UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

DESIREE HOLLER, Plaintiff, v. 3M COMPANY, Defendant.	Case No. 22-cv-00998-WMW-JFD **JOINT RULE 26(f) REPORT**

The parties/counsel identified below conferred as required by Fed. R. Civ. P. 26(f) and the Local Rules on July 19, 2022 and prepared the following report.

DESCRIPTION OF THE CASE

1. Concise factual summary of plaintiff's claims:

Note: This case is related to several others, those of John Wingo v. 3M (22-0993-WMW-JFD), Titus Kargbo v. 3M (22-0996-WMW-JFD), Robert Rieger (22-0994-WMW-JFD), and forthcoming cases Vaughn Wingo and Nevely Randle.

Plaintiff, Desiree Holler ("Holler"), an African American female, was employed by Defendant, 3M Company ("3M"), in February 2019 in Aberdeen, SD.

Holler was passed up for a promotion due to her race and gender, and repeatedly discouraged from applying for the position she wanted. After a lengthy delay and fighting with management for a position she was entitled to by policy, Holler was finally placed in the position she applied to.

Holler worked closely with John Wingo, an African American male. Holler witnessed 3M employees threatening and using racial slurs to harass John Wingo. After Holler reported this treatment, Holler and Wingo both got in trouble for working in a similar manner to their non-African American co-workers. 3M, despite promising to investigate, never did anything to curb the discrimination taking place, and took active steps to discourage reporting and conceal the behavior of its employees and supervisors.

Holler is still currently employed by 3M and is concerned about her career with 3M as a result of the discriminatory treatment she has be subjected to by multiple supervisors and the plant manager.

2. Concise factual summary of defendant's claims/defenses:

3M Company ("3M") has employed Plaintiff Desiree Holler since February 2019 at its Aberdeen, South Dakota facility. 3M has treated Ms. Holler well throughout her employment, and she has not been subject to any race-based, gender-based or other sort of discrimination and she has suffered no adverse employment actions.

3M trained Ms. Holler, allowed and encouraged her to apply for other positions, and selected her for the very first position that she applied for at the Aberdeen facility. 3M continued to treat Ms. Holler well until she left for a maternity leave in 2020.

Ms. Holler worked in the same area as another Plaintiff, John Wingo. Ms. Holler did not report any mistreatment of Mr. Wingo and in fact denied seeing any such mistreatment. Ms. Holler did not engage in any protected conduct and was not subject to any sort of reprisal. Ms. Holler currently remains out on maternity leave and 3M looks forward to her return.

3. Statement of jurisdiction (including statutory citations):

Federal question jurisdiction under 28 U.S. Code Section 1331 because plaintiff asserts claims under Title VII of the Civil Rights Act of 1964, 42 U.S. Code Section 2000 et seq., and diversity jurisdiction under 28 U.S. Code Section 1331 because the parties are citizens of different states and the amount in controversy exceeds $75,000.

4. Summary of factual stipulations or agreements:

None.

5. Statement of whether a jury trial has been timely demanded by any party:

Plaintiff has demanded a jury trial.

6. Statement as to whether the parties agree to resolve the matter under the Rules of Procedure for Expedited Trials of the United States District Court, District of Minnesota, if applicable:

No.

7. Has all process been served and have all pleadings been filed?

   Process has been served and the complaint and answer have been filed. Plaintiff filed an amended complaint on July 12, 2022, per Rule 15, after receiving Defendant's consent to file on that date.

8. Does any party have plans to seek to amend the pleadings or add additional parties to the action, and if so, what are those plans?

   Plaintiff has no present plans to further amend his complaint.

FACT DISCOVERY

Having conferred about the unique needs of this case, and mindful of the goals of justice, efficiency, proportionality, and inexpensiveness, the parties recommend that the Court establish the following fact-discovery deadlines and limitations:

1. The parties must make their initial disclosures under Fed. R. Civ. P. 26(a)(1) on or before August 1, 2022. If the parties plan to disclose documents by a description by category and location of documents, they will exchange copies of initial disclosure documents on or before August 1, 2022.

2. The parties must commence fact discovery in time to be completed by June 1, 2023. The parties will discuss whether a date for the substantial production of documents should be set within the fact-discovery period to facilitate the taking of depositions.

