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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

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COMPLAINT

1
2 Plaintiffs Arthur J. Garcia, Ronald K. Brooks, Betty Jean Norman, Roderick Vold, Robert
3 Elander, and John Lynn by and through the undersigned counsel, complain of defendant 3M Company
4 as follows:

INTRODUCTION

5
6 1. Since 2001, 3M Company ("3M") has engaged in an interwoven set of personnel actions
7 designed to elevate younger employees into the company's leadership and to marginalize and remove
8 older employees – beginning with employee performance appraisals and extending to other personnel
9 actions negatively affecting employees age 46 and older. 3M has engaged in a pattern or practice of
10 discrimination against these older salaried employees throughout the United States, including the
11 plaintiffs, by assigning them lower performance ratings and other less favorable performance
12 designations, virtually shutting them out of intensive leadership training opportunities, denying them
13 promotions, awarding them smaller pay increases and fewer stock options than their younger peers, and
14 disproportionately terminating them from employment and inducing them to "retire" or "resign" in
15 response to threatened imminent involuntary termination. Several 3M employment practices regarding
16 certain performance appraisal ratings and selections for intensive leadership training and promotions
17 also have a disparate impact on employees age 40 and over, particularly age 46 and older. To try to
18 shield itself from liability for its discrimination, 3M has caused departing employees to sign releases that
19 misrepresent their rights and fail to give them required information necessary to determine whether they
20 have been the victims of age discrimination.

21 2. Plaintiffs Garcia, Norman, Vold, Elander, and Lynn seek a declaration under the
22 Declaratory Judgment Act, 28 U.S.C. § 2201, that the purported General Release of All Claims
23 ("Release") signed by most terminated employees is invalid and unenforceable as to their claims under
24 the Age Discrimination in Employment Act ("ADEA"), 29 U.S.C. § 621 *et seq.*, as amended by the
25 Older Worker Benefit Protection Act ("OWBPA"), 29 U.S.C. § 626(f). They seek this relief pursuant
26 to Fed. R. Civ. P. 23 on behalf of themselves and other persons similarly situated, estimated to exceed
27 2,000 people.
28

1 3. Plaintiffs seek relief from 3M's age discrimination under the ADEA on behalf of
2 themselves and other persons similarly situated who choose to opt in ("opt-ins"). Opt-in forms signed
3 by 49 other current or former 3M employees accompany this Complaint. The opportunity to opt in
4 should be extended to former employees who signed the Release once it is declared invalid, as well as
5 to current employees. The number of potential opt-ins is estimated to exceed 6,000.

6 **JURISDICTION, VENUE AND INTRADISTRICT ASSIGNMENT**

7 4. Jurisdiction. This Court has jurisdiction over this action pursuant to: 28 U.S.C. § 1331,
8 as to the claims arising under the ADEA; and 28 U.S.C. §§ 1331 and 2201, as to the claim for
9 declaratory relief.

10 5. Venue. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b). 3M is subject
11 to personal jurisdiction in this District in that it maintains facilities and business operations in this
12 District.

13 6. Intradistrict Assignment. Venue is proper in the San Jose Division of this Court pursuant
14 to Local Rule 3-2(c)-(d) because a substantial part of the events that give rise to the claims asserted in
15 this complaint occurred in San Jose. In particular, 3M employed plaintiff Garcia and other similarly
16 situated persons in Santa Clara County, California, and committed acts of age discrimination in
17 employment there against this plaintiff and other similarly situated persons.

18 **PARTIES**

19 **Plaintiffs**

20 7. Plaintiff Arthur J. Garcia is a former 3M employee who was born on December 13, 1940.
21 He began working for 3M in 1977. When he left employment with 3M on April 29, 2005, at the age of
22 64, he was a salaried, exempt, Grade S4 Senior Account Representative in the After Market Division in
23 San Jose, California.

24 8. Plaintiff Ronald K. Brooks is a current 3M employee who was born on June 2, 1956. He
25 began working for 3M in 1980. Since January 7, 2007 he has been a salaried, exempt, Grade T3 Project
26 Engineer for 3M's Drug Delivery Systems in the Medical Division in Northridge, California. Prior to
27 that, he was a Grade T3 Senior Process Engineer in the Electronic Solutions Division in Columbia,
28 Missouri.

9. Plaintiff Betty Jean Norman is a former 3M employee who was born on November 9, 1945. She began working for 3M in 1989. When she left employment with 3M on August 1, 2004 at the age of 58, she was a salaried, non-exempt, Grade 6 Administrative Assistant in the Visual Systems Division in Austin, Texas.

10. Plaintiff Roderick Vold is a former 3M employee who was born on January 9, 1948. He began working for 3M in 1987. When he left employment with 3M on December 10, 2004, he was a salaried, exempt, Grade 9 Production Supervisor in the Supply Chain Services Division in St. Paul, Minnesota.

11. Robert Elander is a former 3M employee who was born on January 9, 1944. He began working for 3M in 1973. When he left employment with 3M on June 6, 2001, he was a salaried, exempt Level 97 Advanced Technologist in the Electronic Products Division in Austin, Texas.

12. John Lynn is a former 3M employee who was born on January 21, 1947. He began working for 3M on February 16, 1970. When he left employment with 3M on June 6, 2001, he was a salaried, exempt Grade 14 Senior Manufacturing Engineering Specialist in the Electronic Handling and Protection Division, located in Austin, Texas.

13. Plaintiffs have complied with the necessary administrative prerequisites to suit. As shown below, at least 60 days have passed since each of them timely filed charges of discrimination, which were timely cross-filed as indicated.

