

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civil Action No. 01:23-cv-\_\_\_\_-\_\_\_\_-\_\_\_\_

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,

Plaintiff,

v.

EXACT SCIENCES CORPORATION, and  
EXACT SCIENCES LABORATORIES, LLC

Defendants.

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**COMPLAINT**

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**NATURE OF THE ACTION**

This is an action under the Age Discrimination in Employment Act (“ADEA”) against defendants Exact Sciences Corporation and Exact Sciences Laboratories, LLC (together “Defendants” or “Exact Sciences”) to correct unlawful employment practices on the basis of age and to provide appropriate relief to Charging Party, John Larkin (“Larkin” or “Charging Party”), who was adversely affected by Defendant’s actions or practices. As alleged with greater particularity below, the Equal Employment Opportunity Commission (“EEOC” or “Commission”) alleges Exact Sciences refused to hire Mr. Larkin because of his age.

### **JURISDICTION AND VENUE**

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1343 and 1345. This action is authorized and instituted pursuant to Section 7(b) of the ADEA, as amended, 29 U.S.C. § 626(b), which incorporates by reference Sections 16(c) and Section 17 of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. §§ 216(c) and 217.

2. The employment practices alleged to be unlawful were committed within the jurisdiction of the United States District Court for the District of Colorado.

### **PARTIES**

3. Plaintiff EEOC is an agency of the United States of America charged with the administration, interpretation, and enforcement of the ADEA and is expressly authorized to bring this action by Section 7(b) of the ADEA, 29 U.S.C. § 626(b), as amended by Section 2 of Reorganization Plan No. 1 of 1978, 92 Stat. 3781, and by Public Law 98-532 (1984), 98 Stat. 2705.

4. At all relevant times, Defendant Exact Sciences Corporation, a Delaware corporation, has continuously been doing business in the State of Colorado.

5. At all relevant times, Defendant Exact Sciences Corporation has continuously had at least 20 employees.

6. Defendant Exact Sciences Laboratories, LLC is a wholly owned subsidiary of Defendant Exact Sciences Corporation.

7. Defendant Exact Sciences Corporation owns 100% of all outstanding voting securities of Defendant Exact Sciences Laboratories, LLC.

8. At all relevant times, Defendant Exact Sciences Laboratories, LLC, a Delaware LLC, has continuously been doing business in the State of Colorado.

9. At all relevant times, Defendant Exact Sciences Laboratories, LLC has continuously had at least 20 employees.

10. At all relevant times, both Defendants have continuously been employers engaged in an industry affecting commerce under Sections 11(b), (g) and (h) of the ADEA, 29 U.S.C. §§ 630(b), (g) and (h).

11. At all relevant times, the Defendants together comprised and acted as a single employer.

12. At all relevant times, the two Defendants acted in concert and as a single employer in all actions constituting denial of employment to Charging Party Larkin, more specifically alleged below.

13. Exact Sciences describes itself as a molecular diagnostics company. It sells the colon cancer screening test, Cologuard®.

### **STATEMENT OF CLAIMS**

#### **A. Conditions Precedent**

14. On November 28, 2018, more than 30 days prior to the institution of this lawsuit, John Larkin filed a charge of discrimination with the EEOC alleging violation of the ADEA by Exact Sciences.

15. The EEOC provided Defendants with notice of Larkin's Charge of Discrimination.

16. The EEOC investigated Larkin's charge of discrimination.

17. Based on the evidence obtained during the investigation, the EEOC issued a Determination on May 31, 2022 (the "Determination").

18. The Determination found there was reasonable cause to believe that Exact Sciences engaged in unlawful employment practices identified in the determination, including that Exact Sciences denied hire to Larkin based on his age, and that Exact Sciences either knew or showed reckless disregard for whether its conduct was prohibited by the ADEA.

19. The EEOC sent copies of the Determination to Defendants and to Larkin.

20. Prior to institution of this lawsuit, the Commission's representatives attempted to eliminate the unlawful employment practices alleged below and to effect voluntary compliance with the ADEA through informal methods of conciliation, conference and persuasion within the meaning of Section 7(b) of the ADEA, 29 U.S.C. § 626(b).

21. The EEOC was unable to secure from Defendants a conciliation agreement acceptable to the EEOC.

22. On or around June 29, 2022, the EEOC issued to Defendants a Notice of Failure of Conciliation.

23. At all relevant times both Defendants acted in concert and as a single employer for all relevant purposes in responding to Larkin's Charge of Discrimination, communicating with EEOC, and participating in pre-litigation administrative actions under 29 U.S.C. § 626, including that:

- a. both Defendants actually received the Notice of the Charge of Discrimination;
- b. both Defendants, through shared counsel, participated in the EEOC's investigation and in responding to the Charge of Discrimination;
- c. both Defendants actually received the EEOC's Determination;
- d. both Defendants actually received the invitation to Conciliation;

- e. both Defendants had opportunity to participate with the EEOC in conciliation efforts; and,
  - f. both Defendants actually received the Notice of Failure of Conciliation.
24. All conditions precedent to the institution of this lawsuit have been met.