3. The parties have discussed the scope of discovery, including relevance and proportionality, and propose that the Court limit the number of discovery procedures as follows. The parties propose overall limitations on written discovery in this matter and in five related matters (*Rieger v. 3M Co.*, No. 22-0994 (WMW/JFD); *Kargbo v. 3M Co.*, No. 22-0996 (WMW/JFD), *Wingo v. 3M Co.*, No. 22-0993 (WMW/JFD), and forthcoming cases by Vaughn Wingo and Nevely Randle). It is understood that a single interrogatory or document request may pertain to some or all of the plaintiffs yet will still be considered a single item. The parties have not agreed upon the combined written discovery limitations for these matters.

   a. Plaintiff proposes 125 interrogatories (to be answered by each party); 3M proposes 30 interrogatories (to be answered by each party).

   b. Plaintiff proposes no limitation on document requests per FRCP 34; 3M proposes 30 document requests (to be answered by each party).

The parties understand that objections to document requests must meet the requirements of amended Rule 34(b)(2)(B). If the responding party is producing copies of documents or copies of electronically stored information and the copies are not produced with the responses, another reasonable time must be specified in the response. If the requesting party disagrees that this is reasonable, the parties must meet and confer to agree on the timetable for production.

c. Plaintiff proposes no limitation on requests for admission per F.R.C.P. 36; 3M proposes 30 requests for admission (to be answered by each party).

d. Plaintiff proposes 50 total fact depositions shall be taken by each side across this matter and the five related matters (*Rieger v. 3M Co.*, No. 22-0994 (WMW/JFD); *Kargbo v. 3M Co.*, No. 22-0996 (WMW/JFD); *Wingo v. 3M Co.*, No. 22-0993-WMW-JFD, and forthcoming cases by Vaughn Wingo and Nevely Randle). This total does not include expert depositions but does include depositions of organizational-designee depositions taken pursuant to Fed. R. Civ. P. 30(b)(6). An organizational-designee deposition shall count as 1 deposition, irrespective of the number of witnesses designated. It is understood that a deposition may pertain to some or all of the plaintiffs yet will still be considered a single item. The duration limits of Rule 30(d)(1) for several key defense witnesses (e.g., Dave Rook) will be relaxed in light of the need to depose them on a wide breadth of subject matter across several cases.

   3M proposes 10 total fact depositions shall be taken by each side across this matter and the related matters. This total does not include expert depositions but does include depositions of organizational-designee depositions taken pursuant to Fed. R. Civ. P. 30(b)(6). 3M is amenable to extending the duration limits of Rule 30(d)(1) for witnesses in light of the related matters, but any such extension must be applicable to both sides. An organizational-designee deposition shall count as 1 deposition, irrespective of the number of witnesses designated.

e. The parties have discussed the taking of depositions pursuant to Rule 30(b)(6) and present the following agreement: See above.

f. One Rule 35 medical examination, which will be completed by June 1, 2023.

g. N/A other

h. *The parties have discussed the impact of COVID-19 and the national response to the epidemic on this litigation. vCounsel believe that this epidemic might affect the discovery phase of this case in the following ways*:

None.

EXPERT DISCOVERY

1. The parties anticipate that they will require expert witnesses at the time of trial.

   a. The plaintiff anticipates calling six experts in the fields of: Organizational Psychology, Medical Doctor, Mental-Health Professional, Statistics, Economic Loss, and Ergonomics Expert.

   b. 3M anticipates calling experts in each of the fields identified by Plaintiff.

2. The parties propose that the Court establish the following plan for expert discovery:

   a. Initial experts

      i. The identity of any expert who may testify at trial regarding issues on which the party has the burden of persuasion must be disclosed on or before April 1, 2023.

      ii. The initial expert written report completed in accordance with Fed. R. Civ. P. 26(a)(2)(B) must be served on or before May 1, 2023.

   b. Rebuttal experts

      i. The identity of any experts who may testify in rebuttal to any initial expert must be disclosed on or before May 15, 2023.

      ii. Any rebuttal expert's written report completed in accordance with Fed. R. Civ. P. 26(a)(2)(B) must be served on or before June 1, 2023.

3. All expert discovery, including expert depositions, must be completed by July 1, 2023.

OTHER DISCOVERY ISSUES

1. Protective Order

The parties have discussed whether they believe a protective order is necessary to govern discovery and jointly submit a proposed protective order based on the template available on the District's website.