Name	Charge Number	Date Received by EEOC	Cross-Filing
Arthur J. Garcia	370-2006-00160	October 26, 2005	California Department of Fair Employment and Housing
Ronald K. Brooks	28E-2006-09414	August 22, 2006	Missouri Commission on Human Rights
Betty Jean Norman	265-2005-02023	July 6, 2005	Texas Workforce Commission Civil Rights Division
Roderick Vold	265-2005-00020	October 5, 2005	Minnesota Department of Human Rights
Robert Elander	550-2009-01373	January 15, 2009	Minnesota Department Of Human Rights
John E. Lynn, Jr.	550-2009-01431	January 15, 2009	Minneapolis Department of Civil Rights

1 14. Plaintiffs included class allegations in their EEOC Charges, placing 3M on notice that
2 plaintiffs filed their claims individually and on behalf of all persons similarly situated. Accordingly, the
3 charges put 3M on notice that collective and class litigation was contemplated.

4 15. Each plaintiff named in the caption of this case has consented to become a party plaintiff
5 in this action and a class representative as appropriate.

6 **Defendant**

7 16. 3M Company is incorporated in the State of Delaware, with corporate headquarters at
8 3M Center, St. Paul, Minnesota.

9 17. 3M is a diversified technology company that produces products to serve customers in six
10 business segments: Consumer and Office, Display and Graphics, Electro and Communications, Health
11 Care, Industrial and Transportation, and Safety, Security and Protection Services. At year-end 2008,
12 3M reported worldwide sales of \$25.3 billion. It employed over 79,000 people in more than 60
13 countries worldwide, including 33,662 employees in the United States. 3M had operations in 29 states,
14 including California.

15 **FACTS RELATING TO AGE DISCRIMINATION CLAIMS**

16 **I. 3M'S CORPORATE BIAS IN FAVOR OF YOUNG EMPLOYEES**

17 18. In 2001, a new Chief Executive Officer and Chairman, W. James McNerney, took over
18 leadership of 3M. Shortly after he arrived, he mandated that 3M favor young employees in selections
19 for leadership development training, identifying 35 to 42 year olds as his favored employees. Until his
20 departure in 2005, he continued to emphasize that 3M needed to identify and develop future leaders
21 early in their careers, and other executives quickly picked up and extended the theme of favoring
22 younger employees in a variety of HR decisions. After McNerney left 3M, widespread discrimination
23 continued. As the district court for Ramsey County, Minnesota, stated in an age discrimination class
24 action on behalf of Minnesota employees, "The policies established by 3M executives suggest strategies
25 that favor younger employees to the detriment of members of the proposed class." Memorandum of
26 Law in Support of Order Certifying Class and Appointing Class Counsel, *Whitaker v. 3M Company*,
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1 No. 62-C4-04-012239 (Ramsey Co., May 14, 2008), at 4. Those policies have been the same
2 throughout the United States, including Minnesota.

3 19. 3M effectuated this discrimination through centralized personnel policy- and decision-
4 making processes. It used vertical and horizontal controls to assure consistent implementation of
5 personnel policies across the company. The district court for Ramsey County concluded that "3M top
6 executive centralized policy and decision-making creates company-wide common questions." *Id.* The
7 centralized policies and decision-making have applied throughout the United States, including
8 Minnesota.

9 20. In Minnesota, those centralized, discriminatory policies produced "statistical evidence
10 that strongly suggests a consistent pattern across 3M's business units of disparities suffered by older
11 employees in each of the human resources practices challenged." *Id.* There is every reason to believe
12 that, outside of Minnesota, those same practices would similarly produce "a consistent pattern across
13 3M's business units of disparities suffered by older employees in each of the human resources practices
14 challenged." *Id.*

15 II. DISCRIMINATION IN PERFORMANCE APPRAISALS

16 21. 3M has a company-wide system of conducting performance evaluations of its salaried
17 employees, referred to as the "Employee Contribution and Development Process" or "EC&DP." The
18 performance evaluation includes ratings and designations purporting to reflect an employee's "level of
19 contribution," "leadership attributes," job "placement recommendation," and "potential
20 recommendation" (as to whether an employee is believed capable of advancing to senior management
21 or corporate leadership positions), although the content, scales and other features have changed from
22 time to time within the relevant period.

23 22. 3M uses EC&DP ratings and designations for a number of purposes, including
24 determining employee compensation, profit sharing for eligible employees, job placement, promotion,
25 and termination, and to identify and select employees for special training programs.

26 23. EC&DP forms are filled out for each employee annually. An employee's supervisor
27 gives initial, proposed EC&DP ratings. These ratings are reviewed by successively higher groups of
28

1 managers referred to as "Management Team Review" or "MTRs," which purport to act on the basis of
2 group consensus. Through this centralized process, managers without specific knowledge of an
3 employee's performance, contribution or potential contribute to or assign ratings to that employee.

4 24. Since 2001, 3M has directed individual supervisors and, in turn, MTRs to produce
5 predetermined percentages, or percentages within predetermined ranges, of various levels of EC&DP
6 contribution ratings for the group of employees they rate. For 2001, 3M mandated that, within a given
7 group of employees, 20% be rated "High" and 10% be rated "Lower" contributors. Since 2002, 3M has
8 required that business units assign a percentage of employees to each of five separate ratings ("1"
9 through "5" with "5" as the highest) within ranges purportedly based on the relative success of the
10 business unit in which they are employed. As a result, employees are assigned ratings that do not
11 reflect their performance in order to achieve a predetermined distribution of ratings. This caused
12 managers to complain about being forced to lower the ratings of older employees with many years
13 experience. As the ability to allocate ratings into forced distributions indicates, contribution ratings are
14 easily manipulated at 3M and are affected by factors other than the performance of the employee.

15 25. The criteria that 3M has provided for "potential" and placement designations are
16 unreasonably vague. The lack of specificity for potential designations, including vague criteria, is
17 aggravated by the lack of a fixed time horizon over which employees' advancement is to be forecast,
18 which suggests to managers that employees' potential is to be assessed over the remainder of their
19 careers, thereby giving a huge advantage to younger employees and having a disparate impact on older
20 employees.

21 26. The categories used for leadership ratings, which commenced in 2003, are ill-defined,
22 permitting unchecked, subjective decision-making.

23 27. The MTR decision-making process and the lack of specificity in rating criteria have
24 permitted all four types of ratings to be assigned based on age stereotypes and known age preferences of
25 corporate executives.

