of AARP Foundation Litigation Participation as Co-counsel for Plaintiffs

10. Attorneys from Sprenger + Lang, PLLC (S+L), contacted attorneys from AARP Foundation Litigation (AFL) about joining the *Whitaker* case as co-counsel for Plaintiffs in 2005. AFL and S+L attorneys (all of whom are listed in the AFL and S+L fee request) met several times over a period of weeks to discuss in detail the possibility of joining together as co-counsel in the *Whitaker* case. Topics addressed in depth included the nature of the claims in the case, the nature of evidence S+L had uncovered thus far supporting these claims, S+L's plans for developing further evidence and strategies for prosecuting the case, and the roles S+L envisioned for AFL attorneys to play in the case. AFL attorneys reviewed the complaint, other case documents, as well as legal memoranda prepared by S+L, and satisfied themselves with the soundness of the claims and the promising nature of evidence secured thus far. AFL attorneys were familiar with S+L attorneys — their excellent reputation, high level of knowledge, competence and diligence, and record of success

from work together on other cases. AFL attorneys presented the idea of proceeding as co-counsel through several internal levels of review, and secured approval to proceed.

11. AFL attorneys joined the *Whitaker* case as co-counsel for Plaintiffs after S+L's initial investigation, filing of administrative charges, filing of the (initial and first amended) complaints and initial discovery. AFL attorneys began participating in regular meetings of co-counsel to map out strategy and distribute assignments. AFL attorneys began participating in review of factual materials, including discovery documents, legal research with the assistance of law student law clerks, and review and revision of discovery pleadings. AFL attorneys also assisted in developing the Second Amended Complaint, filed in January 2006.

12. AFL attorneys participated in researching, drafting and editing briefs in connection with initial motions to dismiss, and also played a role in the discovery process that followed over the next (nearly) year and a half. AFL attorneys reviewed thousands of discovery documents, prepared outlines of proof, helped draft and edit discovery pleadings, commented on efforts to secure adequate e-discovery, prepared for and took several discovery depositions of defendants' representatives (including Margaret Alldredge, Clydie Douglass and Tim Richmond). AFL attorneys also helped prepare for the taking and defending of expert depositions (including of plaintiffs' expert David Neumark and defense experts Robert Topel and Frank Landy) by gathering, analyzing and summarizing numerous articles, reported decisions, expert reports, transcripts of trial and deposition testimony addressing the work of these experts. AFL attorneys, assisted by law student law clerks, also contact numerous plaintiffs and gathered information from them necessary to respond to defense discovery requests. AFL attorneys had full access to all discovery documents and played a significant role in reviewing them and gathering evidence from them.

13. During the course of the *Whitaker* litigation, AFL attorneys coordinated with AARP publications and public relations staff, as well as S+L attorneys and a public relations firm engaged by S+L, Infinite PR, in order to gain coverage of the *Whitaker* case in the media, for the purposes of encouraging potential favorable witnesses to come forward and to put public pressure on 3M.

14. AFL attorneys assisted S+L attorneys to prepare and file Plaintiffs' motion for class certification on September 11, 2007. In addition, AFL attorneys advised S+L attorneys and assisted with major tasks as the class certification issue went up on appeal and came back to the trial court for a hearing and additional briefing.

15. AFL attorneys also assisted S+L attorneys in settlement discussions with 3M which were conducted with the aid of mediator Hunter R. Hughes, Esq., of Rogers & Hardin. AFL attorneys assisted in the formulation of the programmatic relief and the structure of the monetary relief.

16. On March 14, 2011, the parties executed the proposed Settlement Agreement.

17. I believe all parties and their counsel recognize that, in the absence of an approved settlement, they would face a long litigation course, including further motions and appeals related to class certification, formal discovery on the merits, summary judgment, and trial that would consume time and resources and present each of them with ongoing litigation risks and uncertainties. I further believe that the parties recognize the risk associated with evolving case law, and desire to avoid these risks and uncertainties, as well as the consumption of time and resources, in favor of an amicable settlement pursuant to the terms and conditions of the Settlement Agreement which would be more beneficial to them than continued litigation.

