UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

JOHN WINGO, Plaintiff, v. 3M COMPANY, Defendant.	Case No. 22-cv-993 **AMENDED COMPLAINT** **AND DEMAND FOR JURY TRIAL**

Comes now, John Wingo, through his undersigned attorneys, and respectfully alleges the following:

1. Plaintiff John Wingo ("Wingo") is a black male who was employed by Defendant 3M Company ("3M") at their plant location in Aberdeen, South Dakota until he was wrongfully terminated on October 18, 2021 due to his race, disability, and also in retaliation for Wingo reporting discriminatory conduct at the plant. Wingo's termination was in violation of Title VII of the Civil Rights Act of 1964 ("Title VII"), the Americans with Disabilities Act ("ADA"), and related South Dakota state statutes.

JURISDICTION

2. This Court has jurisdiction over this lawsuit under 28 U.S. Code § 1331 because the action arises under Title VII per 42 U.S.C. § 2000 *et seq*., and under 28 U.S. Code § 1332 because the parties are citizens of different states and the amount in controversy is more than $75,000, exclusive of interest and costs.

3. Wingo is a resident and citizen of the state of Colorado.

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4. Defendant 3M is a corporation incorporated under the laws of the State of Delaware with its principal place of business in Maplewood, Minnesota.

5. Venue is proper in accordance with 28 U.S.C. § 1391(b)(1), as 3M resides in this District because its principal place of business is in this state, and it is the sole Defendant.

DISCRIMINATION CHARGE FILED WITH EEOC

6. Defendant, through its agents who worked with and supervised Wingo, acted with intentional discrimination toward Wingo because of his race in violation of Title VII. Wingo timely filed a formal discrimination Complaint with the U.S. Equal Employment Opportunity Commission (the "EEOC"). Wingo received a Notice of Right to Sue dated January 31, 2022 from the EEOC.

DISCRIMINATION IN VIOLATION OF TITLE VII

7. Wingo began working for 3M at their plant in Aberdeen in 2017. He was wrongfully terminated on October 18, 2021.

Failure to Train

8. At the 3M plant, promotions and different job openings are sought by internal candidates by "posting" to another department. In order to "post" to another department, a candidate has to have received the proper certifications, training, and experience.

9. During Wingo's employment 3M failed to promote John Wingo by purposefully thwarting and stymieing his attempts to receive training, which kept Wingo from being eligible to "post" to another department.

10. Posting to another department would have provided Wingo with higher wages, pay, and benefits.

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11. Wingo was passed up on certification by coworkers that started months after.

12. Wingo possessed the qualifications to advance – he was often required to train new workers in addition to them being certified before him.

13. Being fully certified allows one to post for better positions throughout the company. Without being fully certified one is not allowed to leave the department or file a posting to a better position. New hires that Wingo trained became fully certified before himself. This allowed his coworkers promotions while Wingo was being denied the time to receive training which would allow John Wingo full certification.

14. Wingo complained to upper-level management and supervisors multiple times about being passed up for certification. As a result of making the complaints Wingo's training was prolonged even further causing the certification time to become overdue. In retaliation to the complaints John Wingo was harassed and not trained properly.

15. Wingo was repeatedly called racist and derogatory names and terms by coworkers during his employment with 3M.

16. In May 2019, John Wingo was working in cell 405. Two coworkers that he was working with made a comment saying that Wingo was a fast worker and that he moved and looked like a "monkey" while he was working.

17. Wingo then left the work area to go talk to the supervisor about moving to a different work location. The comment was derogatory, was based on Wingo's race, and Wingo did not appreciate the comment that was made.

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18. While reporting the derogatory statement, one of the two coworkers came into the room and demanded Wingo return to work. When Wingo did return to work (with the supervisor), the employee who referred to him as a "monkey" poked Wingo in his chest numerous times.

19. After reporting the actions of the other employee, a more superior supervisor, Dave Rook, wrote up the incident as a "verbal altercation" and made it a "both sides" issue. Rook was at all relevant times the Plant Engineering General Supervisor, and oversaw everyone in the Engineering Department.

