

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

DAVID BARRETT

(b) County of Residence of First Listed Plaintiff \_\_\_\_\_  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

WILLIAM J. MACKE &amp; ASSOC.

4411 NE TILLAMOOK ST., PORTLAND, OR 97213

503-282-0863

**DEFENDANTS**KAISER FOUNDATION HEALTH PLAN OF  
THE NORTHWEST dba KAISER PERMANENTE

County of Residence of First Listed Defendant \_\_\_\_\_

(IN U.S. PLAINTIFF CASES ONLY)

**MULT.**NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF  
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question  
(U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity  
(Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input checked="" type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

**V. ORIGIN** (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
29 USC 626; 42 USC 1981

Brief description of cause:

Employment action for race, disability and age discrimination.

**VII. REQUESTED IN COMPLAINT:**

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$ 350,000

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE \_\_\_\_\_

DOCKET NUMBER \_\_\_\_\_

DATE

12-17-2014

SIGNATURE OF ATTORNEY OF RECORD

/s/ William J. Macke

**FOR OFFICE USE ONLY**

RECEIPT # \_\_\_\_\_

AMOUNT \_\_\_\_\_

APPLYING IFP \_\_\_\_\_

JUDGE \_\_\_\_\_

MAG. JUDGE \_\_\_\_\_

**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**

## Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
- United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.

**Submitted by Attorney for Plaintiffs:**

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**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
PORTLAND DIVISION**

DAVID BARRETT, individually,  
Plaintiff(s).

vs.

KAISER FOUNDATION HEALTH PLAN OF  
THE NORTHWEST dba KAISER  
PERMANENTE,  
Defendant(s).

**Case No.**

**COMPLAINT**

**JURY TRIAL REQUESTED**

**INTRODUCTION**

**1.**

Plaintiff, DAVID BARRETT alleges race discrimination, retaliation for complaining of race discrimination, and violation of state and federal family leave laws against his former

employer KAISER FOUNDATION HEALTH PLAN OF THE NORTHWEST dba KAISER PERMANENTE (hereinafter “Kaiser”).

## **JURISDICTION AND VENUE**

### **2.**

Jurisdiction is proper in the United States District Court District of Oregon because plaintiff is bringing claims pursuant to Title VII of the Civil Rights Act of 1964. Venue in the Portland Division is proper because the events giving rise to this action occurred in Multnomah County and the parties and witnesses are located in Multnomah County.

## **PARTIES**

### **3.**

Plaintiff is a resident of Multnomah County, Oregon.

### **4.**

Defendant is an Oregon nonprofit corporation with its principal place of business in Oakland, California.

## **GENERAL ALLEGATIONS**

### **5.**

Mr. Barrett began working for Kaiser as a courier in June 1989.

### **6.**

In May 2011, as part of his role as shop steward, Mr. Barrett assisted another employee, Duane Johnson, in filing a grievance over discipline issued by Kaiser, alleging, among other things that the employee had been treated differently because of the employee's race.

7.

On November 1, 2012, an Oregon Health Science University (hereinafter "OHSU") employee complained to Kaiser that Mr. Barrett had acted unprofessionally during a specimen pick-up at an OHSU lab.

8.

Mr. Barrett denied the allegations during a December 3, 2012, meeting between Mr. Barrett and his supervisor Thomas Lear and human resources officer Nate Taylor.

9.

In a December 3, 2012 email, Mr. Barrett explained to Mr. Taylor and Mr. Lear that he was doing the splits as a stretching exercise for a previous back injury.

10.

On January 23, 2013, Kaiser disciplined Mr. Barrett with a level four corrective action form for "Comments and/or actions that were inappropriate towards another party creating a hostile environment."

11.

Later on January 23, 2013, Mr. Barrett met with Kaiser attorneys who questioned Mr. Barrett as to whether he believed that Duane Johnson had been treated differently because of his race on Mr. Barrett expressed his belief that Kaiser had treated Mr. Johnson differently.

12.

On January 31, 2013, Kaiser disciplined Mr. Barrett with a level four corrective action form for generalized performance concerns and placed Mr. Barrett on last chance status.

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**13.**

On May 20, 2013, Kaiser reviewed the January 31, 2014 corrective action form and continued Mr. Barrett with a level four corrective action form for generalized performance concerns and placed Mr. Barrett on last chance status.

**14.**

Mr. Barrett took a medical leave of absence from August 16, 2013 to September 10, 2013 for stress related to his employment and back pain related to his previous back injury.

