IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

JOHN WINGO, Plaintiff, v. 3M COMPANY, Defendant.	Case No. 22-cv-00993-WMW-JFD **ANSWER TO PLAINTIFF'S COMPLAINT**

Pursuant to Rules 8(b) and 12(a), Federal Rules of Civil Procedure, Defendant 3M Company ("3M" or "Defendant") sets forth its objections, answer and defenses to the Complaint of Plaintiff John Wingo ("Plaintiff" or "Wingo") (the "Complaint") as follows:

1. 3M admits that Plaintiff is a black male who was employed by 3M at its Aberdeen, South Dakota plant location until his termination on October 18, 2021. 3M denies the remaining allegations contained in Paragraph No. 1 of the Complaint.

JURISDICTION AND VENUE

2. 3M admits the allegations contained in Paragraph No. 2 of the Complaint.

3. 3M lacks information sufficient to admit or deny the allegations contained in Paragraph No. 3 of the Complaint, and therefore denies the same.

4. 3M admits the allegations contained in Paragraph No. 4 of the Complaint.

5. 3M lacks information regarding Plaintiff's residence, denies that it is liable to Plaintiff, denies that Plaintiff is entitled to damages, but otherwise admits the allegations contained in Paragraph No. 5 of the Complaint.

DISCRIMINATION CHARGE FILED WITH THE EEOC

6. 3M admits that Plaintiff filed a charge of discrimination with the United States Equal Employment Opportunity Commission ("EEOC"), which charge of discrimination speaks for itself, and that the EEOC issued a notice of right to sue in connection with that charge of discrimination. 3M denies the remaining allegations contained in Paragraph No. 6 of the Complaint.

DISCRIMINATION IN VIOLATION OF TITLE VII

7. 3M admits that Wingo worked for 3M at its plant in Aberdeen, South Dakota from 2017 through October 18, 2021. 3M denies the remaining allegations contained in Paragraph No. 7 of the Complaint.

8. 3M admits that some promotions and job openings sought by internal candidates are posted and that candidates must have the proper certifications, training and experience to post for such a position.

9. 3M denies the allegations contained in Paragraph No. 9 of the Complaint.

10. 3M admits that there were positions at the Aberdeen plant that would have paid Wingo higher wages, pay and benefits. 3M denies the remaining allegations contained in Paragraph No. 10 of the Complaint.

11. 3M denies the allegations contained in Paragraph No. 11 of the Complaint.

12. 3M denies the allegations contained in Paragraph No. 12 of the Complaint.

13. 3M denies the allegations contained in Paragraph No. 13 of the Complaint.

14. 3M denies the allegations contained in Paragraph No. 14 of the Complaint.

15. 3M denies the allegations contained in Paragraph No. 15 of the Complaint.

16. 3M lacks information sufficient to admit or deny whether Wingo was working in cell 405 in May 2019, and therefore denies those allegations. 3M lacks information sufficient to admit or deny the remaining allegations contained in Paragraph No. 16 of the Complaint.

17. 3M denies the allegations contained in Paragraph No. 17 of the Complaint.

18. 3M denies the allegations contained in Paragraph No. 18 of the Complaint.

19. 3M admits that Dave Rook was a supervisor. 3M denies the remaining allegations contained in Paragraph No. 19 of the Complaint.

20. 3M lacks information sufficient to admit or deny the allegations contained in Paragraph No. 20 of the Complaint, and therefore denies those allegations.

21. 3M denies the allegations contained in Paragraph No. 21 of the Complaint.

22. 3M denies the allegations contained in Paragraph No. 22 of the Complaint.

23. 3M lacks information sufficient to admit or deny the allegations contained in Paragraph No. 23 of the Complaint, and therefore denies those allegations.

24. 3M lacks information sufficient to admit or deny the allegations contained in Paragraph No. 24 of the Complaint, and therefore denies those allegations.

25. 3M lacks information sufficient to admit or deny the allegations contained in Paragraph No. 25 of the Complaint, and therefore denies those allegations.

26. 3M lacks information sufficient to admit or deny the allegations in Paragraph No. 26 of the Complaint pertaining to Wingo's alleged actions at the county fair, and therefore denies those allegations. 3M denies the remaining allegations contained in Paragraph No. 26 of the Complaint.

27. 3M denies the allegations contained in Paragraph No. 27 of the Complaint.

28. 3M denies the allegations contained in Paragraph No. 28 of the Complaint.