20. In November 2020, one of Wingo's coworkers was training him on 203 when a supervisor came by and became upset because Wingo was being trained on 203.

21. Between January 2020 and January 2021, Wingo was passed over by three different coworkers for certification in his department who had been hired into the department after Wingo.

Discriminatory Actions by Employees

22. During Wingo's employment at 3M, discriminatory statements and actions were rampant at the Aberdeen plant.

23. In August 2019, during the Brown County fair in Aberdeen, Wingo was present with other 3M employees during a concert at a venue called Centennial Village.

24. Wingo was there with his younger [redacted] Vaughn Wingo ("Vaughn"). [redacted] were approached by several 3M employees that were making jokes and laughing, acting like they were being hanged holding their hand over their head as if they were a rope around their neck and they were holding it.

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25. [redacted] did not understand what was happening, but they soon realized the 3M employees wanted to make sure that [redacted] noticed that there was a noose hanging over the entrance of the Centennial Village and how it looked for [redacted] to be standing right in front of it. Comments from the 3M employees included statements that they needed to bring those days back due to them being good old days, and another employee asked, "How does it feel to be you?"

26. Wingo took a video of the noose and tried to capture some of the 3M employees on the video. Wingo took the video to Rook to show him what his employees were doing. Rook stated that what they do outside of work does not pertain to what happens at work during working hours. Rook did not want to view the video.

27. Wingo explained to Rook that he did not like the harassment and hazing, he was scared for his safety, and Wingo wanted to make 3M aware of the actions and beliefs of their employees. Rook did not want to hear it.

28. After Wingo's first conversation with Rook, Wingo started to be harassed by employees walking around acting as if they had a noose and they were hanging themselves looking at Wingo like it was a joke.

29. Wingo tried to report the issue again to Dave Rook, telling him about the actions of employees while on the job. There was no further follow up after Wingo briefly met with Rook about the noose incident a second time.

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30. April 17, 2021, Wingo was assaulted physically at his residence by two coworkers (Kue Moo and Yanai Soe). Moo and Soe went to Wingo's residence while he was not present and entered Wingo's house without permission or his knowledge.

31. Upon returning home Wingo was assaulted by the two individuals. The two then sent Wingo text messages threatening him as well as his family.

32. Following the assault Wingo notified the Aberdeen police department, filed a report, and requested charges to be pressed.

33. On April 20, 2021, Wingo was working in his department alongside Desiree Holler on machine 203. Soe and Moo left their work area during shift and approached Wingo at machine 203. Machine 203 is located towards the back of the plant away from security and most supervised areas. During this time, Wingo feared for his life after having just being assaulted by these two individuals.

34. Moo and Soe threatened Wingo, cursed at him, and at least one of the men called Wingo racial slurs. The men wanted to fight. Desiree Holler witnessed this incident.

35. Wingo repeatedly told them to leave him alone and that he was going to notify the police. Wingo did so when he got off work. The police suggested that Wingo tell his supervisors and let them know that the men assaulted Wingo at his residence.

36. Wingo called work and spoke with Kevin Gibson and Dave Rook about the incident and explained to them what happened over the prior weekend. Wingo asked if he could speak with HR immediately because he was in fear for his life.

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37. Instead of taking prompt action when an employee was being physically threatened, Dave Rook notified Wingo that there would be a meeting with HR three days later, on Friday April 23, 2021, at 7:00 am.

38. Wingo expressed concerns with this timeframe and told Dave Rook that he needed to speak with HR as soon as possible because if no action was taken, he and Moo would still be working in the same area in which the verbal threats and aggressive gestures occurred, and then for the next few days, continued.

39. Wingo could not tolerate the continued discrimination and threats, and he took off (Thursday night/ Friday morning April 23, 2021) because he was overwhelmed and terrified that nothing was done about the incident on April 20, 2021.

40. Wingo arrived for the meeting at 6:45 a.m. on the 23rd, and after checking in with Rook, received a text message that the meeting was cancelled because they thought Wingo was not going to show up.

41. The meeting was rescheduled for Monday April 26, 2021, at 7 a.m., and Wingo again took the day off of work out of fear for his own safety.

