

1 PAUL B. KLAAS *Pro Hac Vice*
2 DORSEY & WHITNEY LLP
3 50 South Sixth Street, Suite 1500
4 Minneapolis, MN 55402
5 Telephone: (612) 340-2817
6 Facsimile: (612) 677-3086
7 E-Mail: klaas.paul@dorsey.com

8 MARTHA C. LUEMERS (SBN 104658)
9 DORSEY & WHITNEY LLP
10 1717 Embarcadero Road
11 Palo Alto, CA 94303
12 Telephone: (650) 857-1717
13 Facsimile: (650) 857-1288
14 E-Mail: luemers.martha@dorsey.com
15 E-Mail: efilingspa@dorsey.com

16 Attorneys for Defendant
17 3M COMPANY

18 UNITED STATES DISTRICT COURT
19 NORTHERN DISTRICT OF CALIFORNIA
20 SAN JOSE DIVISION

21 **ARTHUR J. GARCIA, RONALD K.**
22 **BROOKS, BETTY JEAN NORMAN,**
23 **RODERICK VOLD, ROBERT**
24 **ELANDER, AND JOHN LYNN,**
25 **INDIVIDUALLY AND ON BEHALF OF**
26 **OTHERS SIMILAR SITUATED,**

27 **Plaintiffs,**

28 **v.**

3M COMPANY,

Defendant.

CASE NO. C09-01943 RMW (PVT)

**DEFENDANT’S ANSWER TO
PLAINTIFFS’ COMPLAINT**

DEMAND FOR JURY TRIAL

3M Company (“3M”), for its Answer to the Complaint, states that it does not in any way discriminate against its employees on the basis of their age or any other improper factor, and that its employees are its most valuable resource; and, therefore, 3M denies all such allegations contained in the Complaint. 3M denies that the Named Plaintiffs are similarly situated to any

1 properly definable class, and denies further that they are legally entitled to sue on behalf of others
2 not named. 3M also asserts that the Complaint is ill-founded and without merit as alleged below.

3 1. 3M denies the allegations contained in paragraph 1 of the Complaint.

4 2. 3M asserts that the allegations contained in paragraph 2 of the Complaint
5 summarize Plaintiffs' opinion as to the nature and theory of this case, and further states that no
6 response to those allegations is required. To the extent that a response to the allegations
7 contained in paragraph 2 of the Complaint is required, 3M states as follows: 3M admits that
8 Named Plaintiffs Garcia, Norman, Vold, Elander, and Lynn have purported to seek declaratory
9 relief under the Declaratory Judgment Act that the various versions of releases of claims utilized
10 by 3M since 2001 are invalid and unenforceable as to purported claims under the Age
11 Discrimination in Employment Act ("ADEA"), as amended by the Older Worker Benefit
12 Protection Act ("OWBPA"). 3M admits that they seek that relief pursuant to Fed. R. Civ. P. 23
13 on behalf of themselves and other allegedly similarly-situated persons. 3M denies that any
14 version of any release of claims which it has utilized is invalid and/or unenforceable. 3M
15 affirmatively alleges that all versions of the releases of claims that it has utilized since 2001,
16 including those signed by the Named Plaintiffs and opt-ins, are valid and enforceable. To the
17 extent that documents are referenced in paragraph 2 of the Complaint, 3M states that those
18 documents speak for themselves. 3M denies that this matter may proceed as a class or collective
19 action, denies that any employees have suffered from age discrimination during any applicable
20 limitations period, denies that there are or ever have been any 3M employees who are or were
21 similarly situated to the Named Plaintiffs, and denies that any members of a putative class or
22 collective action are entitled to declaratory judgment or any relief whatsoever. 3M denies any
23 and all remaining allegations contained in paragraph 2 of the Complaint.

24 3. In response to the allegations contained in paragraph 3 of the Complaint, 3M
25 admits that Plaintiffs purport to commence this litigation under the ADEA on behalf of
26 themselves and other allegedly similarly-situated persons. 3M admits that 49 signed opt-in forms
27 accompanied the Complaint. 3M denies that this matter may proceed as a class or collective
28 action, denies that any employees have suffered from age discrimination during any applicable

1 limitations period, denies that there are or ever have been any 3M employees who are or were
2 similarly situated to the Named Plaintiffs, and denies that any members of a putative class or
3 collective action are entitled to any relief whatsoever. 3M denies any and all remaining
4 allegations contained in paragraph 3 of the Complaint.

5 4. In response to the allegations contained in paragraph 4 of the Complaint, 3M
6 admits only that the Named Plaintiffs and opt-ins seek to invoke this Court's jurisdiction pursuant
7 to the provisions of 28 U.S.C. § 1331 and 28 U.S.C. § 2201. 3M denies any and all remaining
8 allegations contained in paragraph 4 of the Complaint.

9 5. In response to the allegations contained in paragraph 5 of the Complaint, 3M
10 admits that it maintains business operations in the Northern District of California and that it is
11 subject to personal jurisdiction in the Northern District of California. 3M denies the remaining
12 allegations contained in paragraph 5 of the Complaint. 3M states that the Complaint is brought in
13 an inappropriate venue and this matter should be transferred to the United States District Court
14 for the District of Minnesota for the convenience of the parties and the witnesses and in the
15 interests of justice.

16 6. In response to the allegations contained in paragraph 6 of the Complaint, 3M
17 admits that it employed Named Plaintiff Garcia in Santa Clara County, California and that it has
18 employed and continues to employ other individuals in Santa Clara County, California. 3M
19 denies the remaining allegations contained in paragraph 6 of the Complaint. 3M states that the
20 Complaint is brought in an inappropriate venue and this matter should be transferred to the United
21 States District Court for the District of Minnesota for the convenience of the parties and the
22 witnesses and in the interests of justice.

23 7. Upon information and belief, 3M admits the allegations contained in paragraph 7
24 of the Complaint.