**B. Charging Party Larkin – Application for Employment with Exact Sciences**

25. In or around May 2018, Larkin applied for employment with Exact Sciences.
26. In May 2018 Larkin was 49 years of age.
27. The resume Larkin submitted to Exact Sciences showed that he had graduated with a Bachelor’s Degree in 1992, 26 years earlier.

28. Exact Sciences knew or should have known Larkin was over 40 years old in May 2018.

29. At the time of his applications to Exact Sciences in May 2018, Larkin had multiple years’ experience both in medical sales and also in medical sales management.

30. Specifically, as of May 2018, the resume Larkin submitted to Exact Sciences showed he had worked for over five years (from 2006 to 2011) as a Vaccine Sales Specialist and then over seven years (from 2011 to 2018) as a Division Sales Manager with the same vaccine manufacturer.

**C. Application for Area Manager Position**

31. In May 2018, when Larkin applied for positions at Exact Sciences, one of the positions he applied for was Area Manager.

32. The Area Manager position supervised other sales employees, including employees in Professional Medical Sales Representative (“PMR”) positions.

33. Prior to July 10, 2018, Exact Sciences communicated to Larkin that he was not hired for the Area Manager position.

34. Prior to July 10, 2018, Exact Sciences communicated to Larkin that among the reasons he was not selected for the Area Manager position was because he lacked experience specific to medical device sales and specific to Defendant's product(s).

**D. Application for Professional Medical Sales Representative Position**

35. In or around May 2018, Larkin also applied to Exact Sciences for the position of Professional Medical Sales Representative ("PMR") for the "Denver West" territory ("the PMR Position").

36. The job description Exact Sciences posted for the PMR Position described "Minimum Requirements" including, in part, "Bachelor's Degree or equivalent education level" and "1 year of sales experience in a customer-facing role with a preference for business-to-business sales experience."

37. The job description also described "Desired Characteristics" including "Experience in a sales role where follow up (not just one-time contact) was necessary to close" and "Background in commissioned, tangible product sales."

38. Based on his resume and qualifications, Mr. Larkin was qualified for the PMR Position.

39. Exact Sciences selected Mr. Larkin for an initial interview for the PMR Position.

40. On or around July 10, 2018, Larkin completed an interview for the PMR Position with a recruiting consultant, Dasha Emelianova ("Emelianova").

41. Ms. Emelianova was employed by Novo Group, Inc. ("Novo").

42. Exact Sciences contracted Novo Group, Inc. to provide recruiting services, including to receive and review applications for the PMR Position to which Larkin applied.

43. Emelianova acted as Exact Sciences' agent in communicating with Larkin regarding the PMR position.

44. As Exact Sciences' agent, Emelianova acted within the actual scope of her authority when interviewing Larkin.

45. As Exact Sciences' agent, Emelianova acted within the apparent scope of her authority when interviewing Larkin.

46. Emelianova created written notes of her July 10, 2018 interview with Larkin.

47. Emelianova's written notes of the July 10, 2018 interview with Larkin are dated July 20, 2018.

48. Emelianova's interview notes were prepared on a form with a field to be completed stating the "Reason he [Larkin] was declined."

49. Emelianova completed the "Reason he [Larkin] was declined" field by indicating "Reject – Phone Interview; Salary Requirements."

50. Emelianova's written notes reflect that she asked Larkin about "salary expectations" during the July 10, 2018 interview.

51. Emelianova's interview notes report that Larkin responded regarding "salary expectations" by indicating he had earned approximately \$120,000 per year total in his prior role, including approximately \$100,000 in base salary and approximately \$20,000 in "bonus."

52. During the July 10, 2018 interview, Larkin indicated his willingness to accept the then-expected starting pay for the PMR position, totaling \$110,000.

53. Emelianova's interview notes state that Larkin "Wasn't chosen for area manager," and "wants to get some experience as a rep and then translate that into a leadership role with [Exact Sciences]."

54. Emelianova's interview notes describe Larkin as "Over qualified" and also "not interested in PMR but in [Area Manager] and just trying to get his foot in the door."

55. No later than approximately July 20, 2018, Emelianova decided she would not recommend Larkin to Exact Sciences for further consideration for the PMR Position.

56. On information and belief, during May–July 2018, Emelianova only forwarded to Exact Sciences the applicant information of candidates she was recommending for the PMR Position.