Settlement is Fair, Reasonable and Adequate

18. Under the terms of the Settlement Agreement, defendant 3M Company has agreed to pay up to a total of \$12 million (plus the employer portion of FICA and Medicare on distributions to

members of the settlement class) to a settlement class consisting of approximately 6,000 employees age 46 and older, the vast majority of whom are currently employed by 3M.

19. As a result of the parties' participation in six years of litigation and fully understanding their adversary's statistical analyses with respect to liability and damages, they were well positioned to evaluate each other's respective positions as well as the costs and risks of continued litigation. During the course of all negotiations, counsel bargained vigorously on behalf of their respective clients. All negotiations were conducted in good faith.

20. In evaluating the fairness, reasonableness, and adequacy of the monetary relief, plaintiffs' counsel determined damages for the class promotion and compensation claims, relying on the statistical analyses of plaintiffs' experts. We calculated these class damages to be in the range of \$11.4 million (a conservative approach using time-in-grade and performance controls) to \$47.1 million (an extremely aggressive approach eliminating potentially tainted variables and assuming the establishment of a "continuing violation"). After applying appropriate discounts for litigation risk associated with class certification and a liability trial, plaintiffs' counsel believe that the proposed monetary relief is well within the range of reasonableness.

21. Meaningful programmatic relief is a significant component of the parties' settlement agreement. As described more fully in the Settlement Agreement, 3M has agreed to take very significant steps (which are specifically recited in paragraph 29 of the Affidavit of Steven Sprenger) during the three-year term of the agreement. These steps cover the following areas of programmatic relief: (1) EEO Communications and Training; (2) Performance Appraisals; (3) Promotions, Transfers, Development, Training Opportunities; (4) Job Eliminations/Terminations of Employment/Releases; and (5) Implementation.

22. Along with all other class counsel, I am confident that these programmatic changes will enhance equal opportunity for all Minnesota-based 3M employees, but particularly those who are in their 40s, 50s, 60s or 70s.

23. It is my opinion, shared by all counsel of record for Plaintiffs, that the Settlement Agreement is fair, reasonable and adequate in light of all of the facts and circumstances.

Calculation of AFL Lodestar Attorneys' Fees & Expenses Through February 28, 2011

24. As of February 28, 2011, AARP Foundation Litigation's attorneys, temp attorney, and law clerks had devoted 1,103.71 hours to the representation of the Plaintiffs and proposed plaintiff settlement class. As reflected in the table below, at our regular hourly billing rates, our firm's aggregate lodestar as of February 28, 2011 was \$606,314.62.¹

Timekeeper/Position	Current Hourly Rate	3M Minnesota	3M General	Lodestar ²
Daniel B. Kohrman, Senior Attorney, admitted to bar in 1985	\$ 625.00	439.70	67.95	296,046.87
Thomas Osborne, Senior Attorney, admitted to bar in 1976	\$ 625.00	289.99	13.08	185,331.25
Laurie McCann, Senior Attorney, admitted to bar in 1992	\$ 625.00	110.85		\$69,281.25
Vanessa Van Struensec, Temp Attorney	\$ 325.00	8.17		\$2,655.25
Mary Barna, law student law clerk	\$ 200.00	75.00		\$15,000.00
Elissa Bretz, law student law clerk	\$ 200.00	58.00		\$11,600.00
Daniel Kane, law student law clerk	\$ 200.00	50.00		\$10,000.00
Charlotte Lanvers, law student law clerk	\$ 200.00	41.00		\$8,200.00
Daenia Peart, law student law clerk	\$ 200.00	41.00		\$8,200.00
TOTAL		1103.71	81.03	\$606,314.62

¹ Consistent with S+L billing practices in this case, AFL created three billing categories for purposes of recording time and expenses for the *Whitaker* and *Garcia* cases: 3M Minnesota, used to record time and expenses that benefitted only the *Whitaker* case; 3M Federal, used to record time and expenses that benefitted only the *Garcia* case; and, 3M General, used to record time and expenses that benefitted both cases. For purposes of the above lodestar fee and case expense calculations, I have allocated equally between 3M Minnesota and 3M Federal the time and expenses billed to 3M General.