25 8. Upon information and belief, 3M admits the allegations contained in paragraph 8
26 of the Complaint.

27 9. Upon information and belief, 3M admits the allegations contained in paragraph 9
28 of the Complaint.

1 10. Upon information and belief, 3M admits the allegations contained in paragraph 10
2 of the Complaint.

3 11. Upon information and belief, 3M admits the allegations contained in paragraph 11
4 of the Complaint.

5 12. Upon information and belief, 3M admits the allegations contained in paragraph 12
6 of the Complaint.

7 13. In response to the allegations contained in paragraph 13 of the Complaint, 3M
8 admits that at least 60 days have elapsed since each Named Plaintiff filed a charge of
9 discrimination and admits that each Plaintiff cross-filed his or her charge of discrimination. 3M
10 states that the timeliness of the charges of discrimination is a legal issue to which no response is
11 required. 3M denies the remaining allegations contained in paragraph 13 of the Complaint.

12 14. In response to the allegations contained in paragraph 14 of the Complaint, 3M
13 states that Plaintiffs' charges of discrimination speak for themselves. 3M denies the remaining
14 allegations contained in paragraph 14 of the Complaint.

15 15. In response to the allegations contained in paragraph 15 of the Complaint, upon
16 information and belief, 3M admits that each Plaintiff named in the caption of this case has
17 consented to become a party plaintiff in this action and a class representative as appropriate. 3M
18 denies that Plaintiffs represent any other person and denies that they are the proper
19 representatives of any other person or any properly definable class. 3M denies that this matter
20 may proceed as a class or collective action and denies that there are or ever have been any 3M
21 employees who are or were similarly situated to the Named Plaintiffs.

22 16. 3M admits that allegations contained in paragraph 16 of the Complaint.

23 17. 3M admits the allegations contained in paragraph 17 of the Complaint.

24 18. In response to the allegations contained in paragraph 18 of the Complaint, 3M
25 admits that, in 2001, a new Chief Executive Officer and Chairman, W. James McNerney, took
26 over leadership of 3M, and admits that he instituted new business strategies and practices
27 designed to, among other things, increase the profitability and performance of 3M. 3M further
28 states that McNerney resigned as Chief Executive Officer and Chairman effective July 1, 2005.

1 3M states that the Memorandum of Law in Support of Order Certifying Class and Appointing
2 Class Counsel (“Memorandum and Order”) written by the district court for Ramsey County,
3 Minnesota in *Whitaker, et al. v. 3M company*, No. 62-C4-04-012239 (Ramsey Co., May 14,
4 2008) speaks for itself. 3M states that the findings and holdings contained in the Memorandum
5 and Order were reversed by the Minnesota Court of Appeals’ decision of April 28, 2009, in
6 *Whitaker, et al. v. 3M Company*, A08-0816 (Minn. App., April 28, 2009), and the matter was
7 remanded for further proceedings to decide Plaintiffs’ motion to certify a class. 3M further states
8 that the Minnesota Court of Appeals found that the District Court for Ramsey County, Minnesota
9 failed to require proof of Rule 23 certification requirements by a preponderance of the evidence
10 and failed to resolve factual disputes relevant to Rule 23 certification requirements. 3M denies
11 the remaining allegations contained in paragraph 18 of the Complaint.

12 19. In response to the allegations contained in paragraph 19 of the Complaint, 3M
13 states that the Memorandum and Order speaks for itself. 3M states that the findings and holdings
14 contained in the Memorandum and Order were reversed by the Minnesota Court of Appeals’
15 decision of April 28, 2009, in *Whitaker, et al. v. 3M Company*, A08-0816 (Minn. App., April 28,
16 2009) , and the matter was remanded for further proceedings to decide Plaintiffs’ motion to
17 certify a class. 3M further states that the Minnesota Court of Appeals found that the District
18 Court for Ramsey County, Minnesota failed to require proof of Rule 23 certification requirements
19 by a preponderance of the evidence and failed to resolve factual disputes relevant to Rule 23
20 certification requirements. 3M denies the remaining allegations contained in paragraph 19 of the
21 Complaint.

22 20. In response to the allegations contained in paragraph 20 of the Complaint, 3M
23 states that the Memorandum and Order speaks for itself. 3M states that the findings and holdings
24 contained in the Memorandum and Order were reversed by the Minnesota Court of Appeals’
25 decision of April 28, 2009, in *Whitaker, et al. v. 3M Company*, A08-0816 (Minn. App., April 28,
26 2009) , and the matter was remanded for further proceedings to decide Plaintiffs’ motion to
27 certify a class. 3M further states that the Minnesota Court of Appeals found that the District
28 Court for Ramsey County, Minnesota failed to require proof of Rule 23 certification requirements

1 by a preponderance of the evidence and failed to resolve factual disputes relevant to Rule 23
2 certification requirements. 3M denies the remaining allegations contained in paragraph 20 of the
3 Complaint.

4 21. In response to the allegations contained in paragraph 21 of the Complaint, 3M
5 admits that it conducts performance evaluations of its salaried employees, and admits that its
6 performance evaluation process is referred to as the Employee Contribution and Development
7 Process (“EC&DP”). 3M states that its EC&DP documents speak for themselves. 3M denies any
8 and all remaining allegations contained in paragraph 21 of the Complaint.

9 22. In response to the allegations contained in paragraph 22 of the Complaint, 3M
10 admits that EC&DP ratings are used for a number of purposes including to determine employee
11 annual incentive compensation for eligible employees, job placement, and promotion. 3M states
12 that an EC&DP rating alone does not control those decisions and/or actions; and that, with respect
13 to terminations, many terminations occur for reasons other than performance; and that, for
14 performance-based terminations, an employee’s EC&DP rating is but one factor considered. 3M
15 denies any and all remaining allegations contained in paragraph 22 of the Complaint.