26 28. 3M has engaged in a pattern or practice of intentionally and willfully assigning low
27 EC&DP ratings to employees over the age of 45. In addition, the lack of a fixed time horizon and
28

1 vague criteria has had a disparate impact on the "potential" ratings of employees 40 or older and
2 particularly over the age of 45.

3 29. Plaintiffs are victims of 3M's pattern or practice of discrimination against older
4 employees in performance appraisals, and are among those who have suffered the adverse impact of the
5 potential rating system. Garcia, Brooks, Norman, Vold and Lynn all experienced drops in their
6 contribution ratings to "low," "1" or "2" levels, after McNerney's arrival at 3M even though their
7 performance did not decline and was equal to or better than the performance of younger peers who, to
8 the best of plaintiffs' knowledge, did not experience similar drops in ratings. Three plaintiffs were
9 placed on Corrective Action Plans as a result of receiving ratings of "1" or "2." None of the plaintiffs
10 received high potential ratings during the period beginning in 2001.

11 III. DISCRIMINATION IN SELECTION FOR TRAINING PROGRAMS

12 A. Selections for Six Sigma Black Belt Program

13 30. In 2001, 3M adopted the "Six Sigma" management methodology as a company-wide
14 strategy. Since then, 3M has selected persons for rapid advancement, provided them a two-year course
15 of specialized training and experience in Six Sigma as Black Belts and Master Black Belts, and (if they
16 were successful) typically given them promotions of one or two salary grades shortly after they have
17 completed their Black Belt or Master Black Belt service. During and after their Black Belt or Master
18 Black Belt service, employees also have been advantaged in the performance appraisal process and in
19 compensation and termination decisions.

20 31. Employees cannot apply for Black Belt or Master Black Belt positions. 3M requires that
21 selectees have been rated as "high potential" on their performance reviews, a requirement that has a
22 disparate impact on older employees. In addition to this requirement and the guideline that Black Belts
23 should come from grades 11 to 15 and Master Black Belts from higher grades, executives have
24 tremendous discretion in selecting employees for these positions.

25 32. 3M has passed over older employees in this subjective and closed selection process.
26 Even controlling for high potential ratings, 3M has selected disproportionately few persons over 45 as
27 Black Belts and Master Black Belts. The disparities have been even greater for employees over 50 or
28 55.

1 33. The disproportionate selection of younger employees for Six Sigma Black Belt and
2 Master Black Belt training is the product of intentional and willful age discrimination emanating from
3 the highest ranks of 3M. McNerney publicly stated that he viewed Six Sigma as a “low-risk way to spot
4 up-and-coming managers” and told executives that Black Belts and Master Black Belts should not be
5 older than their early 40s. Other executives have accepted and applied this preference for younger
6 employees.

7 **B. Accelerated Leadership Development Program**

8 34. In 2001, 3M adopted an advanced training program to identify and develop leaders of the
9 company referred to as the Accelerated Leadership Development Program (“ALDP I”). ALDP I
10 provides an intensive classroom experience, lasting 30 consecutive days including weekends, for groups
11 of 40 employees at a time. There is no application process for participation in ALDP I. Participants
12 generally have been rated as high potential on their performance appraisals and are selected by top
13 executives in a closed process, and generally have come from grades 14 and up. At least during
14 ALDP’s early years, 3M’s CEO and the Vice President of Human Resources reviewed all selections.

15 35. In 2004, 3M instituted ALDP II, a less-intense version of ALDP I for employees in
16 grades 12 -14. Again, there is no application process, and selected employees generally have been rated
17 as “high potential.”

18 36. After completing their ALDP training, participants are advantaged in the performance
19 appraisal process, and in promotion, pay and termination decisions.

20 37. One of the purposes and effects of both ALDP programs is to advance younger
21 employees into leadership positions. As 3M’s 2003 annual report states as to ALDP I, “This intense,
22 high-energy learning experience gets more future 3M leaders into the leadership development process –
23 and often earlier in their careers.” Not surprisingly, 3M has selected disproportionately few salaried
24 exempt employees over the age of 45 for ALDP training.

25 38. The disproportionate selection of younger employees for ALDP training is the product of
26 intentional and willful age discrimination emanating from the highest ranks of 3M. At an ALDP
27 session, one of the participants asked McNerney whether the young age of the participants in the
28 program created a risk of lawsuits. He responded: “That’s the cost of doing business.”

1 **C. Pre-Managerial Assessment Program**

2 39. Between 2001 and 2004, 3M also operated a Pre-Managerial Assessment Program (Pre-
3 MAP) to identify personal development needs for employees below grade 11 identified as having the
4 potential to advance to supervisory or managerial positions. 3M limited Pre-MAP to persons who had
5 worked at 3M no more than five years. During the period that Pre-MAP was in operation, 3M selected
6 no or very few salaried employees over the age of 45 for the program.

7 40. The disproportionate selection of younger employees for Pre-MAP was the product of
8 intentional and willful age discrimination emanating from the highest ranks of 3M. This stereotypical
9 perspective and preference for younger employees was accepted and applied by the persons selecting
10 participants for Pre-Map as a policy or practice of 3M.

11 41. Alternatively, 3M's requirement limiting eligibility for Pre-MAP to persons who had
12 been at 3M five years or less, had an unjustified disparate impact on employees over the age of 40 and
13 particularly age 46 or older.

14 42. The plaintiffs are victims of 3M's pattern or practice of discrimination against employees
15 over the age of 45 in selection for specialized training and assessments and the opportunities they
16 provide, and are among those older employees who have suffered the adverse impact of these policies
17 or practices. None has been selected for Black Belt, Master Black Belt, ALDP, or Pre-MAP. Despite
18 specialized training and experience in statistics and experimental design and the application of these
19 methods to quality and design, Plaintiff Lynn was not selected to staff the Electronic Handling and
20 Protection Division's initial Six Sigma Black Belt training program. When he asked why he was not
21 selected, his supervisor stated: "The employees selected for Black Belt training will be the future
22 leaders for this Division. Let's face it, you and I are just too old to have been considered." Lynn also
23 was not later selected as a trainee for the program. Plaintiff Norman worked diligently to advance her
24 career, including by obtaining an undergraduate degree, yet she was never informed about or given the
25 benefit of the Pre-MAP program.