² Lodestar = Current Hourly Rate (3M Minnesota + (3M General/2)). For purposes of our lodestar calculation, we have excluded approximately 10 timekeepers (all student or law graduate law clerks) who recorded less than 20 hours.

Combined with the lodestar from Sprenger + Lang, the attorney fee request in this case represents less than 40% of our collective lodestar.

25. As of February 28, 2011, AFL had advanced case expenses of at least \$250,000 in connection with their representation of plaintiffs and the proposed settlement class. These expenses are included in the table that appears in paragraph 35 of the affidavit of Steven Sprenger. The expenses presented incurred by S+L, including funds paid from funds advanced by AFL, account for more than \$3 million, and thus exceed the cap on expenses which may be awarded in this case. In addition, AFL incurred approximately \$15,000.00 in travel expenses (principally airfare, lodgings, meals and ground transportation) in connection with their work as co-counsel in the Whitaker case.³ These AFL travel expenses are not included in the table that appears in paragraph 35 of the affidavit of Steven Sprenger.

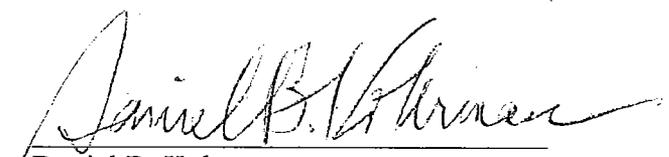
In my opinion, the expenses incurred by S&L attorneys as well as those incurred by AFL attorneys were reasonably necessary to adequately represent the plaintiffs and the putative class in this case.

Estimate of Future Lodestar Attorneys' Fees & Expenses

26. I anticipate that AFL attorneys will perform substantial additional legal work in connection with the settlement – most notably, assisting S+L co-counsel in preparing for and participating in the final approval hearing, and responding to settlement class member inquiries regarding the settlement. I further anticipate that AFL attorneys will perform limited additional work assisting S+L co-counsel in monitoring the implementation of and enforcing compliance with the settlement throughout the three year term of the settlement agreement.

³ AFL attorneys have not incurred any court or witness or court reporter fees, nor any expert or consultant fees, nor any interest accrual fees, long distance telephone charges, fax charges or postage charges. We have not included in our expenses claimed in this case any expenses incurred for: electronic/computer research fees (which I estimate amounted at least to tens of thousands of dollars over the last six years); express mail/messenger fees; or external or internal photocopying fees (which I also estimate amounted to at least tens of thousands of dollars over the past six years).

27. I anticipate that class counsel will advance additional expenses in connection with the settlement. These expenses will include costs related to the fairness hearing, settlement class member communications (i.e., long distance and postage charges) and monitoring the settlement (i.e., travel costs) over a three year period.


Daniel B. Kohrman

Sworn and subscribed before me this 15 day of March, 2011. My commission expires

Margaret Guthrie
Notary Public, District of Columbia
My Commission Expires 11/14/2013


Notary Public



STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

CASE TYPE: Employment

Clifford L. Whitaker et al.,
on behalf of themselves
and all others similarly situated

Court File No. C4-04-12239
(The Honorable Gregg E. Johnson)

RECEIVED
Ramsey County
District Court

MAR 18 2011

Plaintiffs,

Deputy

**[PROPOSED] ORDER
GRANTING PRELIMINARY
APPROVAL OF CLASS
SETTLEMENT AND
PROVISIONAL CLASS
CERTIFICATION**

vs.

3M Company,

Defendant.

On _____, 2011, this Court heard the Parties' joint motion for preliminary approval of class action settlement and provisional class certification under Minnesota Rule of Civil Procedure 23.05. This Court reviewed the motion, including the Settlement Agreement and Release ("Agreement") and plaintiffs' memorandum in support of the motion. Based on this review and findings below, the Court finds good cause to grant the motion.