42. Again, the meeting was cancelled because Wingo was not at work. But Wingo was not at work because he feared for his safety. Which Rook and other supervisors knew. Wingo had to take his own workplace safety into his own hands, miss work, miss getting paid, and use PTO because his supervisors would not promptly help him. On two separate occasions his supervisors took Wingo's preventative measures as reasons to cancel the

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meetings. Meetings that Wingo had requested, and meetings at which Wingo expected to have his safety concerns addressed.

43. A meeting took place on April 28, 2021, where supervisors averred to Wingo that they would deal with the discriminatory treatment and threats.

44. This did not happen. On April 29, 2021, while Wingo was taking a break upstairs, Moo enters the break room around 6:00 a.m., looked at Wingo, and said, "This n--- r is a bitch." Wingo messaged Dave Rook right after the incident to make him aware that harassment and racial slurs were continuing. Wingo told Rook that Titus Kargbo was sitting near him, and Kargbo witnessed the verbal assault.

45. Rook confirmed with Kargbo that Kargbo had heard Moo say these things to Wingo that morning.

46. Soe and Moo continued to physically threaten Wingo and throw racist comments at him.

47. Throughout May and June 2021, Soe and Moo continued to, on a nearly daily basis, repeatedly threaten and call Wingo racial slurs. Upon information and belief, Soe and Moo received no discipline for any of their actions, either before or after the meeting on April 28, 2021.

48. What Wingo does know is that no solution was reached. He continued to experience threats of violence and racist actions on the part of his coworkers.

49. Wingo's supervisors were aware of these incidents. They did not address the issues, instead leaving Wingo to fend for himself.

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50. On June 10, 2021, Wingo was a victim of even more continued harassment. So, in an effort to find his own solution, Wingo had teamed up with Desiree Holler to get both of their work done. Wingo's work was completed first so they could move Wingo away from the constant harassment, then they moved to Holler's machine and completed hers as well. All machines in the department hit their goals for that day. But instead of management providing a solution to the hostile environment, Wingo was written up for not being at his workstation for his entire shift. They did not care about what Moo and Soe were doing to him; they expected Wingo to stand in the spot and take it during his entire shift. Instead of providing a solution, management blamed Wingo for coming up with his own solution that did not impact 3M's productivity at all.

51. Upon information and belief, Moo and Soe were not in their assigned areas that night but were not given any discipline.

52. On June 14, 2021, Wingo was suspended by Rook for a day for not running his assigned machine.

53. On June 16, 2021, the day after Wingo served his suspension, Darren, another supervisor, confronted Wingo about producing bad and unusable material. Wingo asked to see the material and Darren made up numerous excuses to not go see the material. After Darren finally agreed to go look at the material, he and Wingo found that the material was actually not bad. The material was approvable, and the measurements were on target using the calibrated QA approved ruler.

54. On June 23, 2021, Moo threatened Wingo in the bathroom, and Wingo feared for his safety, hoping he can simply use the restroom without being attacked. Moo called

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Wingo racial slurs and threatened to beat him up. He states that he will "catch Wingo lacking" and that it's not about the money which was not refunded for the music equipment that was bought. Wingo proceeded to head to his work area and continued working in fear.

55. On June 25, 2021, John Wingo is called to the office to meet with HR (Dave Rook, Daniel Uhlir, Barbera Hauge). The meeting is to advise Wingo that they are aware of his cell phone use on the production floor.

56. That Wingo is being forced to work around individuals who call him racial slurs, threaten and harass him was not addressed. Instead, his supervisors called him in because Moo reported Wingo having a cell phone.

57. During the meeting, Rook states there is no evidence in support of racial slurs, harassment, and threats.

58. The next day, while Wingo is heading towards the time clock to clock out for work 7:00 a.m. he was met by Rook, and he asked if Wingo had written a statement. Wingo asked what the purpose of the statement was. Rook stated that the statement was about the cell phone incident and told Wingo not to mention the harassment and racial slurs stuff because Rook had already investigated that issue.

