

perceived disability. She was cleared to work by her physician(s) and is qualified to perform the essential functions of her specific job with or without an accommodation. Plaintiff never had a work incident related to her actual, recorded, or perceived disability that would give Kaiser Permanente a reasonable belief that Plaintiff was unable to perform the essential functions of her job, or that Plaintiff posed a direct safety threat to others because of her medical conditions.

3. Pursuant to a company-wide pattern and practice, Kaiser Permanente singled out Plaintiff because of her actual, recorded, or perceived disability, and demanded that Plaintiff disclose her medical condition to it. Plaintiff informed Kaiser Permanente that she suffered from anxiety and depression in the Fall of 2018 and again in May 2019.

4. Once Kaiser Permanente learned of her diagnosis it singled out the Plaintiff to take what it termed as a “competency test” for the job she already occupied.

5. In March 2019, the Plaintiff requested a reasonable accommodation regarding taking the “competency test”, which was denied. The specific accommodation was a postponement until she was mentally stable to sit for the test. Plaintiff’s request was denied and she and others were told that they had failed the test, even though they did not receive their test scores.

6. Kaiser Permanente tested the Plaintiff again in August 2019. Again, she was not given her score; however, she was told that she had failed. Prior to taking the test [July 24, 2019], the Plaintiff had again requested a postponement until she was mentally stable enough to sit for it. As before, this request was denied outright.

7 Kaiser Permanente categorically refused to accommodate the Plaintiff's request that she be allowed a postponement to take the test due to mental instability.

8 Kaiser Permanente never followed up with Plaintiff regarding the proposed request, never offered the Plaintiff any accommodations whatsoever, and completely failed to engage in an interactive process regarding what accommodations could be provided to Plaintiff.

I. PARTIES

9. Yarbough is an individual who resides in College Park, Georgia.

10. Kaiser Permanente is a foreign corporation doing business in the Northern District of Georgia. Kaiser Permanente's headquarters are located at 3495 Piedmont Road NE, Atlanta, Georgia.

11. During all relevant times, Yarbough was an employee of Kaiser Permanente within the meaning of the ADA. Kaiser Permanente was Yarbough's employer within the meaning of the ADA.

II. JURISDICTION AND VENUE

12. This action arises under the ADA 42 U.S.C § 12101 et seq.

13. Venue is proper under 28 U.S.C. § 1391 because a substantial part of the events giving rise to this action occurred in the Northern District of Georgia.

III. FACTUAL ALLEGATIONS

14. Yarbough began working for Kaiser Permanente on or about October 4, 2010 as a Customer Service Coordinator, in Atlanta, Georgia. Prior to her termination she was a Patient Care Associate at Kaiser Permanente's Cascade, Georgia office.

15. Yarbough has been diagnosed with anxiety and depression and she disclosed her medical condition to Kaiser Permanente in the Fall of 2018.

16. Yarbough has never had a work incident related to her anxiety and depression, and her conditions are controlled through medication and therapy.

17. In 2019, the Defendant instituted what it called "competency test" for its employees. These tests were given to employees even if they were already occupying and performing satisfactorily in their current positions.

18. In March 2019, the Plaintiff requested a reasonable accommodation regarding taking the "competency test", which was denied. The specific accommodation was a postponement until she was mentally stable to sit for the test.

Plaintiff's request was denied and she and others were told that they had failed the test, even though they did not receive their test scores.

19. Kaiser Permanente tested the Plaintiff again in August 2019. Again, she was not given her score; however, she was told that she had failed. Prior to taking the test [July 24, 2019], the Plaintiff had again requested a postponement until she was mentally stable enough to sit for it. As before, this request was denied outright.

20. Kaiser Permanente categorically refused to accommodate the Plaintiff's request that she be allowed a postponement to take the test due to mental instability.

21. Kaiser Permanente never followed up with Plaintiff regarding the proposed request, never offered the Plaintiff any accommodations whatsoever, and completely failed to engage in an interactive process regarding what accommodations could be provided to Plaintiff.

22. On November 8, 2019, the Plaintiff was terminated because she, "no longer met the job requirements and was not successful passing the second attempt of the competency test."

23. Plaintiff timely filed a Charge of Discrimination with the Equal Employment Opportunity Commission ("EEOC"), on or around April 22, 2020, alleging violations of the ADA.

24. The EEOC issued Plaintiff a right to sue on August 5, 2020.

IV. CAUSES OF ACTION

COUNT I

**VIOLATIONS OF THE AMERICANS WITH DISABILITIES ACT,
AS AMENDED (DISABILITY DISCRIMINATION)**

25. Plaintiff is a qualified individual with an actual, recorded, and/or perceived disability under the ADA.

26. Section 12112(a) of the ADA prohibits employers from discriminat[ing] against a qualified individual on the basis of disability in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.

27. Kaiser Permanente discriminated against Plaintiff on the basis of disability in regard to discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.