57. On information and belief, during May–July 2018, Emelianova eliminated from consideration applicants for the PMR Position whom she did not recommend.

58. On information and belief, Emelianova eliminated Larkin from further consideration for the PMR Position.

59. When Emelianova decided not to recommend Larkin for further consideration for the PMR Position, she acted within the actual scope of her authority as Defendants' agent.

60. When Emelianova decided not to recommend Larkin for further consideration for the PMR Position, she acted within the apparent scope of her authority as Defendants' agent.

61. When Emelianova eliminated Larkin from further consideration for the PMR Position, she acted within the actual scope of her authority as Defendants' agent.

62. When Emelianova eliminated Larkin from further consideration for the PMR Position, she acted within the apparent scope of her authority as Defendants' agent.



63. Emelianova's actions and decisions eliminated Larkin from further consideration for the PMR Position.

64. Beginning on or around July 16, 2018, Larkin sent email to Emelianova inquiring about the status of the PMR Position.

65. On or around July 23, 2018, Emelianova responded to Larkin by email, telling him Exact Sciences was pursuing other candidates.

66. On or around July 24, 2018, Larkin emailed Emelianova and stated that he was "very disappointed" and asked for feedback.

67. On or around July 25, 2018, Emelianova emailed Larkin, stating, in part that "the manager just felt [Larkin was] over qualified for the role" and that Exact Sciences was "looking for someone more junior that can be trained in the product and stay with the company for years to come."

68. Despite Larkin being qualified for the PMR Position, Exact Sciences rejected and did not hire Larkin for the PMR Position.

69. After Exact Sciences rejected Larkin for the PMR Position, the position remained open.

70. After Exact Sciences rejected Larkin for the PMR Position, Exact Sciences continued to seek applicants with Larkin's qualifications.

#### **E. Defendant's Hiring of Another Candidate**

71. In or around August 2018, Exact Sciences hired another candidate, Melissa Walby, then known as Melissa Liotti ("Liotti"), for the PMR position.

72. At the time Exact Sciences hired her, Liotti was 41 years old, eight years younger than Larkin who was 49.

73. Based on Ms. Liotti's resume and application, Ms. Liotti had fewer years of medical sales experience than Larkin.

74. Based on Ms. Liotti's resume and application, she was less qualified for the PMR Position than Larkin.

75. Based on Ms. Liotti's resume and application, however, she also had multiple years more experience than Exact Sciences listed as the "minimum" qualifications for the PMR position in its posted job description.

76. Exact Sciences did not reject Liotti's application on the basis that she was "over qualified."

77. On information and belief, Exact Sciences paid Liotti more in her first year in the PMR Position than the amount Emelianova's interview notes had reported as disqualifying for Larkin.

78. Specifically, in her first year in the PMR Position, Exact Sciences paid Liotti approximately \$127,000 total, including \$87,000 in base salary, plus \$40,000 in bonuses.

### **CLAIM FOR RELIEF**

#### **Age Discrimination in Hiring (29 U.S.C. § 623(a))**

79. The EEOC reasserts and incorporates by reference all of the foregoing allegations.

80. At all relevant times, Larkin was an individual age 40 or older.

81. At all relevant times, Larkin was qualified and able to perform the essential functions of the PMR Position.

82. Defendants took adverse action against Larkin by refusing to hire him to the PMR Position.

83. Defendants refused to hire Larkin because of his age.

84. Defendants denied Larkin employment opportunities, specifically including hire to the PMR Position, because of his age, in violation of Section 4 of the ADEA, 29 U.S.C. § 623(a).

85. The effect of the practices complained of in the foregoing paragraphs has been to deprive Larkin of equal employment opportunities and otherwise adversely affect his status as an applicant for employment because of his age.

86. At all relevant times, Defendants knew or should have known that denying hire to a job applicant age 40 or older because of his or her age is unlawful under the ADEA.

87. The unlawful employment practices complained of above were willful within the meaning of Section 7(b) of the ADEA, 29 U.S.C. § 626(b).

### **PRAYER FOR RELIEF**

*WHEREFORE*, the Commission respectfully requests that this Court:

A. Grant a permanent injunction enjoining Defendants, their officers, successors, agents, servants, employees, attorneys, and all persons in active concert or participation with them, from engaging in any employment practice which discriminate on the basis of age, including denying employment on the basis of age.

B. Order Defendants to institute and carry out policies, practices, and programs which provide equal employment opportunities for individuals 40 years of age and older, and which eradicate the effects of its past and present unlawful age discrimination.

C. Order Defendants to provide training specific to the requirements of the ADEA for their managers, supervisors, non-supervisory employees, and hiring or recruiting contractors, and all employees or outside contractors involved in hiring and/or recruiting.