(The parties are encouraged, though not required, to use protective order template available on the District's website as a template for a proposed protective order.)

2. Discovery of Electronically Stored Information

The parties have discussed the scope of electronic discovery, including relevance and proportionality, and any issues about preserving potentially discoverable electronic information. The parties have also discussed the form or forms in which electronic discovery should be produced. They inform the Court of the following agreements or issues: None.

The Court refers counsel to "Discussion of Electronic Discovery at Rule 26(f) Conferences: A Guide for Practitioners," developed by the Federal Practice Committee, to help attorneys and parties prepare for a meaningful discussion of electronic discovery issues early in the litigation. The Guide is available on the Court's website under the Court Forms tab, in the "Pretrial, Discovery, and Trial Forms" section. The Guide should be read in advance of the Rule 26(f) Conference.

The parties will further meet and confer by September 1, 2022, to discuss their plan or formal protocol for electronic discovery. They agree to present any disputes regarding an electronic discovery plan and protocol to the Court by October 1, 2022.

3. Claims of Privilege or Protection

The parties have discussed issues regarding the protection of information by a privilege or the work-product doctrine, as required by Fed. R. Civ. P. 26(f)(3)(D). This discussion included whether the parties agree to a procedure to assert these claims after production or have any other agreements under Fed. R. Evidence 502. The parties:

a. Will include their agreement in the proposed Protective Order.

PROPOSED MOTION SCHEDULE

The parties propose the following deadlines for filing motions:

1. Motions seeking to join other parties must be filed and served by September 1, 2022.

2. Motions seeking to amend the pleadings must be filed and served by September 1, 2022.

3. Non-dispositive motions:

   a. All non-dispositive motions relating to fact discovery must be filed and served by July 15, 2023.

   b. All other non-dispositive motions, including motions relating to expert discovery, must be filed and served by July 15, 2023.

   The parties must meet and confer to resolve all discovery disputes and other non-dispositive issues prior to filing any motions.

4. All dispositive motions must either be filed by, or filed and heard by, depending on the preferences of the district judge, September 1, 2023.

TRIAL-READY DATE

1. The parties agree that the case will be ready for trial on or after November 1, 2023.

2. The anticipated length of the **jury** trial is **five days**

3. The parties propose that the final pretrial conference be held on or before October 15, 2023.

INSURANCE CARRIERS/INDEMNITORS

List all insurance carriers/indemnitors, including limits of coverage of each defendant or a statement that the defendant is self-insured: Counsel for 3M is not aware of any applicable insurance agreement under which any person carrying on an insurance business may be liable to satisfy all or part of a judgment entered in this action or to indemnify or reimburse for payments made to satisfy the judgment.

SETTLEMENT

The parties discussed settlement at the Rule 26(f) meet-and-confer and each party has contemporaneously e-mailed to Chambers a confidential letter setting forth what

settlement discussions have taken place and whether the party believes an early settlement conference would be productive, as provided in Magistrate Judge Docherty's Notice of Pretrial Conference.

TRIAL BY MAGISTRATE JUDGE

The parties **have not** agreed to consent to jurisdiction by the Magistrate Judge under 28 U.S.C. § 636(c). (If the parties agree to consent, file the consent with the Rule 26(f) Report.)

McCOLLUM CROWLEY P.A.

Date: July 20, 2022

By: v*s/ Brian J. Kluk*

Brian J. Kluk (Reg. No. 396320)
7900 Xerxes Avenue South
Minneapolis, MN 55431
952-345-9702
bjk@mccollumlaw.com

ATTORNEYS FOR PLAINTIFF

NILAN JOHNSON LEWIS PA

Dated: July 20, 2022

By: *s/ Joseph G. Schmitt*

Donald M. Lewis (Reg. No. 62844)
Joseph G. Schmitt (Reg. No. 231447)
Courtney M. Blanchard (Reg No. 0396339)
Alia M. Abdi (Reg. No. 0399527)
Maria Agostinho Campbell (Reg. No. 0401778)
250 Marquette Avenue South, Suite 800
Minneapolis, Minnesota 55401
Telephone: (612) 305-7500
Fax: (612) 305-7501
dlewis@nilanjohnson.com
jschmitt@nilanjohnson.com
cblanchard@nilanjohnson.com
aabdi@nilanjohnson.com
macampbell@nilanjohnson.com

ATTORNEYS FOR DEFENDANT 3M COMPANY