UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

JOHN WINGO, Plaintiff, v. 3M COMPANY, Defendant.	Case No. 22-cv-00993-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 Titus Kargbo v. 3M (22-0996-WMW-JFD), Desiree Holler v. 3M (22-0998-WMW-JFD), Robert Rieger (22-0994-WMW-JFD), and forthcoming cases Vaughn Wingo and Nevely Randle.

Plaintiff, John Wingo ("Wingo"), an African American male, was hired by Defendant, 3M Company ("3M"), in 2017 and was terminated under the pretext of poor performance and policy violations on October 19. 2021.

Wingo had several years of employment with 3M before issues began to arise. Wingo was repeatedly threatened and harassed by co-workers at 3M. When Wingo reported these incidents to 3M management, he was assured it would be handled. Instead of handling it and stifling or correcting the conduct, 3M retaliated against Wingo and his witnesses. During 3M's retaliation, 3M actively concealed and participated in the discriminatory actions of other employees.

Notably, 3M: (1) delayed Wingo's training which kept him from receiving promotions and better paying positions, (2) failed to supervise its employees, including its managers, effectively which allowed racial epithets and threats to be continuously hurled at Wingo, (3) failed to allow Wingo the same COVID leave that others were permitted to use, (4) had Wingo followed throughout his shift, including to the bathroom, (5) refused to report a

workplace injury despite multiple conversations about it, (6) suspended Wingo from work instead of accommodating his work restrictions despite having light-duty work available, (7) disciplined Wingo for conduct that was acceptable if done by his non-African American coworkers, (8) systematically retaliated against every witness Wingo produced, (9) targeted Wingo in unprofessional ways after he reported discriminatory conduct, and (10) terminated Wingo under the pretext of policy violations and poor performance instead of correcting the issues Wingo was exposing.

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

3M Company ("3M") employed Plaintiff John Wingo at its Aberdeen, South Dakota facility from 2017 until his termination in November 2021. Mr. Wingo raised a number of concerns during his employment at the facility; 3M thoroughly investigated those concerns and took timely and appropriate action where appropriate. 3M eventually terminated Mr. Wingo's employment because he repeatedly refused to perform his assigned work.

Mr. Wingo's concerns arose when he was confronted by two individuals (one a 3M employee; one a contract worker). The individuals, both of whom were minorities, claimed that Mr. Wingo had borrowed money and refused to repay those funds. Mr. Wingo claimed that one of the individuals used a racial slur. This was the start of several altercations between Mr. Wingo and the other individuals. 3M investigated all complaints (some of which were raised by Mr. Wingo and some by the other individuals), but was unable to obtain any information corroborating Mr. Wingo's claims. 3M nevertheless took timely and appropriate action to counsel all the individuals regarding respectful behavior in the workplace. Eventually, the other individuals stopped working at the facility.

Meanwhile, Mr. Wingo contended that he had suffered a workplace injury, and needed accommodation for that injury. 3M repeatedly attempted to accommodate Mr. Wingo, and assigned work that was within the scope of his limitations. Mr. Wingo repeatedly refused to perform the work and eventually 3M terminated his employment as a result.

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 (*Holler v. 3M Co.*, No. 22-0998 (WMW/JFD); *Rieger v. 3M Co.*, No. 22-0994 (WMW/JFD);

Kargbo v. 3M Co., No. 22-0996 (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 in this matter and in the five related matters (*Holler v. 3M Co.*, No. 22-0998 (WMW/JFD); *Rieger v. 3M Co.*, No. 22-0994 (WMW/JFD); *Kargbo v. 3M Co.*, No. 22-0996 (WMW/JFD), and cases forthcoming 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. Two Rule 35 medical examinations, 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. Counsel 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 for this matter is **seven days** (related cases will be tried separately).

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: *s/ Brian J. Kluk*

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Dated: July 20, 2022

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