29. 3M denies the allegations contained in Paragraph No. 29 of the Complaint.

30. 3M lacks information sufficient to admit or deny the allegations contained in Paragraph No. 30 of the Complaint, and therefore denies those allegations.

31. 3M lacks information sufficient to admit or deny the allegations contained in Paragraph No. 31 of the Complaint, and therefore denies those allegations.

32. 3M lacks information sufficient to admit or deny the allegations contained in Paragraph No. 32 of the Complaint, and therefore denies those allegations.

33. 3M admits that Kue Moo and Yanai Soe approached Plaintiff at Machine 203 on April 20, 2021, and that Machine 203 is located toward the back of the Aberdeen, South Dakota plant. 3M lacks information sufficient to admit or deny the allegations regarding Plaintiff's state of mind, and therefore denies those allegations. 3M denies the remaining allegations contained in Paragraph No. 33 of the Complaint.

34. 3M denies the allegations contained in Paragraph No. 34 of the Complaint.

35. 3M lacks information sufficient to admit or deny Plaintiff's allegations regarding his contact with the police, and therefore denies those allegations. 3M denies the remaining allegations contained in Paragraph No. 35 of the Complaint.

36. 3M admits that Plaintiff spoke with Kevin Gibson and Dave Rook about the incident involving Kue Moo and Yanai Soe. 3M denies the remaining allegations contained in Paragraph No. 36 of the Complaint.

37. 3M admits that there was a meeting set for Friday, April 23, 2021 at 7:00 a.m. as part of an investigation into Plaintiff's outreach to 3M. 3M denies the remaining allegations contained in Paragraph No. 37 of the Complaint.

38. 3M denies the allegations contained in Paragraph No. 38 of the Complaint.

39. 3M admits that Wingo did not work on April 23, 2021. 3M denies the remaining allegations contained in Paragraph No. 39 of the Complaint.

40. 3M admits that the Friday, April 23, 2021 meeting was rescheduled to Monday, April 26, 2021 and that Plaintiff was informed of the change via text message. 3M denies the remaining allegations contained in Paragraph No. 40 of the Complaint.

41. 3M admits that a meeting was rescheduled for Monday, April 26, 2021 at 7:00 a.m. and that Plaintiff took time off of work. 3M denies the remaining allegations contained in Paragraph No. 41 of the Complaint.

42. 3M admits that the meeting was canceled because of Plaintiff's absence from the workplace. 3M denies the remaining allegations contained in Paragraph No. 42 of the Complaint.

43. 3M admits that a meeting took place on April 28, 2021 and that 3M supervisors stated that they would take timely and appropriate action to address Plaintiff's concerns. 3M denies the remaining allegations contained in Paragraph No. 43 of the Complaint.

44. 3M admits that Kue Moo and Plaintiff were present in a breakroom on April 29, 2021, that Plaintiff messaged Dave Rook after the incident, and that Plaintiff

claimed that Titus Kargbo witnessed the incident. 3M denies the remaining allegations contained in Paragraph No. 44 of the Complaint.

45. 3M denies the allegations contained in Paragraph No. 45 of the Complaint.

46. 3M denies the allegations contained in Paragraph No. 46 of the Complaint.

47. 3M denies the allegations contained in Paragraph No. 47 of the Complaint.

48. 3M denies the allegations contained in Paragraph No. 48 of the Complaint.

49. 3M admits that Plaintiff brought certain alleged events to the attention of his supervisors. 3M denies the remaining allegations contained in Paragraph No. 49 of the Complaint and specifically denies that Plaintiff brought any alleged incident of misconduct of any kind to 3M's attention prior to April of 2021.

50. 3M admits that Plaintiff disobeyed directives to work on his own machine and instead worked with Desiree Holler on her machine and that Plaintiff was written up for disobeying instructions to work on his own machine. 3M denies the remaining allegations contained in Paragraph No. 50 of the Complaint.

51. 3M denies the allegations contained in Paragraph No. 51 of the Complaint.

52. 3M admits the allegations contained in Paragraph No. 52 of the Complaint.

53. 3M admits that Darin Angerhofer spoke with Plaintiff regarding whether the materials produced by Plaintiff's machine were in compliance with the necessary measurements. 3M denies the remaining allegations contained in Paragraph No. 53 of the Complaint.

54. 3M denies the allegations contained in Paragraph No. 54 of the Complaint.