59. On July 1, 2021, Rook asks Wingo again if he'd made a statement and tells Wingo that his work ethic is low and that he needs to do better.

60. Wingo has never had trouble with his production before.

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61. Rook tells Wingo he has evidence of use of a cell phone in an area of the plant on June 18, 2021. Wingo did not work in that area on June 18, 2021, so Wingo knows there cannot be evidence of him using a cell phone in an area of the plant where he never was.

62. Instead of dealing with the harassing and threatening conduct, 3M supervisors retaliated against Wingo for bringing these issues to their attention. The supervisors did not fix the racial harassing issues, and instead focused their attention on Wingo, making work even harder for him.

63. Wingo went on parental leave on August 2, 2021, for 10 weeks. He was supposed to be out of work until October 11, 2021.

64. Wingo had put in for leave beginning September 1, 2021, as that was the approximate due date. However, the baby came early, and he had to adjust his leave.

65. While Wingo was still at the hospital with his new baby and his girlfriend, he received text messages from Rook asking about leave that was not supposed to start until September 1, 2021, and if that was still the case, how was Wingo going to cover his last two days of missing work? Even while Wingo and his family were in the hospital, Rook was more concerned about the paperwork than the situation Wingo and his new family found themselves in.

Disability Discrimination

66. In February 2021, Wingo hurt his shoulder at work.

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67. Wingo was doing work lifting rolls in the BMF slitting department. The rolls range from 20-35lbs. On an average night, the BMF slitter operator lifts 60-100 rolls per night, and Wingo injured his shoulder doing these lifts.

68. These lifts and other related procedures are in violation of OSHA standards.

69. Wingo reported his injury to Kevin Gibson and Gibson told Wingo that he would report it and get back to Wingo. Instead of getting back to Wingo, Gibson started complaining about Wingo's output.

70. Wingo followed up several times with Gibson, but nothing was ever done in terms of changing his work requirements, accommodating him, or the like.

71. The shoulder did not get better, so in March 2021, Wingo made a doctor's appointment. Wingo notified Gibson about the doctor's appointment he had scheduled.

72. On June 10, 2021, after Wingo had been working for months with his shoulder injury, he had a meeting with Gibson and Rook where he again told them of his right shoulder being in pain and reiterated to them both how the work was continuing to cause pain and injury to his body. While both supervisors acknowledged Wingo's complaint, nothing was done about accommodating Wingo's work-related injury.

73. On June 14, 2021, Wingo was suspended for a day for "not being at his workstation" during his shift. This was retaliation either for complaining about the discriminatory and threatening treatment by his coworkers, or because of his complaints about his work related injury and none of the supervisors providing any help at all.

74. After the birth of his child, Wingo went to the doctor again and underwent an MRI. After receiving the MRI and before Wingo went back to work, Wingo's doctor

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completed a work restriction form for him and submitted it to 3M.

75. Instead of providing Wingo with an appropriate accommodation, his supervisors did not take his restrictions seriously and instead pushed him to work while he was injured, which resulted in more damage to his shoulder.

76. Instead of keeping Wingo's ADA accommodations and medical information confidential as required, Wingo's supervisors would discuss his injuries and requests for accommodations openly with other employees who were not involved in the supervision or care of Wingo.

77. Supervisors released Wingo's personal medical information on the production floor, the hallways, front entrance, and at the time clock. Each of these locations had a crowd of co-workers who were present and listening. The supervisors told Wingo's coworkers and then told Wingo's coworkers to watch Wingo instead of doing their work.

78. When people were signing in to work, they yelled it out in the hallway while Wingo was being sent home. The employees talked about it on the Production floor in front of coworkers. Wingo was called names and humiliated because coworkers knew how his shoulder was hurt by lifting the BMF Rolls. They only knew about this injury because of the supervisors releasing his information.

79. Because of the disclosure of Wingo's medical information, his fellow employees retaliated against Wingo and discriminated against him, treating him poorly, pushing him, calling him names, and making his work environment hostile.

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80. Upon returning to work in late September 2021, Wingo was put back in the HE department, a department that was beyond the work restrictions that Wingo's doctor had set out for him.