IV. DISCRIMINATION IN PROMOTIONS

43. 3M has had at least four promotion processes for salaried employees from 2001 through the present. 3M has used these processes to discriminate against older employees.

44. First, 3M has a centralized, computer-based system for salaried exempt employees to become aware of and apply for vacant positions up to grade 17 referred to as the "Job Information System" or "JIS." 3M has skewed this system to the detriment of older employees in various ways. Although all vacant positions are supposed to be posted, many vacant positions have not been posted and instead given to favored employees. Even when positions are posted, executives frequently designate to hiring managers the employees or slates of employees they favor, effectively closing the competition. Similarly, executives' ability through the MTR process to identify persons ready for promotion and the jobs for which they are ready have alerted hiring managers to the identity of favored employees. Finally, the postings for many positions express preferences or requirements for Black Belt or Master Black Belt training, which systematically has been denied to older employees.

45. Second, 3M does not post L3 positions, and 3M executives select persons to fill these positions through a "tap-on-the-shoulder" process in which younger employees are favored.

46. Third, 3M has established two processes for evaluating the job duties performed by an employee to determine whether they merit an increase in grade, one called the Job Assessment Survey, and the other a comparison between actual job duties and central HR benchmark descriptions. However, a manager can determine whether to submit an employee's duties for evaluation or re-write the job duties to achieve a desired result, and – despite warnings that doing so could expose 3M to liability – executives can and do decide not to promote employees whose duties warrant an increase in grade qualifications for any reason or no reason. Accordingly, these processes can be and are used to discriminatorily deny older employees in-job promotions that their job duties justify.

47. Finally, 3M awards without competition positions to employees "re-entering" normal positions after serving as a Black Belt, Master Black Belt, or in a foreign service assignment. Indeed, it often engages in "swaps," moving an employee out of a position to free it up for a re-entering employee. 3M determines whether such re-entry will be into a position constituting a promotion or a lateral move.

1 48. 3M exercises the discretion in each of these processes to the benefit of younger
2 employees and the detriment of older ones. The denial of promotions to employees over 45 and
3 disproportionate selection of younger employees for promotions are the product of intentional and
4 willful age discrimination emanating from the highest ranks of 3M. Early in his tenure, McNerney
5 warned employees: "You should not be surprised if you see a younger person being promoted over
6 you," and this prediction proved true.

7 49. 3M's closed re-entry process, and its requirement or preference for "Master Black Belt,"
8 and "Black Belt" experience for vacant positions, both have an unjustified disparate impact on
9 employees over 40 and particularly age 46 and older.

10 50. None of the plaintiffs received a promotion during the period since McNerney arrived at
11 3M. Plaintiff Norman had consistently claimed that she was executing supply chain and inventory
12 responsibilities warranting promotion to a higher job grade. Not long after Norman's job was
13 "eliminated" and she left the company, 3M upgraded those responsibilities to a position with a higher
14 job grade and gave the position to a younger person with no college education. The plaintiffs are
15 victims of 3M's pattern or practice of discrimination against employees over the age of 45 in selection
16 for promotions, and are among those older employees who have suffered the adverse impact of these
17 policies or practices.

18 V. DISCRIMINATION IN COMPENSATION

19 51. 3M has used centralized compensation practices for salaried employees. 3M establishes
20 a salary range for each job grade and awards pay increases to individual employees largely based upon
21 the contribution ratings on their EC&DP forms. In addition, for salaried employees in job grades 12
22 and above and equivalent positions, compensation includes an award of stock options based on
23 contribution and leadership attribute ratings.

24 52. Because, as discussed above, older employees receive discriminatorily low contribution
25 and leadership ratings, they receive discriminatorily low pay increases and stock option awards. In
26 addition, even within the limited ranges permitted for pay increases and stock option awards for persons
27 with the same ratings and grade, 3M awards older workers smaller increases and stock option awards
28

1 than their younger peers. 3M's disproportionately higher awards of salary increases and stock options
2 to employees younger than 46 is the product of intentional and willful age discrimination by 3M.

3 53. The plaintiffs are victims of 3M's pattern or practice of discrimination against employees
4 over the age of 45 in compensation. They have received smaller raises and stock option awards than
5 their younger peers in the same or similar positions.

6 VI. DISCRIMINATION IN TERMINATIONS

7 54. 3M has used company-wide policies and systems to reduce its United States workforce
8 by more than four thousand salaried employees since 2001. Corporate approval is required for every
9 termination and the longer the tenure of the employee, the higher the level of management approval
10 required. Most of these terminations have occurred through 3M's Job Elimination Pay Plan ("JE Plan")
11 and its "Performance Management Severance Pay Plan" ("PM Plan"). Those employees targeted for
12 termination are disproportionately over the age of 45.

13 55. Through its JE Plan, 3M terminates employees whose jobs purportedly have been
14 eliminated and who are unable to find alternative positions at the company. In exchange for a release of
15 all claims against the company, 3M offers severance pay and other benefits.

16 56. Through its PM Plan, 3M terminates employees who have been assigned low
17 contribution ratings on their EC&DP forms and/or have been placed on either "Formal" or "Informal
18 Corrective Action Plans." Under the corrective action plans, employees may be terminated without
19 severance pay, or given a lower rating leading to termination, unless their supervisors judge their
20 performance to improve within a short time. The PM Plan offers employees in this situation
21 termination with severance pay and, if they qualify, other benefits if they forego the period for
22 corrective action and execute a release of all claims against 3M.

23 57. Because 3M discriminates against salaried employees over the age of 45 in their
24 performance appraisals, as discussed above, those employees disproportionately have opted for
25 "retirement," "transitional retirement," "resignation," or voluntary job elimination rather than risk
26 termination as a result of a managers' subjective perception that they failed to improve their alleged
27 poor performance. These terminations were further induced by corrective action plans that involved
28 subjective assessments and unrealistic goals that would have been virtually impossible to attain.