16 23. In response to the allegations contained in paragraph 23 of the Complaint, 3M
17 admits that EC&DP forms are completed for each employee annually, and that an employee’s
18 supervisor begins the year-end assessment process by recommending a performance rating
19 (referred to herein as “Level of Contribution”) for the employee. 3M states that Management
20 Team Review (“MTR”) groups within each business or staff organization review the supervisor’s
21 recommended Level of Contribution and other EC&DP ratings for each employee to ensure that
22 individual assessments reflect input beyond employees’ immediate supervisors and to ensure that
23 each employee’s Level of Contribution and other ratings are finally determined through a
24 comparison of employees performing similar work; and that, although the MTR process
25 inevitably involves managerial employees who lack personal knowledge of employees being
26 assessed, the intended result is that those managerial employees do not contribute to or assign
27 ratings to those employees about whom they have no personal knowledge. 3M denies any and all
28 remaining allegations contained in paragraph 23 of the Complaint.

1 24. 3M denies the allegations contained in paragraph 24 of the Complaint. 3M states
2 that the Level of Contribution ratings resulting from its EC&DP process are based on employees'
3 job performance and contributions relative to the stated expectations for their performance; that
4 3M has not established any quota or mandatory fixed percentage distribution for each possible
5 Level of Contribution rating; that, for a limited period of time in 2001 and 2002, it utilized an
6 assessment process in addition to the process resulting in Level of Contribution ratings, which
7 sought to assess how individual employees' total contribution (which was based on factors in
8 addition to an employee's Level of Contribution rating) compared to the total contributions of
9 other employees in the same organization; that such assessment had three possible ratings; that
10 there were stated fixed percentages of employees for each rating category; that such assessment
11 was separate from assessments of whether employees met performance expectations; and that,
12 unlike Level of Contribution ratings, such assessment was intended solely for purposes of
13 providing developmental feedback and assessing an employee's future developmental needs.

14 25. 3M denies the allegations contained in paragraph 25 of the Complaint.

15 26. In response to the allegations contained in paragraph 26 of the Complaint, 3M
16 admits that, in 2003, it began utilizing Leadership Attribute ratings. 3M denies the remaining
17 allegations contained in paragraph 26 of the Complaint. 3M states that the Leadership Attribute
18 ratings in use today differ from those in use prior to 2008.

19 27. 3M denies the allegations contained in paragraph 27 of the Complaint.

20 28. 3M denies the allegations contained in paragraph 28 of the Complaint.

21 29. In response to the allegations contained in paragraph 29 of the Complaint, 3M
22 admits that certain of the Named Plaintiffs received "low," "1," or "2" contribution ratings in or
23 after 2001 and that certain Named Plaintiffs were placed on Corrective Action Plans as a result of
24 their Level of Contribution ratings. 3M admits that none of the Named Plaintiffs received high
25 potential ratings in or after 2001. 3M denies the remaining allegations contained in paragraph 29
26 of the Complaint.

27 30. In response to the allegations contained in paragraph 30 of the Complaint, 3M
28 admits that, in 2001, it began utilizing Six Sigma, a set of methodologies and processes for

1 continuous improvement, focusing on eliminating variation, increasing productivity, and
2 consistently meeting customer wants and needs. 3M admits that it selected persons as Six Sigma
3 Black Belts and Master Black Belts and provided them with a two year course of specialized
4 training and experience in identifying and leading projects, as well as training and supporting Six
5 Sigma Green Belts, who themselves lead Six Sigma projects. 3M states that, after their Six
6 Sigma assignments were complete, Master Black Belts and Black Belts typically reentered 3M's
7 operational and staff operations. 3M states that the reentry assignments these individuals
8 obtained also were consistent with their performance and 3M's business needs. 3M denies the
9 remaining allegations contained in paragraph 30 of the Complaint.

10 31. In response to the allegations contained in paragraph 31 of the Complaint, 3M
11 admits that there typically is no formal application process for the selection of Master Black Belts
12 and Black Belts. 3M admits that Master Black Belts typically are selected from salary grades 16
13 and 17 and that Black Belts typically are selected from salary grades 11 through 15. 3M admits
14 that a "high potential" designation is one of the several job-related criteria utilized in the selection
15 of Master Black Belts and Black Belts. 3M denies the remaining allegations contained in
16 paragraph 31 of the Complaint.

17 32. 3M denies the allegations contained in paragraph 32 of the Complaint.

18 33. In response to the allegations contained in paragraph 33 of the Complaint, 3M
19 admits, upon information and belief, that its former Chief Executive Officer and Chairman may
20 have stated that he viewed Six Sigma as a "low-risk way to spot up-and-coming managers," or
21 stated words to that effect. 3M states that, to understand the full meaning and intent of that
22 statement or words to that effect, it would have to be considered in the full context of the remarks
23 in which that statement or words to that effect were made. 3M denies the remaining allegations
24 contained in paragraph 23 of the Complaint.

25 34. In response to the allegations contained in paragraph 34 of the Complaint, 3M
26 admits that, in 2001, it developed a formal structured learning process to develop employees
27 whose demonstrated performance and leadership during their 3M careers have resulted in them
28 being identified as having the potential to achieve leadership positions within 3M's global

1 organization, and that it named that program the Accelerated Leadership Development Program I
2 (“ALDP I”). 3M admits that there is no formal application process for participation in ALDP I;
3 that ALDP I participants, who have been of all ages, generally have been rated as high potential
4 through the EC&DP performance assessment process, and that ALDP I participants have
5 generally come from grades 14 and up. 3M states that ALDP I participants are selected by top
6 executives from the business or staff organization in which they work; that those executives may
7 apply different standards and means for selecting ALDP I participants; and that a published
8 article misstated the actual selection process for ALDP I participants. 3M denies the remaining
9 allegations contained in paragraph 34 of the Complaint.

