

STATE OF MINNESOTA
COUNTY OF RAMSEY

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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