1 58. 3M has a policy or has engaged in a pattern or practice of disproportionately terminating
2 employees over the age of 45 through its termination systems including PM and JE Plans and its
3 conduct inducing "voluntary" retirements and resignations.

4 59. Plaintiffs Garcia, Norman, Vold, Elander and Lynn all were victims of 3M's pattern or
5 practice of discrimination against those over the age of 45 in termination. Garcia and Vold were placed
6 on Formal Corrective Action Plans that forced their exit from 3M.

7 60. When Plaintiff Elander's job was eliminated, several employees under age 45 in his
8 group volunteered for the job elimination program to take the place of Lynn and other older workers
9 targeted, but 3M refused to alter who it was terminating. 3M told Norman, one of the oldest
10 administrative assistants at 3M's Austin facility, that it had eliminated her job. Then 3M moved a
11 younger 3M employee into her position before she even had left the company. Norman had
12 consistently claimed that she was executing supply chain and inventory responsibilities warranting a
13 higher job grade. Not long after Norman's job was "eliminated" and she left the company, 3M
14 upgraded those responsibilities to a position with a higher job grade and gave the position to a younger
15 person with no college education.

16 **FACTS RELATING TO DECLARATORY JUDGMENT CLAIM AND**
17 **INVALIDITY OF 3M'S RELEASE**

18 61. At all times since 2001, the JE and PM Plans have been "exit incentive or other
19 employment termination program[s] offered to a group or class of employees" under the ADEA as
20 amended by the OWBPA, 29 U.S.C. § 626(f)(1)(H).

21 62. 3M required all employees who accepted its severance offer to sign a Release titled
22 "General Release of All Claims" as a condition of receiving the benefits of the severance plans. Along
23 with the Release, persons offered severance under the JE and PM Plans each received a Summary Plan
24 Description purportedly describing the consideration for signing the Release, Eligible and Ineligible
25 Employee Lists purportedly identifying the decisional unit and the job titles and ages of persons eligible
26 and ineligible for the particular group termination program, and other related documents. 3M drafted
27 all of the documents used in the JE and PM group termination programs, and redrafted or revised the
28 language in the Release and accompanying Summary Plan Descriptions, generally on an annual basis.

1 63. Plaintiffs Elander and Lynn signed the Release in connection with their termination
2 under the Job Elimination Plan in 2001. Plaintiff Norman signed the Release in conjunction with her
3 involuntary termination under the Job Elimination 2004 Severance Pay Plan, and plaintiffs Garcia and
4 Vold signed the Release in conjunction with their involuntary termination under the Performance
5 Management 2004 Severance Pay Plan. Almost all employees who left the company through a group
6 termination program signed the Release.

7 64. The Release and accompanying materials offered to persons subject to the group
8 termination programs from 2001 to the present were written in a manner such that the average person
9 subject to the Plans would wrongly understand that they were not permitted to file charges with the
10 EEOC or otherwise challenge discrimination by 3M or the validity of the Release itself and could not
11 obtain relief through such a charge or challenge. For a number of years, the Release also falsely stated
12 that a signer who did raise such a challenge would have to tender back any severance benefits received.
13 These provisions all had the effect of misleading persons signing the Release and discouraging them
14 from filing charges or otherwise challenging discrimination by 3M or the validity of the Release.

15 65. The Release and accompanying materials offered to persons subject to the group
16 termination programs from 2001 to the present were written in a manner that would cause the average
17 person subject to the programs falsely to believe that pension, retirement or other benefits already
18 available were at risk if they did not sign the Release. The Release contained no information regarding
19 consideration and the accompanying materials provided to persons subject to the group termination
20 programs failed to provide adequate information distinguishing employees' pension, retirement and
21 other benefits from those available only if they signed the Release.

22 66. The Release and accompanying OWBPA-required informational materials offered to
23 persons subject to the group termination programs from 2001 to the present were not written in a
24 manner calculated to be understood by the affected persons and failed to provide those persons all of the
25 information required to permit them to make an informed decision whether to release claims of age
26 discrimination, as described in the following paragraphs.

27 67. The Eligible and Ineligible Employee Lists provided to persons subject to the group
28 termination programs identified a purported "decisional unit" that did not necessarily correlate with an

1 organizational unit that would be understood by the average person receiving the list. For the years
2 2001 through at least 2005, 3M did not maintain records that would identify the specific employees on
3 the Eligible and Ineligible Employee Lists, thereby making it impossible for employees to determine at
4 any time the applicable decisional unit and the persons included in that decisional unit.

5 68. The Eligible and Ineligible Employee Lists provided to persons subject to the group
6 termination programs did not distinguish voluntary from involuntary terminations.

7 69. The Eligible and Ineligible Employee Lists provided to persons subject to the group
8 termination programs did not provide cumulative information, where applicable, about persons subject
9 to the programs over time.

10 70. The Releases and accompanying materials for the JE Plans from 2001 through the
11 present failed to inform persons subject to that program of the "eligibility factors" that 3M used when it
12 selected them for inclusion in the job elimination program. The Releases themselves referenced the
13 applicable Summary Plan Descriptions, and they only stated words to the effect that the employees were
14 eligible for the JE Plan if their job was eliminated, they were not subsequently placed in another
15 position, and they completed the procedural steps required by the Plan.

16 VII. CLASS ACTION ALLEGATIONS

17 DECLARATORY JUDGMENT CLASS

18 71. Plaintiffs Garcia, Norman, Vold, Elander and Lynn seek to represent a class of former
19 employees pursuant to Fed. Rule Civ. P. 23(b)(2) with respect to Count I below seeking a declaratory
20 judgment that the Releases they and other similarly situated employees signed are invalid and
21 unenforceable under the OWBPA with respect to their ADEA claims and that 3M is equitably estopped
22 to raise a statute of limitations defense to the ADEA claims of persons who did not file charges within
23 300 days after their termination. The class consists of:

24 All persons who were 40 or older when employed by 3M in the United States in a
25 salaried position below the level of director, or salary grade 18, and who signed a
26 document on or after January 1, 2001, and on or about their last day of employment
27 purporting to release ADEA claims arising out of their employment with 3M.
28

1 The proposed class (Declaratory Judgment Class) may include subclasses defined by year, job
2 elimination program or other appropriate basis. In the event that discovery shows, or the Court
3 determines, that the proposed class cannot satisfy Fed. Rule Civ. P. Rule 23, plaintiffs may propose to
4 modify or narrow the definition of the class.

