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11 *Attorneys for Plaintiff and the proposed Class*

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

12 KEITH ADER and JEFFREY ) CASE NO.:  
13 COCHRAN, on behalf of themselves )  
14 and all others similarly situated, ) **COMPLAINT**  
15 )  
16 Plaintiffs, )  
17 )  
18 vs. )  
19 )  
20 SIMONMED IMAGING )  
INCORPORATED, An Arizona )  
corporation, and ABC ENTITIES 1-20, )  
JOHN AND JANE DOES 1-20. )  
Defendants. )

21  
22 Plaintiffs, Keith Ader and Jeffrey Cochran, collectively (“Plaintiffs”), allege as  
23 follows:

24 1. This case arises out of Defendant, SimonMed Imaging Incorporated’s  
25 (“SimonMed” or “Defendant”) unlawful employment practices. Specifically, Defendant  
26 unlawfully classified and continues to classify its employees employed as Modality  
27 Service Engineers and MRI Field Engineers as exempt from the overtime requirements of  
28 the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201 *et. seq.* and has failed and

1 refused to pay overtime compensation in violation of the FLSA and in violation of  
2 Arizona's wage statutes, Ariz. Rev. Stat. § 23-350 *et. seq.*

3 **JURISDICTION AND VENUE**

4 2. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 because  
5 this is a civil action arising under the laws of the United States. Specifically, this action  
6 is brought under 29 U.S.C. § 216(b). This Court has pendent jurisdiction over the state  
7 claim pursuant to 28 U.S.C. § 1367(a).

8 3. This Court has personal jurisdiction over Defendant because SimonMed  
9 regularly transacts business in and has significant and continuous contact with this  
10 District.

11 4. At all times material, Defendant was, and continues to be, engaged in  
12 interstate commerce as defined by the FLSA.

13 5. At all times material, during their employment with Defendant, Plaintiffs  
14 were employees as defined by the FLSA.

15 6. Venue is proper under 28 U.S.C. § 1391(b) as Defendant is domiciled in or  
16 around Maricopa County, Arizona.

17 **PARTIES**

18 7. Plaintiff, Keith Ader, is a citizen and resident of Maricopa County, Arizona  
19 who was at all relevant times employed as a Modality Service Engineer employee and  
20 was and is an "employee" within the meaning of Ariz. Rev. Stat. § 23-350.

21 8. Plaintiff, Jeffrey Cochran, is a citizen and resident of Maricopa County,  
22 Arizona who was at all relevant times employed as an MRI Field Engineer employee and  
23 was and is an "employee" within the meaning of Ariz. Rev. Stat. § 23-350.

24 9. There is not distinction between Modality Service Engineers and MRI Field  
25 Engineers other than their title. They perform the same job duties which consist primarily  
26 of manual labor. All Modality Service Engineers and MRI Field Engineers currently or  
27 formerly employed by Defendant are similarly situated for purposes of this lawsuit.

28 10. At all relevant times during their employment with SimonMed, pursuant to

1 SimonMed's policy and pattern or practice, Plaintiffs regularly worked for SimonMed's  
2 benefit for periods of time without payment of all compensation due them under the law.  
3 SimonMed did not pay Plaintiffs overtime compensation for hours worked for  
4 SimonMed's benefit in excess of 40 hours in a workweek despite being legally obligated  
5 to do so.

6 11. Defendant, SimonMed, is an Arizona corporation authorized to conduct  
7 business in Arizona and is within the jurisdiction of this Court. Defendant's principal  
8 place of business is located in Scottsdale, Arizona. Upon information, SimonMed  
9 transacts its business in jurisdictions other than Arizona including, but not limited to,  
10 California, Nevada, Florida and Nebraska.

11 12. Defendant, SimonMed, is an "employer" within the meaning of 29 U.S.C. §  
12 203(d) and Ariz. Rev. Stat. § 23-350.

13 **CLASS AND COLLECTIVE ACTION ALLEGATIONS**

14 13. Plaintiffs bring FLSA claims on behalf of themselves and all similarly  
15 situated Modality Service Engineer and MRI Field Engineer employees who work or  
16 have worked for SimonMed performing or who have performed such duties who elect to  
17 opt into the FLSA claims asserted in this action.

18 14. SimonMed is liable under the FLSA for, *inter alia*, failing to properly  
19 compensate Plaintiffs and similarly situated employees. Defendant's failure to pay  
20 overtime compensation to similarly situated Modality Service Engineer and MRI Field  
21 Engineer employees results from Defendant's standard policy and practice, the class  
22 members are readily identifiable and all Modality Service Engineer and MRI Field  
23 Engineer employees performed similar duties, responsibilities and activities, all of whom  
24 were and are harmed by Defendant's unlawful decision refusing and failing to pay  
25 overtime compensation in violation of the FLSA. Notice should be sent to the FLSA  
26 Class Members pursuant to 29 U.S.C. § 216(b).