28. Because Kaiser Permanente violated 42 U.S.C. § 12112, Plaintiff has suffered and will continue to suffer loss of income, emotional distress, and other damages in an amount in excess of \$75,000. Plaintiff is also entitled to attorneys' fees and costs incurred in connection with her claims.

29. Kaiser Permanente committed the above-alleged facts with reckless or deliberate disregard for the rights and safety of Plaintiff. As a result, Plaintiff is entitled to punitive damages.

COUNT II

**VIOLATIONS OF THE AMERICANS WITH DISABILITIES ACT, AS
AMENDED
(UNLAWFUL MEDICAL REQUESTS)**

30. Plaintiff is a qualified individual with an actual, recorded, and/or perceived disability under the ADA.

31. Section 12112(d)(4)(A) of the ADA provides: A covered entity shall not require a medical examination and shall not make inquiries of an employee as to whether such employee is an individual with a disability or as to the nature or severity of the disability, unless such examination or inquiry is shown to be job related and consistent with business necessity.

32. Though it was neither job-related nor consistent with any business necessity, Kaiser Permanente inquired as to whether Plaintiff is an individual with a disability and as to the nature and severity of the disability.

33. Because Kaiser Permanente violated 42 U.S.C. § 12112(d)(4)(A), Plaintiff has suffered and will continue to suffer loss of income, emotional distress, and other damages in an amount in excess of \$75,000. Plaintiff is also entitled to

attorneys' fees and costs incurred in connection with this claim.

34. Kaiser Permanente committed the above-alleged acts with reckless or deliberate disregard for the rights of Plaintiff. As a result, Plaintiff is entitled to punitive damages.

COUNT III

VIOLATIONS OF THE AMERICANS WITH DISABILITIES ACT, AS AMENDED (FAILURE TO ACCOMMODATE)

35. Plaintiff is a qualified individual with an actual, recorded, and/or perceived disability under the ADA.

36. Section 12112(a) of the ADA prohibits discrimination against individuals with a qualified disability, and 42 U.S.C. § 122112(b)(5)(A) includes the following in the definition of "discrimination": [N]ot making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such covered entity[.]

37. To the extent Plaintiff required accommodations, they were reasonable and Kaiser Permanente did not provide them.

38. Because Kaiser Permanente violated 42 U.S.C. § 12112(a), Plaintiff has suffered and will continue to suffer loss of income, emotional distress, and other damages in an amount in excess of \$75,000. Plaintiff is also entitled to attorneys' fees and costs incurred in connection with her claims.

39. Kaiser Permanente committed the above-alleged acts with reckless or deliberate disregard for the rights and safety of Plaintiff. As a result, Plaintiff is entitled to punitive damages.

V. PRAYER FOR RELIEF

WHEREFORE, Yarbough prays for judgment against Kaiser Permanente as follows:

- a) That the practices of Kaiser Permanente complained of herein be determined and adjudged to constitute violations of the ADA;
- b) An injunction against Kaiser Permanente and its directors, officers, owners, agents, successors, employees and representatives, and any and all persons acting in concert with them, from engaging in each of the unlawful practices, policies, customs and usages set forth herein;
- c) For an award of damages arising from loss of past and future income, and other damages, all in an amount in excess of \$75,000;

- d) For an award of damages for mental anguish and emotional distress in an amount in excess of \$75,000;
- e) For Plaintiff's costs, disbursements and attorneys' fees pursuant to law;
- f) For Pre-judgment interest, as provided by law;
- g) For all relief available under the ADA, including punitive damages and reinstatement;
- h) For such other and further relief available by statute; and
- i) For such other and further relief as the Court deems just and equitable.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff demands a trial by jury.

Respectfully submitted,

/s/Roderick T. Cooks

Roderick T. Cooks (*pro hac vice forthcoming*)

Lee D. Winston (*pro hac vice forthcoming*)

Attorneys for the Plaintiff

OF COUNSEL:

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PLAINTIFF'S ADDRESS:

Anteaus N. Yarbough
c/o Winston Cooks, LLC
505 20th Street North
Suite 815
Birmingham, AL 35203

DEFENDANT'S ADDRESS:

Kaiser Permanente Insurance Company
CORPORATION SERVICE COMPANY
40 Technology Parkway South
Suite 300
Norcross, GA 30092

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

Anteaus N. Yarbough

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

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

Winston Cooks, LLC, 505 20th Street North, Suite 815, Birmingham, AL 35203, (205) 482-5174

DEFENDANTS

Kaiser Permanente Georgia Region

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

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, 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)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, 1 1, 2 2, 3 3, 4 4, 5 5, 6 6

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

Click here for: Nature of Suit Code Descriptions.

Table with columns: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Personal Injury, Property Damage, Labor, etc.

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, 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): The Americans with Disabilities Act Amendments Act of 2008. Brief description of cause: Termination because of disability

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: [X] Yes [] No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE Nov 3, 2020 SIGNATURE OF ATTORNEY OF RECORD /s/Roderick T. Cooks

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.

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [‘Singled Out’: Lawsuit Claims Kaiser Permanente Denied ‘Competency Test’ Accommodation for Ex-Employee with Disability](#)