FINDINGS

For purposes of the Settlement Agreement only, the Court finds:

1. The Agreement is fair, reasonable, and adequate;
2. The Notice, Class Member Declaration and Claim Sheet (attached to the Agreement) comply with due process because they are reasonably calculated to adequately apprise Class Members of: (i) the pending lawsuit; (ii) the proposed settlement; and (iii) their rights, including the right to participate in the settlement, exclude themselves from the settlement, or object to the settlement;
3. For settlement purposes only, the Class is so numerous that joinder of all Class Members is impracticable;

4. For settlement purposes only, Plaintiffs' claims are typical of individual Class Members' claims;

5. For settlement purposes only, there are issues common to the Class that predominate over any questions affecting only individual Class Members;

6. For settlement purposes only, the Plaintiffs and their Counsel fairly and adequately represent the Class's interests; and

7. For settlement purposes only, class certification is superior for purposes of implementing the Settlement Agreement to other available methods for the fair and efficient adjudication of the controversy.

IT IS ORDERED THAT:

1. **Settlement Approval.** The Agreement, including the Notice, Class Member Declaration and Claim Sheet, attached to the Agreement, are preliminarily approved. Plaintiffs and Defendant, 3M Company ("3M") (collectively "the Parties"), are ordered to comply with the terms of the Agreement.

2. **Provisional Certification.** For settlement purposes only, the Class is provisionally certified as:

All persons who were 46 or older when employed by 3M in Minnesota in a salaried exempt position below job grade 18 at any time on or after May 10, 2003 through December 31, 2010, and who did not sign a document on or about their last day of employment purporting to release claims arising out of their employment with 3M.

3. **Provision of Class Notice.** On the ninetieth (90th) calendar day after entry of this Order, or the following business day if the 90th day is a Sunday or holiday, the Parties, through the appointed Claims Administrator, will mail Notice and a Class Member Declaration to each Class Member as specified in the Agreement.

4. **Request to Opt-Out.** Class Members who wish to be excluded from the Settlement shall submit a written request to opt-out to the Claims Administrator within one

hundred (100) calendar days of the initial mailing of the Notice and Class Member Declaration. No particular format shall be required for a Class Member to opt-out, provided that the Class Member's written request reasonably identifies the Class Member and the *Whitaker v. 3M Company* litigation and expresses an intent to opt-out of the Settlement. Requests to opt out shall be deemed timely if they are postmarked on or before the 100th day after the initial mailing of the Notice and Class Member Declaration. The time to opt-out will not be enlarged for any returned mailings. Individuals who validly opt-out of the Settlement are no longer deemed to be Class Members. As such, those individuals cannot object to the Settlement.

5. Objection to Settlement. Class Members who do not opt out and who wish to object to the Agreement shall file a written objection with the Court and serve copies on Class Counsel and 3M's Counsel no later than one hundred (100) calendar days from the initial mailing date of the Notice and Class Member Declaration. Written objections shall be deemed timely if they are postmarked on or before the 100th day after the initial mailing of the Notice and Class Member Declaration. The Objection shall state: (a) the objecting person's full name, address, and telephone number; (b) the words "Notice of Objection" or "Formal Objection"; (c) in clear and concise terms, the legal and factual arguments supporting the objection; and (d) a list identifying the witness(es) the objector may call to testify at the Fairness Hearing and true and correct copies of any exhibit(s) the objector intends to offer. The objection will not be valid if it objects only to the lawsuit's appropriateness or merits.

6. Failure to Object to Settlement. Class Members who fail to object to the Agreement in the manner specified above will: (1) be deemed to have waived their right to object to the Agreement; (2) be foreclosed from objecting (whether by a subsequent objection, intervention, appeal, or otherwise) to the Agreement; and (3) not be entitled to speak at the Fairness Hearing.