5 72. *Numerosity*. The number of persons in the Declaratory Judgment Class is estimated to
6 exceed 2,000. It would be impracticable to bring all or even a substantial percentage of such persons
7 before the Court as individual plaintiffs through joinder.

8 73. *Commonality*. There are questions of law and fact common to the class. The two
9 overarching questions are whether 3M's Release is illegal and unenforceable because it violates the
10 OWBPA and whether 3M is equitably estopped to raise a statute of limitations defense for persons who
11 did not file charges within 300 days after their termination. These broad issues encompass numerous
12 issues of law and fact that are also common to the members of the class, including:

- 13 • Did 3M write the Release and accompanying materials in a manner
14 reasonably calculated to be understood by the average person subject to the
15 group termination programs with respect to employees' pension, retirement or
16 other available benefits, as well as their right to file charges with the EEOC,
17 challenge the validity of the release and obtain relief?
- 18 • Did 3M's Release and accompanying materials interfere with their protected
19 right to file a charge or participate in an investigation or proceeding
20 conducted by the EEOC?
- 21 • Did 3M's Release and accompanying materials adequately apprise the
22 employees subject to the group termination programs of the decisional units
23 and persons eligible and ineligible for termination, whether persons were
24 voluntarily or involuntarily included in the termination, and of the effect and
25 the cumulative effect of 3M's termination decisions on the decisional unit?
- 26 • Did 3M fail to provide employees subject to the JE Plan with the factors used
27 to select them for inclusion in the job eliminations, eliminate their positions
28 and not place them in other positions?
- Was 3M's use of an invalid and unenforceable Release part and parcel of an
illegal plan to insulate it from liability for its pattern or practice of
discriminating against older employees in terminations?
- Is 3M equitably stopped from raising a statute of limitations defense based on
failure to timely file an EEOC charge where 3M's Release would cause
average employees who signed it to falsely believe that they could not file
charges with the EEOC or challenge the validity of the Release and could not
obtain relief through such a charge or challenge and, for a number of years,
unlawfully conditioned any challenge on a tender back of severance benefits?

1 80. Plaintiffs seek declaratory relief from this Court in order to establish whether the
2 Releases are invalid and unenforceable and are not knowing and voluntary waivers of plaintiffs' ADEA
3 claims, and to establish whether 3M is equitably estopped from relying on the Release as to class
4 members who signed them more than 300 days before charges were filed. These issues represent
5 threshold issues for many plaintiffs and class members, and their early resolution will facilitate the swift
6 administration of justice.

7 81. The signed Releases are invalid and therefore unenforceable because neither the
8 Releases nor the accompanying materials comply with the OWBPA and its implementing regulations.

9 82. The Releases and the accompanying materials violate the OWBPA, 29 U.S.C.
10 § 626(f)(1)(A), and implementing regulations, 29 CFR § 1625.22(a)(3), (b)(3), (b)(4), (i)(2) and (i)(3),
11 and 29 CFR § 1625.23(a) and (b), as they are written in a manner that the average signatory would
12 falsely believe that they could not file charges with the EEOC or otherwise challenge discrimination by
13 3M or the validity of the Release itself, and that they could not obtain relief through such a charge or
14 challenge. For a number of years, the Releases also unlawfully conditioned any challenge on a tender
15 back of severance benefits in violation of 29 CFR § 1625.23(a) and (b). These provisions also violate
16 the OWBPA, 29 U.S.C. § 626(f)(4), which provides that "[n]o waiver agreement may affect the
17 Commission's rights and responsibilities to enforce this Act," and prohibits using a waiver "to justify
18 interfering with the protected right of an employee to file a charge or participate in an investigation or
19 proceeding conducted by the Commission."

20 83. The Releases and the accompanying materials also violate the OWBPA, 29 U.S.C.
21 § 626(f)(1)(A), and implementing regulations, 29 C.F.R. § 1625.22(b)(3), as the consideration offered is
22 not written in plain language calculated to be understood by the average signatory and has the effect of
23 misleading, misinforming or failing to inform the affected individuals as they are written in a manner
24 that the average signatory would falsely believe that benefits and payments "to which the individual
25 already [wa]s entitled" were consideration for the waiver of rights or claims, in violation of the
26 OWBPA, 29 U.S.C. § 626(f)(1)(D), and implementing regulations, 29 C.F.R. § 1625.22(d). Thus, 3M
27 violated the OWBPA because it failed to obtain waivers of "rights or claims *only* in exchange for
28

1 consideration in addition to anything of value to which the individual already is entitled.” 29 U.S.C.
2 § 626(f)(1)(D) (emphasis added); 29 C.F.R. § 1625.22(d)(2) and (3).

3 84. The Release and accompanying materials also violate the OWBPA, 29 U.S.C.
4 § 626(f)(1)(H), and implementing regulations 29 C.F.R. § 1625.22(b)(5) and (f), in failing to adequately
5 provide several types of information required in connection with “an exit incentive or other employment
6 termination program offered to a group or class of employees” to permit those employees to evaluate
7 the effects of 3M’s group termination programs in making an informed decision whether to waive or
8 release claims of age discrimination.

9 85. The signed Releases from 2001 through the present are invalid and unenforceable
10 because they fail to identify the “class, unit, or group of individuals covered by such program” as
11 required by the OWBPA at 29 U.S.C. § 626(f)(1)(H)(i) “in a manner calculated to be understood by the
12 average individual eligible to participate.”

