

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

JAMES WHITE, Individually and for Others
Similarly Situated,

v.

IMAGE STREAM MEDICAL, INC.,

Case No.

Collective Action

Jury Trial Demanded

ORIGINAL COMPLAINT

SUMMARY

1. Until recently, Image Stream Medical, Inc. (Image Stream) did not pay overtime to its Field Service Engineers.

2. Instead, Image Stream paid these workers a set amount each week, with no overtime compensation for hours worked in excess of 40 in a workweek.

3. From November 2016 until August 2018, James White was one of Image Stream's Field Service Engineers.

4. For most of his employment, White worked far more than 40 hours a week without receiving overtime pay.

5. Although Image Stream recently began paying its Field Service Engineers overtime, it did not offer them anything for the thousands of hours of overtime they had worked in the past.

6. White brings this collective action to recover unpaid overtime and other damages.

JURISDICTION AND VENUE

7. This Court has original subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and 29 U.S.C. § 216(b).

8. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because Image Stream's headquarters is in this District.

THE PARTIES

9. White worked for Image Stream as a Field Service Engineer from November 2016 to August 2018.

10. His written consent is attached as Exhibit A.

11. Image Stream Chemical Corporation is a medical equipment company.¹

12. Image Stream is headquartered in Littleton, Massachusetts.²

13. **Image Stream** may be served with process by serving its registered agent and President Eddie F. Mitchell, One Monarch Drive, Littleton, Massachusetts 01460.

FLSA COVERAGE

14. At all relevant times, Image Stream was an employer within the meaning of the Section 3(d) of the Fair Labor Standards Act (FLSA). 29 U.S.C. § 203(d).

15. Image Stream assigned White and its other Field Service Engineers work, reviewed their performance, withheld taxes from their wages, and otherwise treated them as employees.

16. At all relevant times, Image Stream was part of an enterprise within the meaning of Section 3(r) of the FLSA. 29 U.S.C. § 203(r).

17. At all relevant times, Image Stream was part of an enterprise engaged in commerce or in the production of goods for commerce within the meaning of Section 3(s)(1) of the FLSA, 29 U.S.C. § 203(s)(1), because they had employees engaged in commerce or in the production of goods for commerce, or employees handling, selling, or otherwise working on goods or materials – such as cell phones, computers, walkie-talkies, hardhats, and hand tools - that have been moved in or produced for commerce.

¹ <https://www.imagestreammedical.com/about-us/about-us-overview/>

² <https://www.imagestreammedical.com/about-us/contact-us/>

18. At all relevant times, Image Stream's annual gross volume of sales made or business done has exceeded \$5,000,000 per year.

19. At all relevant times, White and the other Field Service Engineers were engaged in commerce or in the production of goods for commerce.

THE FACTS

20. Image Stream bills itself as "a leader in clinical visual collaboration solutions."

21. It sells equipment and solutions that allow "real-time sharing of procedural imagery, applications, and in-room frame of reference to create a context-rich, immersive experience."

22. Image Stream says its "system is intended to empower surgical and care teams to quickly and securely connect to clinical specialists, technicians, trainers, or manufacturer's representatives from across the organization or around the world, and at any time – virtually."

23. Image Stream is a multi-million-dollar corporation.

24. Over the past 3 years, Image Stream has employed dozens of workers, known as Field Service Engineers.

25. Field Services Engineers' primary job duty is to inspect, service, repair, and provide technical support for Image Stream equipment.

26. Image Stream does business across the United States, from Massachusetts to California.

27. White was a Field Service Engineer employed by Image Stream.

28. White worked for Image Stream in Texas, Arkansas, Louisiana, and New Mexico.

29. Image Stream hired White around November 2016.

30. White worked for Image Stream until August 2018.

31. Until October 2017, Image Stream did not pay White overtime.

32. Instead, Image Stream paid White a flat “salary” which did not increase regardless of the number of hours he worked in a week.

33. Image Stream’s salary was only supposed to cover 80 hours in a 2 week pay period (or 40 hours per week).

34. Image Stream knew White, and its other Field Service Engineers, were working more than 40 hours a week from its own records.

35. At least some of the time the Field Service Engineers were working was reflected in the “Weekly Reports” Image Stream required them to submit.

36. White, for example, reported 45 hours in “OnSite Visits” alone for the week ending March 18, 2017.

37. But Image Stream did not pay White any overtime for this, or any other, workweek until October 2017.

38. In fact, none of the Field Service Engineers received overtime until Image Stream converted its Field Service Technicians to non-exempt in October 2017.

39. Even after they were converted to non-exempt and started receiving overtime, Field Service Engineers continued to work far in excess of 40 hours in a week.

40. And although Image Stream began paying all its Field Service Engineers overtime on a forward going basis, it offered them nothing for past overtime worked.

41. Image Stream’s policy of paying its Field Service Engineers a maximum amount per week, with no overtime for hour worked in excess of 40 in a week, violates the FLSA.

42. Image Stream knew of the overtime requirements of the FLSA.

43. It nonetheless failed to pay its Field Service Engineers, such as White, overtime.

44. Image Stream’s failure to pay overtime to these hourly workers was, and is, a willful violation of the FLSA.

COLLECTIVE ACTION ALLEGATIONS

45. Image Stream paid dozens of Field Service Engineers across the United States using the same unlawful “salary” scheme.