10 35. In response to the allegations contained in paragraph 35 of the Complaint, 3M
11 admits that, in 2004, it developed ALDP II, a less intense version of ALDP I. 3M admits that
12 there is no formal application process for participation in ALDP II, that ALDP II participants,
13 who have been of all ages, generally have been rated as high potential through the EC&DP
14 performance assessment process, and that ALDP II participants have generally come from grades
15 12 through 14. 3M denies any and all remaining allegations contained in paragraph 35 of the
16 Complaint.

17 36. 3M denies the allegations contained in paragraph 36 of the Complaint.

18 37. In response to the allegations contained in paragraph 37 of the Complaint, 3M
19 states that its 2003 annual report speaks for itself. 3M denies the remaining allegations contained
20 in paragraph 37 of the Complaint.

21 38. In response to the allegations contained in paragraph 38 of the Complaint, 3M
22 states that its former Chief Executive Officer and Chairman may have stated words to the effect
23 that “lawsuits are a cost of doing business.” 3M states that, to understand the full meaning of that
24 statement or words to that effect, it would have to be considered in the full context of the remarks
25 in which that statement or words to that effect were made. 3M denies the remaining allegations
26 contained in paragraph 38 of the Complaint.

27 39. In response to the allegations contained in paragraph 39 of the Complaint, 3M
28 admits that between 2001 and 2004, it operated the Pre-Managerial Assessment Program (“Pre-

1 MAP”), and that Pre-MAP was a program designed to identify personal development needs for
2 employees below job grade 11 whose performance demonstrated that they might have the
3 potential to advance to supervisory or managerial positions within 3M. 3M states that Pre-MAP
4 was directed to employees who worked at 3M for no more than five years, and without regard to
5 such employees’ ages. 3M denies the remaining allegations contained in paragraph 39 of the
6 Complaint.

7 40. 3M denies the allegations contained in paragraph 40 of the Complaint.

8 41. 3M denies the allegations contained in paragraph 41 of the Complaint.

9 42. In response to the allegations contained in paragraph 42 of the Complaint, 3M
10 admits that none of the Named Plaintiffs has been selected for Master Black Belt, Black Belt,
11 ALDP, or Pre-MAP. 3M admits that Norman obtained an undergraduate degree while working
12 for 3M. 3M denies the remaining allegations contained in paragraph 42 of the Complaint.

13 43. In response to the allegations contained in paragraph 43 of the Complaint, 3M
14 admits that it has utilized a variety of promotion processes for salaried employees between 2001
15 and the present. 3M denies the remaining allegations contained in paragraph 43 of the Complaint.

16 44. In response to the allegations contained in paragraph 44 of the Complaint, 3M
17 admits that, at one time, it utilized a computer-based, centralized system through which salaried
18 employees were able to seek and obtain alternate positions, and that this system was referred to as
19 the Job Information System (“JIS”). 3M admits that job descriptions and qualifications for many
20 vacant positions up to salary grade 17 were posted on the JIS; that employees were able to
21 identify and apply for positions that were posted on the JIS; and that, if an employee applied for a
22 vacant position listed on the JIS, that application could have led to an interview for the applicant
23 with the manager who was interviewing candidates for the vacant position, based on that hiring
24 manager’s own review of the applicant’s relevant qualifications and experience. 3M states that
25 the JIS did not purport to be a system by which all vacant positions at 3M, including positions
26 that would be a promotion for any specific employee, were filled. 3M admits that, in certain
27 instances, it has promoted employees to positions which were not listed or identified as vacant on
28 the JIS and for which there was no formal application process. 3M states that this approach to

1 certain promotions has existed for many years and is not new since 2001. 3M states that Six
2 Sigma experience, including Master Black Belt, Black Belt, Green Belt, and Champion training
3 and experience have been identified as relevant experience for certain, but not all, salaried job
4 openings at 3M. 3M denies the remaining allegations contained in paragraph 44 of the
5 Complaint.

6 45. In response to the allegations contained in paragraph 45 of the Complaint, 3M
7 states that individuals chosen to fill positions above salary grade 17 must be approved by
8 members of 3M's Executive Resources Committee. 3M denies the remaining allegations
9 contained in paragraph 45 of the Complaint.

10 46. In response to the allegations contained in paragraph 46 of the Complaint, 3M
11 admits that it has established two processes for evaluating the job duties performed by an
12 employee to determine whether those duties merit an increase in job grade, one called the Job
13 Assessment Survey, and the other a comparison between actual job duties and central human
14 resources benchmark descriptions. 3M states that each process is used in specific circumstances
15 to ensure that the process of evaluating and determining the appropriate job grade for a new or
16 established position is fair and appropriate. 3M denies the remaining allegations contained in
17 paragraph 46 of the Complaint.

18 47. 3M denies the allegations contained in paragraph 47 of the Complaint. 3M states
19 that, after their Six Sigma or foreign service assignments are complete, Master Black Belts, Black
20 Belts, and foreign service employees typically reenter 3M's staff and operational organizations.
21 3M states that the reentry assignments these individuals obtain are consistent with their
22 performance and 3M's business needs.

23 48. In response to the allegations contained in paragraph 48 of the Complaint, 3M
24 admits that its former Chief Executive Officer and Chairman may have stated to employees that
25 "you should not be surprised if you see a younger person being promoted over you," or words to
26 that effect. 3M states that, to understand the full intent and meaning of this statement or words to
27 that effect, it would have to be considered in the full context of the remarks in which that
28

1 statement or words to that effect were made. 3M denies the remaining allegations contained in
2 paragraph 48 of the Complaint.

3 49. 3M denies the allegations contained in paragraph 49 of the Complaint.

4 50. In response to the allegations contained in paragraph 50 of the Complaint, 3M
5 admits that none of the Named Plaintiffs received a promotion following January 1, 2001. 3M
6 denies the remaining allegations contained in paragraph 50 of the Complaint.