13 86. The signed Releases for the JE Plans from 2001 through the present are invalid and
14 unenforceable because they fail to inform the recipient as to “any eligibility factors for such [an
15 “employment elimination”] program” as required by the OWBPA at 29 U.S.C. § 626(f)(1)(H)(i).

16 87. 3M further has violated the OWBPA by not following the directives at 29 C.F.R.
17 § 1625.22 (f)(4)(iii) and (vi) requiring it to provide breakdowns by grade level or some other
18 subcategory if the termination includes several grade levels or other subcategories, requiring it to
19 distinguish voluntary from involuntary terminations on its Eligible and Ineligible Employee Lists, if
20 both are included, and to provide cumulative information about persons selected over time in the
21 programs, where applicable.

22 88. Because 3M intentionally used the Release to insulate it from liability for its pattern or
23 practice of discriminating against older employees in terminations, the Release also should be found
24 void on public policy grounds.

25 89. For reasons described above, including the willful failure by 3M to comply with federal
26 statutory and regulatory guidelines pertaining to employee rights to file administrative charges and
27 required disclosures of information relevant to the assessment of possible age discrimination claims,
28 plaintiffs and class members who signed releases reasonably understood that they had given up their

1 right to file a charge, challenge the Release or obtain any relief regardless of the language of the
2 Release until long after the deadline to file charges and were unaware of information showing that age
3 discrimination played a role in the selection of persons scheduled for termination under 3M's JE and
4 PM Plans. Therefore, plaintiffs also seek the declaratory judgment of this Court that 3M is equitably
5 estopped to argue that the ADEA claims of plaintiffs and opt-ins for conduct occurring from and after
6 January 1, 2001 are untimely.

7 COUNT II

8 **DISPARATE TREATMENT** 9 **WITH RESPECT TO PERFORMANCE EVALUATIONS,** 10 **TRAINING, PROMOTIONS, PAY AND TERMINATIONS**

11 **ADEA COLLECTIVE ACTION**

12 90. Plaintiffs restate and reallege the allegations contained in the paragraphs 1-89 as though
13 set forth here in full.

14 91. This action is brought under 29 U.S.C. § 626(b) and (c) and 29 U.S.C. § 216(b) by the
15 above-named plaintiffs on behalf of other similarly situated persons who opt into this action by filing
16 appropriate notice. The similarly situated persons are defined as:

17 All persons who were 46 or older when employed by 3M in the United States in a salaried
18 position below the level of director, or salary grade 18, during the liability period, except for any
19 claims included in the class claims in the case *Whitaker v. 3M Company*, No. 62-C4-04-012239
(Ramsey Co., Minn.).

20 92. At all times relevant to this complaint, plaintiffs were aggrieved persons as defined by
21 the ADEA, 29 U.S.C. § 630.

22 93. At all times relevant to this complaint, 3M has been engaged in an industry affecting
23 commerce and is an employer as defined in 29 U.S.C. § 630(a) and (b).

24 94. At all times relevant to this complaint, plaintiffs and opt-ins were and are members of a
25 class of persons protected by the ADEA, 29 U.S.C. § 626(b), in that at the time he or she was treated
26 adversely by 3M on account of his or her age, each of them was 46 years of age or older in accordance
27 with 29 U.S.C. § 631(a), and had been employed in the United States by 3M.

28 95. 3M's discriminatory policies or practices as to performance evaluation, training,
promotions, pay and terminations, described above, represent a pattern or practice of intentional and

1 willful denial to plaintiffs and opt-ins of their right to equal employment opportunity in violation of the
2 ADEA at 29 U.S.C. § 623(a)(1).

3 96. 3M's discriminatory and unlawful employment practices have been intentional, willful
4 and oppressive, and have been conducted in reckless disregard for the rights of plaintiffs and class
5 members.

6 97. To the extent that any of the discriminatory policies or practices identified herein have
7 been implemented by lower-level management, 3M's executive management has independently
8 directed, adopted, ratified, condoned and approved the discriminatory policies or practices identified
9 herein, and has failed to take adequate measures to prevent such discrimination from occurring.

10 98. 3M has acted with reckless disregard to the rights of employees over the age of 45 in its
11 failure adequately and effectively to monitor, identify and remedy the impact of 3M's discriminatory
12 processes for performance evaluation, selection for training, promotions, pay and terminations.

13 99. As a result of 3M's violations of the ADEA, plaintiffs and opt-ins have been injured and,
14 therefore, are entitled to an award of equitable relief, monetary relief, liquidated damages, and
15 attorneys' fees and costs, as well as any other relief provided under the ADEA and applicable law.
16 Plaintiffs and opt-ins are threatened with further injury and loss which are irreparable in nature and for
17 which they have no adequate remedy at law.

18 COUNT III

19 **DISPARATE IMPACT** 20 **WITH RESPECT TO PERFORMANCE EVALUATIONS,** 21 **TRAINING AND PROMOTIONS** 22 **ADEA COLLECTIVE ACTION**

23 100. Plaintiffs restate and reallege the allegations contained in the paragraphs 1-99 as though
24 set forth here in full.

25 101. This disparate impact count is brought under 29 U.S.C. § 626(b) and (c) and 29 U.S.C.
26 § 216(b) by the above-named plaintiffs on behalf of other similarly situated persons who opt into this
27 action by filing appropriate notice. The similarly situated persons are defined as:

28 All persons who were 46 or older when employed by 3M in the United States in a salaried
position below the level of director, or salary grade 18, during the liability period except for any

1 claims included in the class claims in the in the case *Whitaker v. 3M Company*, No. 62-C4-04-012239 (Ramsey Co., Minn.);

2 or, in the alternative, to the extent that the Court holds that a disparate impact count can be stated only
3 on behalf of those age 40 and above:

4 All persons who were 40 or older when employed by 3M in the United States in a salaried
5 position below the level of director, or salary grade 18 during the liability period, except for any
6 claims included in the class claims in the case *Whitaker v. 3M Company*, No. 62-C4-04-012239
(Ramsey Co., Minn.).