81. Wingo spoke with his supervisor, and the supervisor stated that Rook and Gibson told him to put Wingo on the HE machines instead of doing light duty work as prescribed by his doctor.

82. Wingo refused to work on the machines that he knew were beyond his restrictions. This happened on September 29 and 30, 2021.

83. On September 30, Wingo had a meeting with the Supervisor for the HE department, Matt Barber. At that meeting, Barber told Wingo that he did not know why they wanted Wingo to be in HE when there was a lot of rejects that needed sorting which is considered light duty and would have been an appropriate accommodation for Wingo. It would have relieved him of the pain in his shoulder while working. Barber stated that he could use Wingo for the rejects work but the command from Rook was to send Wingo home if he could not run the machine that was causing further injury to his shoulder.

84. On October 4, 2021, Wingo received a text from Rook that said he would be moved to the VFLEX area in response to Wingo's adjusted accommodations. Wingo told Rook this was unsafe and would be unproductive, as the VFLEX machine is one of 3M's fastest running machines. Wingo's attempts to carry out the task caused major pain in his injured shoulder, and also put others' production in jeopardy because he could not keep up with the machine due to the shoulder injury.

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85. Wingo texted Rook his specific restrictions, which stated: "Able to use right hand repetitively occasionally: 1-33%; Able to grip/grasp/turn with the right hand frequently: 34-66%." The VFLEX machine would require him to repetitively grip/grasp/turn throughout the entirety of his shift, and accordingly being posted at that machine was non-compliant with Wingo's restrictions. Rook knew or should have known that posting Wingo on the VFLEX machine violated his work restrictions, just as Wingo told him.

86. Wingo refused to do work that would injure him and was sent home instead of being permitted to do other light duty work.

87. Wingo was stationed at the same station for October 4, October 5, and October 6. Each day the same scene played out, where Wingo would show up to work, he was told that he had to work on the VFLEX machine, Wingo would say he could not, and Wingo was sent home from work.

88. Wingo was not paid for the days he was sent home.

89. Instead of providing Wingo an accommodation because of his injury, his supervisors pushed him to do dangerous jobs and subject himself to further injury. When Wingo was unable to perform these jobs because it would hurt him further, he was sent home despite their being other, lighter, accommodating work available for him to do instead.

90. Wingo worked hourly for 3M, so if he did not get hours, he did not get paid.

91. Instead of providing Wingo with work that he could perform with his accommodations, 3M Supervisors regularly sent him home, even if they had work he could do that would accommodate his shoulder injury.

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92. Wingo knew there was work that he could have done with his accommodation that would not have caused pain to his shoulder and he could have continued to work.

93. On October 7, 2021, Wingo met with HR about the accommodations. In that meeting and in follow up texts, HR avers that 3M is following Wingo's accommodations and providing him work within his restrictions. As detailed above, that was not the case.

94. On October 7, Wingo was granted light duty work in the Doboy department. He was watched by his supervisor, Gibson, and subjected to harassment from his coworkers because of his accommodations.

95. Part of being on accommodations for 3M was filling out paperwork called a Transitional Employment Plan, or TEP, the purpose of which was to keep 3M informed about his work restrictions and how his current work is impacting his pain or restrictions.

96. This was a form he was required to update every day.

97. Wingo would use work time to update his form, as it was work related paperwork.

98. On October 18, 2021, Wingo was wrongfully terminated. The reason he was given was that he was working on his TEP form during work hours. This is a work form that needed to be updated every day.

99. Wingo was wrongfully terminated, and discriminated against, based on his race, his disability, and in retaliation for making complaints about the discriminatory conduct of his coworkers and his supervisors.

100. Wingo was retaliated against by 3M for having complained of his discriminatory treatment. Wingo was wrongfully terminated from his position at 3M.

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101. Wingo was retaliated against for having complained of the treatment he experienced at the hands of his coworkers and his supervisors because he was a black employee of 3M.

102. Wingo experienced a hostile work environment that is contrary to the Civil Rights Act during his employment with 3M. His supervisors did nothing to help ameliorate the working conditions, and in fact, encouraged the treatment Wingo received. All of this was done in violation of Title VII.