7 51. In response to the allegations contained in paragraph 51 of the Complaint, 3M
8 admits that it has a salary range for each job grade; that an employee's annual compensation
9 increases are based primarily on the employee's Level of Contribution ratings; and that, in years
10 prior to 2005, employees in job grades 12 and above and equivalent positions were eligible to
11 receive annual stock option awards. 3M states that, under its compensation system, managers
12 within its business or staff organizations made final decisions on whether an employee's
13 compensation will be adjusted and, if so, by how much. 3M denies the remaining allegations
14 contained in paragraph 51 of the Complaint.

15 52. 3M denies the allegations contained in paragraph 52 of the Complaint.

16 53. 3M denies the allegations contained in paragraph 53 of the Complaint.

17 54. In response to the allegations contained in paragraph 54 of the Complaint, 3M
18 states that, since 2001 to the present, it undertook actions reducing its global workforce at
19 different times to respond to business conditions in each business unit eliminating jobs, and that
20 some of those employees who were terminated worked in the United States. 3M admits that since
21 2001, it has utilized a variety of corporate separation benefit plans with titles such as Job
22 Elimination Plan and Performance Management Severance Pay Plan and states that those
23 documents speak for themselves. 3M denies the remaining allegations contained in paragraph 54
24 of the Complaint.

25 55. In response to the allegations contained in paragraph 55 of the Complaint, 3M
26 states that, since 2001, it has utilized corporate separation benefit plans with titles such as Job
27 Elimination Plan and states that those documents speak for themselves. 3M denies the remaining
28 allegations contained in paragraph 55 of the Complaint.

1 56. In response to the allegations contained in paragraph 56 of the Complaint, 3M
2 states that, since 2001, it has utilized corporate separation benefits plans with titles such as
3 Performance Management Severance Pay Plan and states that those documents speak for
4 themselves. 3M denies the remaining allegations contained in paragraph 56 of the Complaint.

5 57. 3M denies the allegations contained in paragraph 57 of the Complaint.

6 58. 3M denies the allegations contained in paragraph 58 of the Complaint.

7 59. In response to the allegations contained in paragraph 59 of the Complaint, 3M
8 admits that Named Plaintiffs Garcia and Vold were placed on formal Corrective Action Plans.
9 3M denies the remaining allegations contained in paragraph 59 of the Complaint.

10 60. In response to the allegations contained in paragraph 60 of the Complaint, 3M
11 admits that it told Norman that it had eliminated her job. 3M denies the remaining allegations
12 contained in paragraph 60 of the Complaint.

13 61. 3M states that the allegations contained in paragraph 61 of the Complaint purport
14 to set forth legal conclusions to which no responsive pleading is required and denies any
15 allegations that are not conclusions of law.

16 62. In response to the allegations contained in paragraph 62 of the Complaint, 3M
17 states that one of the conditions of eligibility for its Job Elimination Pay Plan and Performance
18 Management Severance Pay Plan is the execution of a release of claims against 3M. 3M states
19 that those documents speak for themselves. 3M admits that persons being offered severance pay
20 under its Job Elimination Plans and the Performance Management Severance Pay Plans each
21 received a Summary Plan Description, Eligible and Ineligible Lists, and other related documents,
22 3M states that those documents speak for themselves. 3M admits that it drafted all the documents
23 utilized in connection with its corporate separation benefits plans, and admits that many of those
24 documents were redrafted or revised on a periodic basis, including some on an annual basis. 3M
25 denies any and all remaining allegations contained in paragraph 62 of the Complaint.

26 63. In response to the allegations contained in paragraph 63 of the Complaint, 3M
27 admits that one of the conditions of eligibility for its Job Elimination Plans and Performance
28 Management Plans is the execution of a release of claims against 3M. 3M states that Named

1 Plaintiffs Elander, Lynn, Norman, Vold, and Garcia each executed the release of claims against
2 3M that was required under the terms of the severance plan each was eligible for. 3M admits that
3 most employees who left 3M through a group termination program executed a release of claims
4 against 3M, and states that the severance benefits and compensation paid to such employees were
5 generous and consistent with 3M's practice of treating employees fairly. 3M denies any and all
6 remaining allegations contained in paragraph 63 of the Complaint.

7 64. In response to the allegations contained in paragraph 64 of the Complaint, 3M
8 states that the various releases of claims and accompanying materials it has utilized since 2001
9 speak for themselves. 3M states that the allegations contained in paragraph 64 of the Complaint
10 purport to set forth legal conclusions to which no responsive pleading is required and denies any
11 allegations that are not conclusions of law.

12 65. In response to the allegations contained in paragraph 65 of the Complaint, 3M
13 states that the various releases of claims and accompanying materials it has utilized since 2001
14 speak for themselves. 3M states that the allegations contained in paragraph 65 of the Complaint
15 purport to set forth legal conclusions to which no responsive pleading is required and denies any
16 allegations that are not conclusions of law.

17 66. In response to the allegations contained in paragraph 66 of the Complaint, 3M
18 states that the various releases of claims and accompanying materials it has utilized since 2001
19 speak for themselves. 3M states that the remaining allegations contained in paragraph 66 of the
20 Complaint purport to set forth legal conclusions to which no responsive pleading is required and
21 denies any remaining allegations that are not conclusions of law.

22 67. In response to the allegations contained in paragraph 67 of the Complaint, 3M
23 states that the various Eligible and Ineligible Employee Lists it has utilized since 2001 speak for
24 themselves. 3M states that it may not currently have records which would identify each specific
25 employee on Eligible and Ineligible Employee Lists between 2001 and 2005, and that the
26 OWBPA did not require that it retain such records. 3M states that the allegations contained in
27 paragraph 67 of the Complaint purport to set forth legal conclusions to which no responsive
28 pleading is required and denies any allegations that are not conclusions of law.