7 102. At all times relevant to this complaint, plaintiffs and opt-ins were and are members of a
8 class of persons protected by the ADEA, 29 U.S.C. § 626(b), in that at the time he or she was adversely
9 affected by 3M on account of his or her age, each of them was 46 years of age or older or, in the
10 alternative, 40 years of age or older, in accordance with 29 U.S.C. § 631(a), and had been employed in
11 the United States by 3M.

12 103. To the extent that any of the discriminatory policies or practices identified herein have
13 been implemented by lower-level management, 3M's executive management has independently
14 directed, adopted, ratified, condoned and approved the discriminatory policies or practices identified
15 herein, and has failed to take adequate measures to prevent such discrimination from occurring.

16 104. 3M has acted with reckless disregard to the rights of employees age 46 or older or, in the
17 alternative, age 40 or older, in its failure adequately and effectively to monitor, identify and remedy the
18 impact of 3M's discriminatory processes for performance evaluation and selection for training and
19 promotions.

20 105. 3M has engaged in employment practices that have had a disparate impact on persons 46
21 and over, or, in the alternative, age 40 or older, within the meaning of 29 U.S.C. § 623(a)(2), including
22 but not limited to the following:

- 23 A. Assigning "high potential" ratings using subjective and vague criteria and without a
24 reasonable, fixed time horizon for assessing employees' anticipated advancement;
- 25 B. Restricting leadership development training to persons rated "high potential;"
- 26 C. Using a closed selection process to select persons for leadership development training;
- 27 D. Restricting the PMAP program to employees with less than five years experience;
- 28 E. Using a closed selection process to award promotions to Black Belts and Master Black Belts upon re-entry to the workforce after completing their training and experience;

1 F. Requiring or preferring employees with Black Belt and Master Black Belt experience
2 when filling vacancies.

3 106. The disparities caused by these practices and practices like them cannot be justified by
4 reasonable factors other than age.

5 107. As a result of 3M's violations of the ADEA, plaintiffs and opt-ins have been injured and,
6 therefore, are entitled to an award of equitable relief, monetary relief and attorneys' fees and costs, as
7 well as any other relief provided under the ADEA and applicable law. Plaintiffs and opt-ins are
8 threatened with further injury and loss which are irreparable in nature and for which they have no
9 adequate remedy at law.

10 PRAYER FOR RELIEF

11 WHEREFORE, plaintiffs and others similarly situated pray that this Court enter judgment in their
12 favor and against 3M Company as follows:

13 A. With respect to plaintiffs' action under the Declaratory Judgment Act:

14 1. certifying the Declaratory Judgment Class pursuant to Fed. Rule Civ. P. 23(b)(2),
15 designating the plaintiffs as representatives of the class, and designating their counsel of record as Class
16 Counsel;

17 2. declaring that 3M's Releases are invalid and unenforceable and are not knowing
18 and voluntary waivers of plaintiffs' ADEA claims because they violate the OWBPA and its
19 implementing regulations and cannot be enforced against plaintiffs and other class members, and are
20 not a bar to actions by them under the ADEA;

21 3. enjoining 3M, its agents, servants, and employees from using the unenforceable
22 Release or other similarly invalid releases, in connection with employees 40 years of age and older
23 selected for termination under future Job Elimination and Performance Management Severance Pay
24 Plans or programs like them;

25 4. requiring 3M immediately to inform all employees who were 40 years of age or
26 older and signed 3M's Release when terminated by 3M between January 1, 2001 and the present, in
27 writing, that the Release they signed is invalid as a bar to actions under the ADEA and advising them
28

1 that they have the right to file a charge of age discrimination with the EEOC for a period of 180 or 300
2 days (depending on their jurisdiction) from receipt of the notice or to opt into this action; and

3 5. declaring that 3M is equitably estopped to argue that the claims of plaintiffs and
4 opt-ins are barred by the statute of limitations for all persons who were 40 years of age or older when
5 terminated by 3M between January 1, 2001 and the present and requiring 3M, as part of the notice
6 requested in subparagraph 3 above, to advise all such persons that 3M's Release does not prevent them
7 from initiating EEOC charges or actions under the ADEA or from opting into this action.

8 B. With respect to plaintiffs' action under the ADEA:

9 1. maintaining this case as a collective action on behalf of the proposed group and
10 any appropriate subgroups;

11 2. determining that 3M's complained of policies and practices violate the rights of
12 the plaintiffs and opt-ins under the ADEA;

13 3. issuing a permanent prohibitory injunction ordering 3M and its officers, agents,
14 employees and successors to cease and desist from the unfair discriminatory employment policies and
15 practices complained of herein;

16 4. issuing a permanent mandatory injunction requiring 3M to take such affirmative
17 action as will effectuate the purposes of the ADEA, including adopting employment practices in accord
18 with the ADEA's requirements;

19 5. entering judgment in favor of plaintiffs and opt-ins, and against 3M for
20 reasonable monetary damages, including back pay (plus interest or an appropriate inflation factor and
21 an enhancement to offset any adverse tax consequences associated with lump sum receipt of back pay),
22 front pay, benefits and all other damages owed to plaintiffs and opt-ins; and

23 6. awarding each of the plaintiffs and opt-ins liquidated damages in an amount
24 equal to their actual damages.

25 C. With respect to all claims:

26 1. awarding the plaintiffs and opt-ins such other and further legal and equitable
27 relief as may be found appropriate and as the Court may deem just or equitable;
28

2. awarding plaintiffs and opt-ins or class members costs including, but not limited to, attorneys' fees, experts' fees, and other costs and expenses of this litigation; and,

3. retaining jurisdiction over this action until such time as it is satisfied that 3M has remedied the practices complained of and is determined to be in full compliance with the law.

Dated: May 4, 2009

Respectfully submitted,

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JURY DEMAND

Plaintiffs demand trial by jury of all claims to the extent allowed by law, including but not limited to the provisions of the ADEA at 29 U.S.C. § 626(b).

Dated: May 4, 2009

Respectfully submitted,

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