55. 3M admits that Plaintiff met with Dave Rook, Daniel Uhlir and Barbera Hauge regarding his use of his cell phone on the production floor on June 25, 2021. 3M denies the remaining allegations contained in Paragraph No. 55 of the Complaint.

56. 3M admits that the meeting on June 25, 2021 addressed Plaintiff's use of his cell phone on the production floor in violation of 3M's policy. 3M denies the remaining allegations contained in Paragraph No. 56 of the Complaint.

57. 3M denies the allegations contained in Paragraph No. 57 of the Complaint.

58. 3M admits that Dave Rook requested Plaintiff to provide a written statement regarding his cell phone issue. 3M denies the remaining allegations contained in Paragraph No. 58 of the Complaint.

59. 3M admits that Dave Rook made a second request to Plaintiff about the cell phone statement. 3M denies the remaining allegations contained in Paragraph No. 59 of the Complaint.

60. 3M denies the allegations contained in Paragraph No. 60 of the Complaint.

61. 3M admits that Dave Rook told Plaintiff that 3M had received information that Plaintiff had used his cell phone on the production floor. 3M denies the remaining allegations contained in Paragraph No. 61 of the Complaint.

62. 3M denies the allegations contained in Paragraph No. 62 of the Complaint.

63. 3M admits that Plaintiff went on parental leave on August 2, 2021 and that the parental leave was scheduled for ten weeks. 3M denies the remaining allegations contained in Paragraph No. 63 of the Complaint.

64. 3M admits that Plaintiff scheduled his leave to begin on September 1, 2021, that Plaintiff's baby arrived before September 1, 2021, that Plaintiff adjusted his leave dates, and that 3M agreed to the updated dates. 3M denies the remaining allegations contained in Paragraph No. 64 of the Complaint.

65. 3M admits that Dave Rook sent Plaintiff a text message asking about his leave of absence and states that the text message speaks for itself. 3M denies the remaining allegations contained in Paragraph No. 65 of the Complaint.

Disability Discrimination

66. 3M denies the allegations contained in Paragraph No. 66 of the Complaint.

67. 3M admits that the BMF slitter operator can lift up to 100 rolls per night. 3M denies the remaining allegations contained in Paragraph No. 67 of the Complaint.

68. 3M denies the allegations contained in Paragraph No. 68 of the Complaint.

69. 3M denies the allegations contained in Paragraph No. 69 of the Complaint.

70. 3M lacks information sufficient to admit or deny Wingo's allegations about his doctor's appointments, and therefore denies those allegations. 3M denies the remaining allegations contained in Paragraph No. 70 of the Complaint.

71. 3M admits that Plaintiff had a meeting with Dave Rook and Kevin Gibson on June 10, 2021. 3M denies the remaining allegations contained in Paragraph No. 71 of the Complaint.

72. 3M admits that Plaintiff was suspended on June 14, 2021 because he was not at his work station during his shift. 3M denies the remaining allegations contained in Paragraph No. 72 of the Complaint.

73. 3M admits that Plaintiff's doctor completed a work restriction form and submitted that form to 3M. 3M lacks information sufficient to admit or deny Plaintiff's allegations regarding his doctor's visit and therefore denies those allegations. 3M lacks sufficient information to admit or deny the remaining allegations contained in Paragraph No. 73 of the Complaint.

74. 3M denies the allegations contained in Paragraph No. 74 of the Complaint.

75. 3M denies the allegations contained in Paragraph No. 75 of the Complaint.

76. 3M denies the allegations contained in Paragraph No. 76 of the Complaint.

77. 3M denies the allegations contained in Paragraph No. 77 of the Complaint.

78. 3M denies the allegations contained in Paragraph No. 78 of the Complaint.

79. 3M admits that Plaintiff was assigned to work in the HE department. 3M denies the remaining allegations contained in Paragraph No. 79 of the Complaint.

80. 3M admits that Plaintiff spoke to supervisors about working on HE machines. 3M denies the remaining allegations contained in Paragraph No. 80 of the Complaint.

81. 3M admits that Plaintiff refused to work on the HE machines. 3M denies the remaining allegations contained in Paragraph No. 81 of the Complaint.

82. 3M admits that Plaintiff met with HE supervisor Matt Barber. 3M denies the remaining allegations contained in Paragraph No. 82 of the Complaint.

83. 3M admits that Dave Rook sent Plaintiff a text, and states that the text message speaks for itself. 3M admits that Plaintiff communicated with supervisors about

this move. 3M denies the remaining allegations contained in Paragraph No. 83 of the Complaint.