1 68. In response to the allegations contained in paragraph 68 of the Complaint, 3M
2 states that the various Eligible and Ineligible Employee Lists it has utilized since 2001 speak for
3 themselves. 3M states that the allegations contained in paragraph 68 of the Complaint purport to
4 set forth legal conclusions to which no responsive pleading is required and denies any allegations
5 that are not conclusions of law.

6 69. In response to the allegations contained in paragraph 69 of the Complaint, 3M
7 states that the various Eligible and Ineligible Employee Lists it has utilized since 2001 speak for
8 themselves. 3M states that the allegations contained in paragraph 69 of the Complaint purport to
9 set forth legal conclusions to which no responsive pleading is required and denies any allegations
10 that are not conclusions of law.

11 70. In response to the allegations contained in paragraph 70 of the Complaint, 3M
12 states that the various releases of claims and accompanying materials it has utilized since 2001
13 speak for themselves. 3M states that the allegations contained in paragraph 70 of the Complaint
14 purport to set forth legal conclusions to which no responsive pleading is required and denies any
15 allegations that are not conclusions of law.

16 71. In response to the allegations contained in paragraph 71 of the Complaint, 3M
17 admits that Named Plaintiffs Garcia, Norman, Vold, Elander, and Lynn seek to represent a class
18 of former 3M employees pursuant to Fed. R. Civ. P. 23(b)(2) seeking a declaratory judgment on
19 behalf of themselves and other former 3M employees that the release of claims they and other
20 allegedly similarly situated employees signed are invalid and unenforceable under the OWBPA
21 and that 3M is equitably estopped to raise a statute of limitations defense to those employees'
22 purported ADEA claims. 3M denies that the Named Plaintiffs are entitled to declaratory relief or
23 any other relief whatsoever. 3M denies that the broadly defined putative class described in
24 paragraph 71 of the Complaint satisfies any of the requirements for class certification under Fed.
25 R. Civ. P. 23(b)(2). 3M denies that there are or ever have been any 3M employees who are or
26 were similarly situated to the Named Plaintiffs. 3M denies any and all remaining allegations
27 contained in paragraph 71 of the Complaint.
28

1 72. 3M states that the allegations contained in paragraph 72 of the Complaint purport
2 to set forth legal conclusions to which no responsive pleading is required and denies any
3 allegations that are not conclusions of law.

4 73. 3M states that the allegations contained in paragraph 73 of the Complaint purport
5 to set forth legal conclusions to which no responsive pleading is required and denies any
6 allegations that are not conclusions of law. 3M denies that the “common questions” set forth in
7 paragraph 73 of the Complaint are sufficient under Fed. R. Civ. P. 23(b)(2).

8 74. 3M states that the allegations contained in paragraph 74 of the Complaint purport
9 to set forth legal conclusions to which no responsive pleading is required and denies any
10 allegations that are not conclusions of law. 3M denies that the experiences of the Named
11 Plaintiffs create sufficient typicality for any proposed class.

12 75. 3M states that the allegations contained in paragraph 75 of the Complaint purport
13 to set forth legal conclusions to which no responsive pleading is required and denies any
14 allegations that are not conclusions of law. 3M denies that the Named Plaintiffs are adequate
15 representatives for the broadly defined putative class that the Named Plaintiffs purport to seek.

16 76. 3M states that the allegations contained in paragraph 76 of the Complaint purport
17 to set forth legal conclusions to which no responsive pleading is required and denies any
18 allegations that are not conclusions of law.

19 77. In response to the allegations contained in paragraph 77 of the Complaint, 3M
20 incorporates and restates herein by reference its foregoing responses to paragraphs 1 through 76
21 of the Complaint.

22 78. In response to the allegations contained in paragraph 78 of the Complaint, 3M
23 states that it is without sufficient information to admit or deny the allegations regarding the
24 Named Plaintiffs’ alleged subjective “apprehension,” and, accordingly, denies those allegations.
25 3M denies that the Named Plaintiffs are entitled to declaratory relief or any other relief.

26 79. In response to the allegations contained in paragraph 79 of the Complaint, 3M
27 states that one of the conditions of eligibility for its Job Elimination Plan and its Performance
28 Management Plan is the execution of a release of claims against 3M. 3M admits that it drafted

1 the releases of claims and other materials that accompanied its Job Elimination Plans and
2 Performance Management Severance Pay Plans. 3M admits that Garcia, Norman, and Vold each
3 voluntarily executed a release of claims against 3M, effectively releasing and waiving their
4 purported ADEA claims against 3M. 3M states that Elander and Lynn each also voluntarily
5 executed a release of claims against 3M, effectively releasing and waiving their purported ADEA
6 claims against 3M. 3M denies any and all remaining allegations contained in paragraph 79 of the
7 Complaint.

8 80. In response to the allegations contained in paragraph 80 of the Complaint, 3M
9 admits that the Named Plaintiffs have purported to seek declaratory relief. 3M denies that
10 Plaintiffs are entitled to declaratory relief or any other relief.

11 81. 3M denies the allegations contained in paragraph 81 of the Complaint. To the
12 extent that documents are referenced in paragraph 81 of the Complaint, 3M states that those
13 documents speak for themselves.

14 82. 3M states that the allegations contained in paragraph 82 of the Complaint purport
15 to set forth legal conclusions to which no responsive pleading is required and denies any
16 allegations that are not conclusions of law. To the extent that documents are referenced in
17 paragraph 82 of the Complaint, 3M states that those documents speak for themselves.

18 83. 3M states that the allegations contained in paragraph 83 of the Complaint purport
19 to set forth legal conclusions to which no responsive pleading is required and denies any
20 allegations that are not conclusions of law. To the extent that documents are referenced in
21 paragraph 83 of the Complaint, 3M states that those documents speak for themselves.