**15.**

On September 19, 2013, Mr. Lear and Mr. Taylor placed Mr. Barrett on administrative leave for alleged violations of his last chance agreement.

**16.**

On September 22, 2013, Mr. Barrett went on medical leave for his prior back injury, to include surgery and last until January 14, 2014.

**17.**

On November 23, 2013, Kaiser informed Mr. Barrett that his 90 days of leave with job protection had expired and they could post and fill his job.

**18.**

On December 13, 2013, Mr. Barrett met with Mr. Lear and Mr. Taylor and signed a resignation agreement.

**19.**

On December 18, 2013, Mr. Barrett rescinded the separation agreement and Kaiser changed Mr. Barrett's employment status to terminated.

20.

On January 3, 2014, Mr. Barrett's doctor released him to return to work.

**FIRST CLAIM FOR RELIEF – Title VII Race Discrimination**

21.

Kaiser, through its supervisors and managers, treated Mr. Barrett differently in the terms and conditions of his employment, as alleged above, because of his race—African American.

22.

Kaiser treated similarly situated non-African American employees more favorably than Mr. Barrett under similar, or more egregious circumstances, resulting in lesser discipline and continued employment for those employees.

23.

As further evidence of Kaiser's discriminatory animus, Mr. Lear referred to Duane Johnson, another African American former Kaiser employee, as "boy", even though Mr. Johnson was much older than Mr. Taylor and Mr. Barrett facilitated a discussion over Mr. Lear's disrespectful behavior toward Mr. Johnson, in Mr. Barrett's role as shop steward.

24.

Kaiser's race discrimination caused Mr. Barrett economic damages in the form of lost wages, lost benefits and lost earning capacity.

25.

Kaiser's race discrimination caused Mr. Barrett non-economic damages in the form of emotional distress, anxiety, loss of sleep and depression.

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**SECOND CLAIM FOR RELIEF – State Disability Discrimination**

**ORS 659A.112**

**26.**

Kaiser discriminated against Mr. Barrett on the basis of a disability by disciplining him for stretching during downtime as described above and failed to engage in the interactive process.

**27.**

Kaiser discharged Mr. Barrett from employment while he was on leave related to a disabling condition without engaging in the interactive process, as described above.

**28.**

Kaiser's disability discrimination caused Mr. Barrett emotional distress in the form of emotional distress, anxiety, loss of sleep and depression.

**29.**

Kaiser's disability discrimination caused Mr. Barrett economic damages in the form of lost wages, lost benefits and lost earning capacity.

**30.**

Kaiser knowingly violated state laws prohibiting disability discrimination and plaintiff reserves the right to amend his complaint to seek punitive damages in the amount of \$1,000,000.

**THIRD CLAIM FOR RELIEF – Age Discrimination (ADEA)**

**31.**

Kaiser discriminated against Mr. Barrett on the basis of his age, treating him differently in the terms and conditions of his employment as opposed to younger employees.



**32.**

Kaiser discriminated against Mr. Barrett, who is 60, and other older employees including Gene Butolph, claiming that they were not following their assigned routes and otherwise holding them to a level that did not apply to younger workers.

**33.**

Kaiser's age discrimination caused Mr. Barrett emotional distress in the form of emotional distress, anxiety, loss of sleep and depression.

**34.**

Kaiser's age discrimination caused Mr. Barrett economic damages in the form of lost wages, lost benefits and lost earning capacity.

**TOTAL DAMAGES CLAIMED**

**35.**

Mr. Barrett claims the following damages for all claims:

- a. \$250,000 in economic damages;
- b. \$100,000 in non-economic damages;
- c. Prejudgment interest; and
- d. Attorney fees and costs in an amount to be determined by the court.

**DEMAND FOR A JURY TRIAL**

**36.**

Plaintiffs demand a jury trial.

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### **PRAYER FOR RELIEF**

**WHEREFORE**, plaintiffs pray for relief as follows:

1. On all claims:
  - a. For economic and noneconomic damages in the amount of \$350,000;
  - b. For prejudgment interest.
2. On all claims, an award of costs and reasonable attorney fees.
3. On all claims, any other relief the courts deems just and equitable to the full extent permitted under controlling law; and
4. For any damages not timely paid, an award of post-judgment interest at the applicable statutory rate.

Dated: 12/17/2014

WILLIAM J. MACKE & ASSOCIATES

/s William J. Macke

William J. Macke, OSB #091793

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Cristen Campbell, OSB #120753

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Of Attorneys for Plaintiffs