84. 3M admits that Plaintiff texted Dave Rook regarding his restrictions, and states that the text message speaks for itself. 3M denies the remaining allegations contained in Paragraph No. 84 of the Complaint.

85. 3M admits that Plaintiff was sent home because he refused to do work. 3M denies the remaining allegations contained in Paragraph No. 85 of the Complaint.

86. 3M admits that Plaintiff was assigned to work on the VFLEX machine on October 4, October 5 and October 6, 2021, that he refused to work on those machines, and that he was sent home. 3M denies the remaining allegations contained in Paragraph No. 86 of the Complaint.

87. 3M admits the allegations contained in Paragraph No. 87 of the Complaint.

88. 3M denies the allegations contained in Paragraph No. 88 of the Complaint.

89. 3M admits the allegations contained in Paragraph No. 89 of the Complaint.

90. 3M denies the allegations contained in Paragraph No. 90 of the Complaint.

91. 3M denies the allegations contained in Paragraph No. 91 of the Complaint.

92. 3M admits that Plaintiff met with Human Resources regarding work restrictions and/or accommodations on October 7, 2021 and that Human Resources informed Plaintiff that the assignments offered to Plaintiff were within his work restrictions. 3M denies the remaining allegations contained in Paragraph No. 92 of the Complaint.

93. 3M admits that Plaintiff was granted light duty work in the Doboy department on October 7, 2021. 3M denies the remaining allegations contained in Paragraph No. 93 of the Complaint.

94. 3M admits the allegations contained in Paragraph No. 94 of the Complaint.

95. 3M denies the allegations contained in Paragraph No. 95 of the Complaint.

96. 3M admits the allegations contained in Paragraph No. 96 of the Complaint.

97. 3M admits that Plaintiff was terminated on October 18, 2021 and that the Transitional Employment Plan needed to be updated every day. 3M denies the remaining allegations contained in Paragraph No. 97 of the Complaint.

98. 3M denies the allegations contained in Paragraph No. 98 of the Complaint.

99. 3M denies the allegations contained in Paragraph No. 99 of the Complaint.

100. 3M denies the allegations contained in Paragraph No. 100 of the Complaint.

101. 3M denies the allegations contained in Paragraph No. 101 of the Complaint.

102. 3M denies the allegations contained in Paragraph No. 102 of the Complaint.

103. 3M denies the allegations contained in Paragraph No. 103 of the Complaint.

104. 3M denies the allegations contained in Paragraph No. 104 of the Complaint.

COUNT I
DISCRIMINATION IN VIOLATION OF TITLE VII

105. The allegations contained in Paragraph No. 105 of the Complaint do not require a response, except that 3M incorporates its responses to the paragraphs referenced therein.

106. 3M denies the allegations contained in Paragraph No. 106 of the Complaint.

COUNT II
RETALIATION UNDER TITLE VII

107. The allegations contained in Paragraph No. 107 of the Complaint do not require a response, except that 3M incorporates its responses to the paragraphs referenced therein.

108. 3M denies the allegations contained in Paragraph No. 108 of the Complaint.

COUNT III
DISCRIMINATION IN VIOLATION OF STATE LAW
SECTION 20-13-10 – UNFAIR OR DISCRIMINATORY PRACTICES

109. The allegations contained in Paragraph No. 109 of the Complaint do not require a response, except that 3M incorporates its responses to the paragraphs referenced therein.

110. 3M denies the allegations contained in Paragraph No. 110 of the Complaint.

COUNT IV
STATE CLAIM OF RETALIATION AGAINST 3M

111. The allegations contained in Paragraph No. 111 of the Complaint do not require a response, except that 3M incorporates its responses to the paragraphs referenced therein.

112. 3M denies the allegations contained in Paragraph No. 112 of the Complaint.

113. 3M denies the allegations contained in Paragraph No. 113 of the Complaint.

COUNT V
DISABILITY DISCRIMINATION UNDER THE ADA

114. The allegations contained in Paragraph No. 114 of the Complaint do not require a response, except that 3M incorporates its responses to the paragraphs referenced therein.

115. 3M denies the allegations contained in Paragraph No. 115 of the Complaint.

COUNT VI
RETALIATION UNDER THE ADA

116. The allegations contained in Paragraph No. 116 of the Complaint do not require a response, except that 3M incorporates its responses to the paragraphs referenced therein.

117. 3M denies the allegations contained in Paragraph No. 117 of the Complaint.