D. Order Defendants to make whole Mr. Larkin by providing the affirmative relief necessary to eradicate the effects of its unlawful practices, including but not limited to providing appropriate back pay, an equal amount of liquidated damages, lost wages, and lost benefits with prejudgment interest, in amounts to be determined at trial.

E. Order Defendants to make whole Mr. Larkin by providing compensation for all pecuniary losses resulting from the unlawful employment practices described in the paragraphs above, in amounts to be determined at trial.

F. Order Defendants to make whole Mr. Larkin by providing affirmative relief necessary to eradicate the effects of the unlawful practices described above, by providing the affirmative relief necessary to eradicate the effects of its unlawful practices, including but not limited to, reinstatement or front pay in lieu of reinstatement.

G. Grant such further relief as this Court deems necessary and proper in the public interest.

H. Award the EEOC its costs of this action.

RESPECTFULLY SUBMITTED this 31<sup>st</sup> day of March, 2023.

Gwendolyn Reams  
Acting General Counsel

Christopher Lage  
Deputy General Counsel

Mary Jo O'Neill  
Regional Attorney  
Phoenix District Office

Rita Byrnes Kittle  
Assistant Regional Attorney  
Denver Field Office

*s/*

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Nathan D. Foster  
Trial Attorney  
EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION  
Denver Field Office  
950 17<sup>th</sup> Street, Suite 300  
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**PLEASE NOTE:** For purposes of service upon the EEOC, it is sufficient that pleadings, notices, and court documents be served upon the Trial Attorneys. Duplicate service is not required on the Acting General Counsel and Deputy General Counsel in Washington, D.C.

AO 440 (Rev. 06/12) Summons in a Civil Action

**UNITED STATES DISTRICT COURT**

for the

\_\_\_\_\_ District of \_\_\_\_\_

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\_\_\_\_\_  
*Plaintiff(s)*

v.

Civil Action No.

\_\_\_\_\_  
*Defendant(s)*

**SUMMONS IN A CIVIL ACTION**

To: *(Defendant's name and address)*

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

*CLERK OF COURT*

Date: \_\_\_\_\_

\_\_\_\_\_  
*Signature of Clerk or Deputy Clerk*

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_ .

I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_ , who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the summons unexecuted because \_\_\_\_\_ ; or

Other *(specify)*: \_\_\_\_\_ .

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

**UNITED STATES DISTRICT COURT**

for the

\_\_\_\_\_ District of \_\_\_\_\_

<p style="text-align: center;"><i>Plaintiff(s)</i></p> <p style="text-align: center;">v.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>Civil Action No.</p>
<p style="text-align: center;"><i>Defendant(s)</i></p>		

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If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

*CLERK OF COURT*

Date: \_\_\_\_\_

\_\_\_\_\_  
*Signature of Clerk or Deputy Clerk*



Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_ .

I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_ , who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the summons unexecuted because \_\_\_\_\_ ; or

Other *(specify)*: \_\_\_\_\_ .

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

JS 44 (Rev. 10/20) District of Colorado

# 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**

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

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

**(c)** Attorneys (Firm Name, Address, and Telephone Number)  
Nathan Foster - 950 17th Street Ste 300, Denver CO 80202  
Phone: 720-779-3634

**DEFENDANTS**

EXACT SCIENCES CORPORATION and  
EXACT SCIENCES LABORATORIES, LLC

County of Residence of First Listed Defendant Dane County, WI  
(IN U.S. PLAINTIFF CASES ONLY)

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

Attorneys (If Known)  
Katelynn M. Williams Phone 608.258.4286  
Foley & Lardner LLP  
150 East Gilman Street, Suite 5000, Madison WI 53703-1482

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

- 1 U.S. Government Plaintiff  
 2 U.S. Government Defendant  
 3 Federal Question (U.S. Government Not a Party)  
 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)

- |   |                            |                            |   |                            |                            |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
|   | <b>PTF</b>                 | <b>DEF</b>                 |   | <b>PTF</b>                 | <b>DEF</b>                 |
| 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)

Click here for: [Nature of Suit Code Descriptions.](#)

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	<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>LABOR</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"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 <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"/> 376 Qui Tam (31 USC 3729(a)) <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 (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <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 - Transfer  
 8 Multidistrict Litigation - Direct File

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
**29 U.S.C § 623(a) & 29 U.S.C. § 626(b)**  AP Docket  
 Brief description of cause: Employment practice which discriminated on the basis of age.

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. **DEMAND \$** \_\_\_\_\_ **JURY DEMAND:**  Yes  No

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

(See instructions): JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

DATE \_\_\_\_\_ SIGNATURE OF ATTORNEY OF RECORD \_\_\_\_\_

**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 there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven 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.  
 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 – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.  
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.  
**PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- 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.