7. Participation in Settlement Fund. Class Members who wish to participate in the Settlement under the Agreement shall complete, execute and return their Class Member Declaration within seventy-five (75) calendar days of the initial mailing of the Notice and Class

Member Declaration. Class Member Declarations shall be deemed timely if they are postmarked on or before the 75th day after the initial mailing of the Notice and Class Member Declaration. Class Members who fail to timely execute and return their Class Member Declaration, but who do not opt out, shall not be entitled to any Settlement Award but shall otherwise be bound by the Settlement Agreement, including the Judicial Release. Class Members who timely execute and return a Class Member Declaration which indicates a claim for age discrimination shall also complete, execute and return their Claim Sheet within forty-five (45) days after the mailing of their Claim Sheet by the Claims Administrator. Claim Sheets shall be deemed timely if they are postmarked on or before the 45th day after the mailing of the Claim Sheets by the Claims Administrator. Class Members who fail to timely execute and return their Claim Sheet shall not be entitled to any Settlement Award but shall otherwise be bound by the Settlement Agreement, including the Judicial Release.

8. Appointment of Class Representative and Class Counsel. For settlement purposes only, Plaintiffs are conditionally appointed as the Class Representative to implement the Parties' settlement in accordance with the Agreement. The law firm of Sprenger + Lang, PLLC and the AARP Foundation Litigation are appointed as Class Counsel. Plaintiffs and Class Counsel shall continue to fairly and adequately represent and protect the Class's interests.

9. Termination of Agreement. If the Agreement terminates for any reason, the following will occur: (a) this Preliminary Approval Order, and all of its provisions, including conditional certification of the settlement class, will be automatically vacated; (b) this Action will revert to the status that existed at the execution date of the Agreement, subject to the Parties' request for additional time to complete discovery; (c) no party shall be deemed to have waived, and will not be prejudiced in its right to pursue or oppose, any claims, objections, rights or defenses, or legal arguments or positions, including, but not limited to, claims or objections to class certification, and claims and defenses on the merits; (d) no term or draft of the Agreement, or any aspect of the Parties' settlement discussions, including related documentation, will have any effect or be admissible into evidence for any purpose in this Action; and (e) 3M shall have

no obligation to pay any of the Gross Settlement Sum. This Order will not waive or otherwise impact the Parties' rights or arguments.

10. No Admissions. Nothing in this Order is or may be construed as an admission or concession on any point of fact or law by or against any Party.

11. Qualified Settlement Fund. The Court approves and orders the creation of a 3M Whitaker Qualified Settlement Fund ("Qualified Settlement Fund") in accordance with the terms of the parties' Settlement Agreement. 3M has agreed to pay to the Qualified Settlement Fund the Gross Settlement Sum, as set forth in the Settlement Agreement, which payment will be in full settlement and discharge of all of the claims of Settlement Class Members against 3M that are the subject of this lawsuit and in exchange for a full release and discharge by the Named Plaintiffs, Class Representatives, and all Settlement Class Members who do not exclude themselves from the settlement.

Establishment of the Qualified Settlement Fund is intended to satisfy the requirements of Treasury Regulation Section 1.468B-1(c), 26 C.F.R. § 1.468B-1, by (a) being established pursuant to the approval and order of this Court, (b) resolving and satisfying claims for discrimination and violations of statutory and common law against 3M, and (c) constituting a segregated account, all as required by those regulations.

The Qualified Settlement Fund will be administered by the Claims Administrator Rust Consulting, (hereafter, the "administrator"). The Qualified Settlement Fund will receive the Gross Settlement Sum as set forth in the Settlement Agreement in accordance with its terms, and subject to further approvals of this Court, as required. The Qualified Settlement Fund and its administrator will remain subject to the continuing jurisdiction of this Court until the Qualified Settlement Fund terminates by its terms.

12. Fairness Hearing. On _____ 2011, at _____, this Court will hold a Fairness Hearing to determine whether the Agreement should be finally approved as fair, reasonable, and adequate. All supporting papers, including the class counsels' request for attorneys' fees and reimbursement of costs, shall be filed no later than 5 days before the Fairness

Hearing. This Court may order the Fairness Hearing to be postponed, adjourned, or continued. If that occurs, the Parties will not be required to provide additional notice to class members.

DATED: _____

HONORABLE GREGG E. JOHNSON
DISTRICT COURT JUDGE