103. Wingo was retaliated against for making claims regarding his need for reasonable accommodation, first by not receiving an accommodation and then by being denied the opportunity to work in the positions where his accommodations would allow him to work. This discriminatory conduct resulted in Wingo's lost hours, lost pay, and ultimately, his lost job.

Failure to Grant COVID Leave

104. On April 22, 2020, Rook approached Wingo with a security guard and refused to allow him access to the plant.

105. Rook informed Wingo that there was a COVID exposure at Wingo's [redacted] work location.

106. Wingo told Rook that Wingo had not been around his [redacted] so there was no exposure with Wingo.

107. Wingo promised Rook that he would be honest about exposures and would take the leave when appropriate.

108. In July of 2020, Wingo was exposed to COVID.

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109. Wingo reported this exposure to Rook.

110. Rook denied Wingo's COVID leave and forced Wingo to use his vacation days to cover the time off.

111. As a direct and proximate result of Defendant's discriminatory and retaliatory treatment of Wingo, he has suffered actual and consequential damages. Defendant's discriminatory practices have caused Wingo injury, including, but not limited to, lost earnings (past and future), lost benefits, emotional pain and suffering, mental anguish, humiliation, embarrassment, loss of enjoyment of life, court costs, litigation expenses (including reasonable attorneys' fees) and other damages as will be proven at trial.

112. Wingo is entitled to equitable relief and damages for Defendant's discriminatory practices as permitted under law.

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COUNT I
DISCRIMINATION IN VIOLATION OF TITLE VII

113. Plaintiff reincorporates by reference paragraphs 1 through 112 and incorporates them herein.

114. Defendant 3M's actions as set forth above constitute discrimination against Plaintiff in violation of Title VII, as amended, 42 U.S.C.§2000e-(a)(1).

COUNT II
RETALIATION UNDER TITLE VII

115. Plaintiff reincorporates by reference paragraphs 1 through 112 and incorporates them herein.

116. Defendant 3M's actions as set forth above constitute retaliation against Plaintiff in violation of Title VII, as amended, 42 U.S.C.§2000e-3(a).

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

117. Plaintiff realleges paragraphs 1 through 112 and incorporates them herein.

118. Defendant's actions as set forth above constitute discrimination against Plaintiff based on his race in violation of the South Dakota Human Rights Act, South Dakota Code § 20-13-22, in that as Plaintiff's employer, 3M, through their agents as detailed above, discharged and accorded adverse or unequal treatment to Plaintiff as an employee of 3M with respect to his training, promotion, upgrading, compensation, employment, and other terms or conditions of his employment. These actions were taken on account of Plaintiff's race.

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COUNT IV
STATE CLAIM OF RETALIATION AGAINST 3M

119. Plaintiff reincorporates by reference paragraphs 1 through 112 and incorporates them herein.

120. Plaintiff was terminated in retaliation for making reports of discriminatory conduct in violation of the South Dakota Human Rights Act.

121. Defendant's actions as set forth above constitute retaliation against Plaintiff in violation of the South Dakota Human Rights Act, South Dakota Code § 20-13-26, in that 3M, by and through its agents as detailed above, did engage in reprisal against Plaintiff by reason of his reporting the discriminatory conduct of his supervisors.

COUNT V
DISABILITY DISCRIMINATION UNDER THE ADA

122. Plaintiff reincorporates by reference paragraphs 1 through 112 and incorporates them herein.

123. Defendant 3M's actions as set forth above constitute a violation of the ADA in violation of 42 U.S.C. §12112.

COUNT VI
RETALIATION UNDER THE ADA

124. Plaintiff reincorporates by reference paragraphs 1 through 112 and incorporates them herein.

125. Defendant 3M's actions as set forth above constitute retaliation against Plaintiff in violation of the ADA, 42 U.S.C. §12203.

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COUNT VII
STATE CLAIM OF DISABILITY DISCRIMINATION

126. Plaintiff reincorporates by reference paragraphs 1 through 112 and incorporates them herein.

127. Defendant discriminated against Plaintiff by failing to make good faith efforts to provide an accommodation for him to continue working.