22 84. 3M states that the allegations contained in paragraph 84 of the Complaint purport
23 to set forth legal conclusions to which no responsive pleading is required and denies any
24 allegations that are not conclusions of law. To the extent that documents are referenced in
25 paragraph 84 of the Complaint, 3M states that those documents speak for themselves.

26 85. 3M states that the allegations contained in paragraph 85 of the Complaint purport
27 to set forth legal conclusions to which no responsive pleading is required and denies any
28

1 allegations that are not conclusions of law. To the extent that documents are referenced in
2 paragraph 85 of the Complaint, 3M states that those documents speak for themselves.

3 86. 3M states that the allegations contained in paragraph 86 of the Complaint purport
4 to set forth legal conclusions to which no responsive pleading is required and denies any
5 allegations that are not conclusions of law. To the extent that documents are referenced in
6 paragraph 86 of the Complaint, 3M states that those documents speak for themselves.

7 87. 3M states that the allegations contained in paragraph 87 of the Complaint purport
8 to set forth legal conclusions to which no responsive pleading is required and denies any
9 allegations that are not conclusions of law. To the extent that documents are referenced in
10 paragraph 87 of the Complaint, 3M states that those documents speak for themselves.

11 88. 3M states that the allegations contained in paragraph 88 of the Complaint purport
12 to set forth legal conclusions to which no responsive pleading is required and denies any
13 allegations that are not conclusions of law. To the extent that documents are referenced in
14 paragraph 88 of the Complaint, 3M states that those documents speak for themselves. 3M further
15 states that there is no public policy rationale to support a general conclusion that waivers of
16 claims may not be used when employers pay valuable severance benefits to employees.

17 89. In response to the allegations contained in paragraph 89 of the Complaint, 3M
18 admits that Plaintiffs have purported to seek a declaratory judgment. 3M denies that Plaintiffs are
19 entitled to declaratory relief or any other relief. 3M denies the remaining allegations contained in
20 paragraph 89 of the Complaint. To the extent that documents are referenced in paragraph 89 of
21 the Complaint, 3M states that those documents speak for themselves.

22 90. In response to the allegations contained in paragraph 90 of the Complaint, 3M
23 incorporates and restates herein by reference its foregoing responses to paragraphs 1 through 89
24 of the Complaint.

25 91. In response to the allegations contained in paragraph 91 of the Complaint, 3M
26 admits that the Named Plaintiffs have purported to bring this action under 29 U.S.C. § 626(b) and
27 (c) and 29 U.S.C. § 216(b) on behalf of themselves and other allegedly similarly-situated persons.
28 3M denies that there are or ever have been any 3M employees who are or were similarly situated

1 to the Named Plaintiffs. 3M denies the remaining allegations contained in paragraph 91 of the
2 Complaint.

3 92. 3M states that the allegations contained in paragraph 92 of the Complaint purport
4 to set forth legal conclusions to which no responsive pleading is required and denies any
5 allegations that are not conclusions of law.

6 93. 3M states that the allegations contained in paragraph 93 of the Complaint purport
7 to set forth legal conclusions to which no responsive pleading is required and denies any
8 allegations that are not conclusions of law.

9 94. In response to the allegations contained in paragraph 94 of the Complaint, 3M
10 admits, upon information and belief, that each of the Named Plaintiffs and each of the opt-ins
11 whose opt-in forms were attached to the Complaint are 46 years of age or older and have been or
12 are employed in the United States by 3M. 3M denies that any of the Named Plaintiffs or opt-ins
13 were treated adversely by 3M on account of his or her age. To the contrary, the Named Plaintiffs
14 and opt-ins were treated fairly and in a nondiscriminatory manner. 3M states that the remaining
15 allegations contained in paragraph 94 of the Complaint purport to set forth legal conclusions to
16 which no responsive pleading is required and denies any remaining allegations that are not
17 conclusions of law.

18 95. 3M states that the allegations contained in paragraph 95 of the Complaint purport
19 to set forth legal conclusions to which no responsive pleading is required and denies any
20 allegations that are not conclusions of law.

21 96. 3M denies the allegations contained in paragraph 96 of the Complaint.

22 97. 3M denies the allegations contained in paragraph 97 of the Complaint.

23 98. 3M denies the allegations contained in paragraph 98 of the Complaint.

24 99. 3M denies the allegations contained in paragraph 99 of the Complaint.

25 100. In response to the allegations contained in paragraph 100 of the Complaint, 3M
26 incorporates and restates herein by reference its foregoing responses to paragraphs 1 through 99
27 of the Complaint.

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1 101. In response to the allegations contained in paragraph 101 of the Complaint, 3M
2 admits that the Named Plaintiffs have purported to bring this action under 29 U.S.C. § 626(b) and
3 (c) and 29 U.S.C. § 216(b) on behalf of themselves and other allegedly similarly-situated persons.
4 3M denies that there are or ever have been any 3M employees who are or were similarly situated
5 to the Named Plaintiffs. 3M denies the remaining allegations contained in paragraph 101 of the
6 Complaint.

7 102. In response to the allegations contained in paragraph 102 of the Complaint, 3M
8 admits that each of the Named Plaintiffs and each of the opt-ins whose opt-in forms were attached
9 to the Complaint are 46 years of age or older and have been or are employed in the United States
10 by 3M. 3M denies that any of the Named Plaintiffs or opt-ins were treated adversely by 3M on
11 account of his or her age. To the contrary, the Named Plaintiffs and opt-ins were treated fairly
12 and in a nondiscriminatory manner. 3M states that the remaining allegations contained in
13 paragraph 102 of the Complaint purport to set forth legal conclusions to which no responsive
14 pleading is required and denies any remaining allegations that are not conclusions of law.

15 103. 3M denies the allegations contained in paragraph 103 of the Complaint.

16 104. 3M denies the allegations contained in paragraph 104 of the Complaint.