27 15. Plaintiffs also bring suit on behalf of themselves and on behalf of all others  
28 similarly situated for violations of Arizona's Wage Statutes under the provisions of Rule

1 23 of the Federal Rules of Civil Procedure with respect to violations alleged in this  
2 Complaint. Judicial economy dictates that the issues raised here be resolved in a single  
3 action.

4 16. The proposed class (“Class”) is defined as follows:

5 All persons currently or formerly employed as a Modality Service  
6 Engineer, MRI Field Engineer or other similarly situated employee  
7 performing installation, maintenance and repair of certain medical  
8 diagnostic equipment used or operated by Defendant in the United  
States who worked in excess of forty hours during one or more  
workweeks without receiving overtime compensation within three  
(3) years of the date this action was commenced.

9 17. Defendant SimonMed has intentionally, willfully and repeatedly engaged  
10 in a pattern, practice and/or policy of violating the FLSA and Arizona Wage Statutes.  
11 This policy and pattern or practice includes but is not limited to:

- 12 a. willfully failing to record all of the time that its employees, including  
13 Plaintiffs and Class Members, have worked for the benefit of  
14 Defendant;
- 15 b. willfully failing to keep records as required by the FLSA;
- 16 c. willfully misclassifying Plaintiffs and similarly situated Modality  
17 Service Engineer and MRI Field Engineer employees as exempt from  
18 the overtime requirements of the FLSA;
- 19 d. willfully failing to pay its Modality Service Engineer and MRI Field  
20 Engineer employees, including Plaintiffs and members of the Class,  
21 overtime wages for hours that they worked in excess of 40 hours per  
22 week.

23 18. The requirements for maintaining this action as a class action under Fed. R.  
24 Civ. P. 23(a)(1) are satisfied in that there are too many Class members for joinder of all  
25 of them to be practicable. Upon information, there are more than 15 members of the  
26 proposed Class.

27 19. The claims of the Class members raise numerous common questions of fact  
28 and law, thereby satisfying the requirements of Fed. R. Civ. P. 23(a)(2).



1           27.   Modality Service Engineer, MRI Field Engineer and similarly situated  
2 SimonMed employees are employees whose job duties and responsibilities are not  
3 exempt from the requirements to pay overtime.   However, Defendant improperly  
4 classified, and continues to classify, these employees as exempt for the purpose of  
5 overtime compensation eligibility under the FLSA without reference to the types of  
6 duties those workers perform.

7           28.   Plaintiffs and those current and former Modality Service Engineer, MRI  
8 Field Engineer and similarly situated SimonMed employees customarily and regularly  
9 performed non-exempt physical or manual work.   That is, the primary duties of Plaintiffs  
10 and Modality Service Engineer, MRI Field Engineer and similarly situated SimonMed  
11 employees consist of installing, maintaining and troubleshooting medical and  
12 radiological imaging and diagnostic equipment used by SimonMed technicians and  
13 physicians located in different parts of the United States.

14           29.   Plaintiffs and those current and former Modality Service Engineer, MRI  
15 Field Engineer and similarly situated SimonMed employees rarely, if ever, exercise true  
16 discretionary powers in connection with matters of significance.

17           30.   Plaintiffs and those current and former Modality Service Engineer, MRI  
18 Field Engineer and similarly situated SimonMed employees were not and are not  
19 relatively free from supervision in connection with matters of significance.

20           31.   Upon information, SimonMed does not keep accurate payroll records of all  
21 hours worked by Plaintiffs and members of the Class as required by the FLSA.

22           32.   Plaintiffs and current and former Modality Service Engineer, MRI Field  
23 Engineer and similarly situated SimonMed employees routinely and regularly worked for  
24 Defendant in excess of forty hours per workweek without being paid overtime wages.

25           33.   Upon information and belief, Defendant was or should have been aware  
26 that state and federal law required it to pay its employees performing non-exempt duties  
27 overtime wages for hours worked in excess of forty per week.

28           34.   Upon information and belief, Defendant was aware or should have been

1 aware that Plaintiffs and other Modality Service Engineer, MRI Field Engineer and  
2 similarly situated SimonMed employees customarily and regularly perform non-exempt  
3 physical or manual work consisting of installing, maintaining and troubleshooting  
4 medical and radiological imaging and diagnostic equipment including hardware and  
5 electronic components, storage products and embedded subsystems.

6 35. Upon information and belief, Defendant's failure to pay Plaintiffs and  
7 Modality Service Engineer, MRI Field Engineer and similarly situated SimonMed  
8 employees overtime wages for their work in excess of 40 hours per week was willful and  
9 without justification or authorization.