128. Defendant 3M's actions as set forth above constitute disability discrimination against Plaintiff in violation of the South Dakota Human Relations Act, South Dakota Code §§ 20-13-10 and 20-13-23.7.

CLAIM VIII
RETALIATION UNDER STATE LAW

129. Plaintiff realleges paragraphs 1 through 112 and incorporates them herein.

130. Plaintiff was terminated in retaliation for making reports of discriminatory conduct regarding his disability in violation of the South Dakota Human Relations Act.

131. Defendant's actions as set forth above constitute retaliation against Plaintiff in violation of the South Dakota Human Relations Act, South Dakota Code § 20-13-26, in that 3M, by and through its agents as detailed above, did engage in reprisal against Plaintiff by reason of his reporting the discriminatory conduct of his supervisors in regard to his disability.

COUNT IX
DISCLOSURE OF CONFIDENTIAL PROTECTED HEALTH INFORMATION UNDER THE ADA

132. Plaintiff reincorporates by reference paragraphs 1 through 112 and incorporates them herein.

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133. Defendant 3M's actions as set forth above constitute a violation of the confidentiality requirements of Title 1 against Plaintiff in violation of the ADA, 42 U.S.C. §12203.

COUNT X
NEGLIGENT INFLICTION
OF EMOTIONAL DISTRESS

134. Plaintiff reincorporates by reference paragraphs 1 through 112 and incorporates them herein.

135. Defendant 3M's actions as set forth above constitute negligent infliction of emotional distress under state law.

COUNT XI
INTENTIONAL INFLICTION
OF EMOTIONAL DISTRESS

136. Plaintiff realleges paragraphs 1 through 112 and incorporates them herein.

137. Defendant 3M's actions as set forth above constitute intentional infliction of emotional distress under state law.

COUNT XII
NEGLIGENT SUPERVISION

138. Plaintiff reincorporates by reference paragraphs 1 through 112 and incorporates them herein.

139. Defendant 3M's actions as set forth above constitute negligent supervision of its employees at the Aberdeen plant in violation of state law.

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

140. Plaintiff realleges paragraphs 1 through 112 and incorporates them herein.

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141. As alleged above, Plaintiff was an hourly employee of Defendant and worked hours for which he was not compensated in violation of South Dakota Statute § 60-11-9.

COUNT XIV
INTENTIONAL DISCRIMINATION
IN VIOLATION OF 42 US Code § 1981

142. Plaintiff realleges paragraphs 1 through 112 and incorporates them herein.

143. As alleged above, Plaintiff was harassed and eventually terminated as a result of intentional racial discrimination in violation of 42 U.S.C. §1981.

COUNT XV
CONCEALMENT, AIDING, AND INDUCEMENT
OF DISCRIMINATORY CONDUCT

144. Plaintiff realleges paragraphs 1 through 112 and incorporates them herein.

145. Defendant 3M's actions and lack of action amount to unlawful concealment, unlawful aiding, and inducement of unlawful discriminatory conduct South Dakota Statute § 20-13-26.

Wherefore, Plaintiff respectfully requests that Defendant's actions be declared unlawful and enter judgment in his favor and against Defendant and award:

1. Compensatory damages, including for emotional distress, as the evidence at trial may show;
2. Damages against Defendant including but not limited to those damages allowed by Title VII, the ADA, the South Dakota Human Relations Act, the South Dakota Wage Act, and any other pertinent and applicable statute, rule or regulation;
3. For Plaintiff's damages, including but not limited to, lost wages and benefits.
4. For Plaintiff's costs, disbursements, and expenses.

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5. For Plaintiff's attorney's fees.
6. Pre- and post-judgment interest, costs, expert witness fees and such other relief as the court deems proper; and
7. For such other relief as the court deems just and equitable.

PLAINTIFF DEMANDS A JURY TRIAL ON ALL CLAIMS.

Dated this 12th day of July, 2022.

McCOLLUM CROWLEY P.A.

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