17 105. 3M states that the allegations contained in paragraph 105 of the Complaint purport
18 to set forth legal conclusions to which no responsive pleading is required and denies any
19 allegations that are not conclusions of law.

20 106. 3M states that the allegations contained in paragraph 106 of the Complaint purport
21 to set forth legal conclusions to which no responsive pleading is required and denies any
22 allegations that are not conclusions of law.

23 107. 3M denies the allegations contained in paragraph 107 of the Complaint.

24 108. 3M denies that the Named Plaintiffs and/or putative class members and/or others
25 allegedly similarly-situated are entitled to any of the relief demanded in the Prayer for Relief of
26 the Complaint.

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SEVENTH AFFIRMATIVE DEFENSE

116. Some or all of the claims asserted in the Complaint are barred by the doctrine of estoppel by reasons of the conduct and actions of the Named Plaintiffs, putative class members, opt-ins, and putative opt-ins.

EIGHTH AFFIRMATIVE DEFENSE

117. Some or all of the claims asserted in the Complaint are barred by the doctrine of laches.

NINTH AFFIRMATIVE DEFENSE

118. The claims asserted in the Complaint are barred, in whole or in part, by the failure of the Named Plaintiffs, putative class members, opt-ins, and putative opt-ins to comply with the jurisdictional, procedural, and administrative prerequisites for filing this action or participating in this action, including, without limitation, their failure to timely file charges of discrimination and/or properly assert charge allegations.

TENTH AFFIRMATIVE DEFENSE

119. The claims set forth in the Complaint are barred to the extent that those claims exceed the scope of the administrative charges filed by the Named Plaintiffs.

ELEVENTH AFFIRMATIVE DEFENSE

120. Some of the claims alleged in the Complaint are barred by the applicable statute of limitations.

TWELFTH AFFIRMATIVE DEFENSE

121. Some or all of the claims alleged in the Complaint are not cognizable under the ADEA because they do not allege employment decisions or actions that amount to a material adverse change to a term or condition of employment.

THIRTEENTH AFFIRMATIVE DEFENSE

122. Any employment actions allegedly taken with respect to the Named Plaintiffs, putative class members, and opt-ins, and putative opt-ins were based upon legitimate, nondiscriminatory business reasons unrelated to their age or any other protected classification.

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FOURTEENTH AFFIRMATIVE DEFENSE

123. Any employment actions allegedly taken with respect to the Named Plaintiffs, putative class members, opt-ins, and putative opt-ins, including but not limited to, any termination decisions, were based upon reasonable factors other than their ages within the meaning of the ADEA.

FIFTEENTH AFFIRMATIVE DEFENSE

124. Any adverse impact of an employment decision, including, but not limited to, a termination, affecting the Named Plaintiffs, putative class members, members, opt-ins, and putative opt-ins, which 3M denies, was the unintended and nondiscriminatory consequence of facially neutral policies implemented pursuant to sound business practices and for legitimate business reasons, and which are job-related to the positions at issue and consistent with business necessity.

SIXTEENTH AFFIRMATIVE DEFENSE

125. 3M has a well-publicized internal policy prohibiting discrimination. Any damages that the Named Plaintiffs, putative class members, opt-ins, and putative opt-ins allegedly suffered, which 3M denies, were the direct and proximate result of their failure to timely report alleged discrimination and, therefore, they are estopped and barred from recovery of damages from 3M.

SEVENTEENTH AFFIRMATIVE DEFENSE

126. Upon information and belief, the Named Plaintiffs, putative class members, opt-ins, and putative opt-ins have failed to reasonably mitigate their claimed damages, their entitlement to which is expressly denied.

EIGHTEENTH AFFIRMATIVE DEFENSE

127. The Named Plaintiffs are not entitled to class certification because they are unable to establish each element necessary for a class to be certified under 29 U.S.C. §§ 626(b) and (c), 29 U.S.C. § 276(b) and/or Rule 23 of the Federal Rules of Civil Procedure.

NINETEENTH AFFIRMATIVE DEFENSE

128. 3M expressly denies any discrimination or unlawful motives in its dealings with the Named Plaintiffs and/or putative class members. However, 3M further alleges that, even if an

1 unlawful motive were found to exist, the challenged decisions concerning the Named Plaintiffs’
2 and/or putative class members’ employment still would have been made in the absence of the
3 unlawful motive.

4 **TWENTIETH AFFIRMATIVE DEFENSE**

5 129. As a separate and alternative affirmative defense, 3M alleges that the claims
6 contained in the Complaint as to any particular but unnamed putative class member may be
7 barred by any or all of the affirmative defenses contemplated by Rule 8(c) of the Federal Rules of
8 Civil Procedure. The extent to which such claims contained in the Complaint may be barred by
9 one or more of said affirmative defenses not specifically set out above cannot be determined at
10 this time, and 3M reserves its right to allege such affirmative defenses at an appropriate time.

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Defendant 3M prays for judgment as follows:

- 13 (1) dismissing Plaintiffs’ Complaint with prejudice;
- 14 (2) awarding 3M its costs and disbursements incurred herein; and
- 15 (3) awarding such other and further relief as this Court deems just and proper.

16 DATED: July 2, 2009

DORSEY & WHITNEY LLP

18 By: _____
19 PAUL B. KLAAS
20 Attorneys for Defendant
3M COMPANY

21 **JURY DEMAND**

22 Defendant 3M hereby demands trial by jury.

23 DATED: July 2, 2009

DORSEY & WHITNEY LLP

25 By: _____ /S/
26 PAUL B. KLAAS
27 Attorneys for Defendant
3M COMPANY

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Filer's Attestation of Concurrence by Signatory

I, Martha C. Luemers, counsel for 3M Company, hereby attest that I have obtained the concurrence of Paul B. Klaas in the filing of this document.

/S/
MARTHA C. LUEMERS