COUNT VII
STATE CLAIM OF DISABILITY DISCRIMINATION

118. The allegations contained in Paragraph No. 118 of the Complaint do not require a response, except that 3M incorporates its responses to the paragraphs referenced therein.

119. 3M denies the allegations contained in Paragraph No. 119 of the Complaint.

120. 3M denies the allegations contained in Paragraph No. 120 of the Complaint.

COUNT VIII
RETALIATION UNDER STATE LAW

121. The allegations contained in Paragraph No. 121 of the Complaint do not require a response, except that 3M incorporates its responses to the paragraphs referenced therein.

122. 3M denies the allegations contained in Paragraph No. 122 of the Complaint.

123. 3M denies the allegations contained in Paragraph No. 123 of the Complaint.

COUNT IX
DISCLOSURE OF CONFIDENTIAL PROTECTED HEALTH INFORMATION UNDER THE ADA

124. The allegations contained in Paragraph No. 124 of the Complaint do not require a response, except that 3M incorporates its responses to the paragraphs referenced therein.

125. 3M denies the allegations contained in Paragraph No. 125 of the Complaint.

COUNT X
NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

126. The allegations contained in Paragraph No. 126 of the Complaint do not require a response, except that 3M incorporates its responses to the paragraphs referenced therein.

127. 3M denies the allegations contained in Paragraph No. 127 of the Complaint.

COUNT XI
NEGLIGENT SUPERVISION

128. The allegations contained in Paragraph No. 128 of the Complaint do not require a response, except that 3M incorporates its responses to the paragraphs referenced therein.

129. 3M denies the allegations contained in Paragraph No. 129 of the Complaint.

COUNT XII
FAILURE TO PAY WAGES OWED
IN VIOLATION OF S.D.C.L. § 60-11-9

130. The allegations contained in Paragraph No. 130 of the Complaint do not require a response, except that 3M incorporates its responses to the paragraphs referenced therein.

131. 3M denies the allegations contained in Paragraph No. 131 of the Complaint.

The "Wherefore" paragraph of the Complaint entitled "Claim XII" and its subparagraphs 1-7 do not require a response. To the extent this section and its subparts require a response, 3M denies any unlawful actions and denies that Plaintiff is entitled to any of the relief purportedly sought.

AFFIRMATIVE DEFENSES

1. One or more of the counts in the Complaint fails to state a claim upon which relief can be granted.

2. Plaintiff's claims are barred in whole or in part by waiver, estoppel, unclean hands, laches, and/or other equitable doctrines.

3. Plaintiff's claims are barred, in whole or in part, by applicable statutes of limitations.

4. Plaintiff's claims are barred, in whole or in part, for failure to exhaust administrative remedies.

5. Plaintiff's claims are barred, in whole or in part, because he was employed at will and could be terminated with or without cause.

6. Plaintiff's claims are barred, in whole or in part, because Defendant did not owe Plaintiff a duty, or because Defendant did not breach any duty owed to Plaintiff.

7. Plaintiff's claims are barred, in whole or in part, by the business judgment rule.

8. Some or all of the forms of relief sought in the Complaint are barred because Defendant has at all times acted in good faith and with the honest belief that its conduct was in compliance with federal and state civil rights statutes.

9. Plaintiff's claims are barred in whole or in part because any alleged acts or omissions of Defendant that gave rise to Plaintiff's alleged claims were at all times made in accordance with legitimate, non-discriminatory, and non-retaliatory reasons.

10. Plaintiff's claims are barred because his damages were not caused by the Defendant's actions, were the result of his own conduct, and/or were caused by the conduct of others over whom Defendant had no control.

11. Plaintiff's claims are barred, in whole or in part, to the extent Defendant did not have actual or constructive knowledge of the conduct of others over whom Defendant had no control.

12. Plaintiff's claims are barred, in whole or in part, by his failure to mitigate, or reasonably attempt to mitigate, his damages.

13. Plaintiff's claims are barred, in whole or in part, because Defendant engaged in the interactive process and provided accommodations to Plaintiff.Defendant's actions were not undertaken with willfulness, malice, or reckless indifference to Plaintiff's legally protected rights.

14. Defendant gives notice that it is not knowingly waiving any affirmative defense and intends to rely upon such other and further defenses as may become available or apparent during pretrial proceedings of this action and hereby reserves its right to amend its Answer and include all such defenses.

NILAN JOHNSON LEWIS PA

Dated: June 13, 2022

By: *s/ Joseph G. Schmitt*

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