46. Image Stream’s policy of denying overtime to its Field Service Engineers is a result of a position-wide misclassification.

47. All the Field Service Engineers performed similar job duties as reflected in Image Stream’s common job description.

48. The Field Service Engineer job, considered as a whole, is a non-exempt position.

49. When Image Stream reclassified its Field Service Engineers as non-exempt, it did so on a position-wide basis.

50. Other employers in this industry have been paying overtime to workers like the Field Service Engineers for many years.

51. The workers impacted by Image Stream’s salary scheme should be notified of this action and given the chance to join pursuant to 29 U.S.C. § 216(b).

52. Therefore, the FLSA collective is properly defined as:

All Field Services Engineers employed by Image Stream in the past 3 years who were paid a “salary” with no overtime for hours worked in excess of 40 in a workweek.

CAUSE OF ACTION – VIOLATION OF THE FLSA

53. By failing to pay White and the other Field Service Engineers overtime at one-and-one-half times their regular rates, Image Stream violated the FLSA’s overtime provisions.

54. Image Stream owe White and the other Field Service Engineers the difference between the rate paid to them and the proper overtime rate.

55. Because Image Stream knew, or showed reckless disregard for whether, its pay practices violated the FLSA, Image Stream owe these wages for at least the past three years.

56. Image Stream are liable to White and the other Field Service Engineers for an amount equal to all unpaid overtime wages as liquidated damages.

57. White and the other Field Service Engineers are entitled to recover all reasonable attorneys' fees and costs incurred in this action.

JURY DEMAND

58. White demands a trial by jury.

PRAYER

61. White prays for relief as follows:

a. An order allowing this action to proceed as a collective action under the FLSA and directing notice to all other Field Service Engineers who were denied overtime pay;

b. Judgment awarding White and the other Field Service Engineers all unpaid overtime compensation, liquidated damages, attorneys' fees and costs under the FLSA;

c. An award of pre- and post-judgment interest on all amounts awarded at the highest rate allowable by law; and

d. All such other and further relief to which White and the other Field Service Engineers may show themselves to be justly entitled.

Respectfully submitted,

By: /s/ Philip J. Gordon

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ATTORNEYS IN CHARGE FOR PLAINTIFF

EXHIBIT A

DocuSign Envelope ID: 882A5130-D223-4ECF-8213-A9843066D25A

CONSENT TO JOIN WAGE CLAIM

Print Name: James White

1. I hereby consent to participate in a collective action lawsuit against **Image Stream Medical, Inc.** (and its related entities) to pursue my claims of unpaid overtime during the time that I worked with the company.
2. I understand that this lawsuit is brought under the Fair Labor Standards Act, and consent to be bound by the Court's decision.
3. I designate the law firm and attorneys at BRUCKNER BURCH PLLC as my attorneys to prosecute my wage claims.
4. I authorize the law firm and attorneys at BRUCKNER BURCH PLLC to use this consent to file my claim in a separate lawsuit, class/collective action, or arbitration against the company.

Signature:  _____
DocuSigned by:
2EEA8AFE3F4B4F2...

Date Signed: 8/12/2018

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

James White, Individually and for Others Similarly Situated

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

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

Philip J. Gordon, Esq., Gordon Law Group, LLP, 585 Boylston Street, Boston, MA 02116, 617-536-1800

DEFENDANTS

Image Stream Medical, Inc.

County of Residence of First Listed Defendant Middlesex County (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)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and business location (Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation).

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

Click here for: Nature of Suit Code Descriptions.

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Each category contains a list of legal codes with checkboxes.

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. 216(b)

Brief description of cause: Non-payment of wages - collective action

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: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE DOCKET NUMBER

DATE 10/01/2018 SIGNATURE OF ATTORNEY OF RECORD /s/ Philip J. Gordon

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. 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 – 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.

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) James White et al v. Image Stream Medical, Inc.

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

I. 410, 441, 470, 535, 830*, 835*, 891, 893, 895, R.23, REGARDLESS OF NATURE OF SUIT.

II. 110, 130, 140, 160, 190, 196, 230, 240, 290,320,362, 370, 371, 380, 430, 440, 442, 443, 445, 446, 448, 710, 720, 740, 790, 820*, 840*, 850, 870, 871.

III. 120, 150, 151, 152, 153, 195, 210, 220, 245, 310, 315, 330, 340, 345, 350, 355, 360, 365, 367, 368, 375, 376, 385, 400, 422, 423, 450, 460, 462, 463, 465, 480, 485, 490, 510, 530, 540, 550, 555, 625, 690, 751, 791, 861-865, 890, 896, 899, 950.

*Also complete AO 120 or AO 121. for patent, trademark or copyright cases.

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES NO

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES NO

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES NO

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES NO

7. Do all of the parties in this action, excluding governmental agencies of the United States and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).

YES NO

A. If yes, in which division do all of the non-governmental parties reside?

Eastern Division Central Division Western Division

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division Central Division Western Division

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES NO

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Philip J. Gordon

ADDRESS Gordon Law Group, LLP, 585 Boylston, Street, Boston, MA 02116

TELEPHONE NO. 617-536-1800

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Lawsuit: Image Stream Medical Deprived Engineers of OT Pay in 'Salary Scheme'](#)