10 **COUNT I**

11 **VIOLATION OF THE FAIR LABOR STANDARDS ACT ON BEHALF OF**  
12 **PLAINTIFF AND ALL FLSA CLASS MEMBERS**

13 36. Plaintiffs reallege and incorporate all allegations in all preceding  
14 paragraphs as if fully set forth.

15 37. Defendant has engaged in a widespread pattern and practice of violating the  
16 FLSA, as set forth herein.

17 38. Plaintiffs have consented in writing to be a party to this action, pursuant to  
18 29 U.S.C. § 216(b). Plaintiffs' consents are attached hereto as Exhibit A.

19 39. Plaintiffs and those current and former employees similarly situated are  
20 entitled to be paid one and one-half times their regular hourly rate of pay for each hour  
21 worked in excess of forty hours per workweek.

22 40. In the course of employment with Defendants, Plaintiffs and those current  
23 and former employees similarly situated worked the number of hours required of them,  
24 many times in excess of forty hours, but were not properly paid overtime compensation.

25 41. The pay practices of Defendant, as described in the above paragraphs,  
26 violate the FLSA by failing to properly pay overtime to Plaintiffs and those current and  
27 former employees similarly situated for those hours worked each workweek in excess of  
28 forty hours.

1           42. Defendant's violations of the FLSA are willful and intentional. Defendant  
2 has not made a good faith effort to comply with the FLSA with respect to its  
3 compensation of Plaintiffs and other current and former Modality Service Engineer, MRI  
4 Field Engineer and similarly situated SimonMed employees.

5           43. Because of Defendant's willful and unlawful acts, a three year statute of  
6 limitations applies, pursuant to 29 U.S.C. § 255 and Plaintiffs and those current and  
7 former employees similarly situated have been harmed and suffered damages by being  
8 denied overtime wages in accordance with the FLSA, plus incurred costs and reasonable  
9 attorneys' fees.

10           44. As a result of Defendant's violations of the FLSA, Plaintiffs and those  
11 current and former employees similarly situated are entitled to liquidated damages in an  
12 amount equal to the wages they are owed as unpaid overtime.

13           45. As a result of Defendant's violations of the FLSA, Plaintiffs and those  
14 current and former employees similarly situated are entitled to declaratory and injunctive  
15 relief.

16           46. As a result of Defendant's unlawful acts, Plaintiffs and the FLSA Class  
17 Members are entitled to recovery of overtime wages, liquidated damages, prejudgment  
18 interest, attorneys' fees, costs and other compensation pursuant to 29 U.S.C. § 216(b).

19           47. During the three years preceding the filing of this lawsuit, Defendant has  
20 (1) employed and continues to employ individuals similarly situated to Plaintiffs (i.e.,  
21 Modality Service Engineer, MRI Field Engineer and similarly situated SimonMed  
22 employees) throughout Arizona and elsewhere; (2) classified and continues to misclassify  
23 these employees as exempt for the purpose of overtime compensation eligibility; (3)  
24 suffered or permitted to be suffered, with knowledge, hours of service by these  
25 employees in excess of forty hours during one or more workweeks, for which Defendant  
26 failed to properly pay additional overtime premiums. Each improperly classified and  
27 therefore improperly paid Modality Service Engineer, MRI Field Engineer and similarly  
28 situated SimonMed employees who performed or continues to perform services for



1 Defendant for any time during the three years preceding this lawsuit, is entitled to  
2 notification of the pendency of this action and of his/her right to consent to becoming a  
3 party to this action.

4 **COUNT II**

5 **FOR VIOLATION OF ARIZONA’S WAGE ACT ON BEHALF OF PLAINTIFF**  
6 **AND ALL CLASS MEMBERS**

7 48. Plaintiffs reallege and incorporate by reference all allegations in all  
8 preceding paragraphs as if fully set forth herein.

9 49. At all times relevant to this action, Plaintiffs were and are employees and  
10 Defendant was and is an employer within the meaning of and subject to Ariz. Rev. Stat. §  
11 23-350.

12 50. Ariz. Rev. Stat. § 23-351 provides that:

13 A. Each employer in this State shall designate two or more days in  
14 each month, not more than sixteen days apart, as fixed paydays for  
15 payment of wages to the employees . . .

16 \*\*\*

17 C. Each employer shall, on each of the regular paydays, pay to the  
18 employees . . . all wages due the employee up to such date . . .

19 51. Ariz. Rev. Stat. § 23-351(c)(3) provides that: “[o]vertime or exception pay  
shall be paid no later than sixteen days after the end of the most recent pay period.”

20 52. As set forth above, the FLSA requires that employees such as Plaintiffs and  
21 similarly situated Modality Service Engineer, MRI Field Engineer and other similarly  
22 situated SimonMed employees be paid overtime wages for all hours worked in excess of  
23 forty hours per week. Defendant violated Ariz. Rev. Stat. §23-351 by failing to pay  
24 wages and overtime due Plaintiffs and members of the Class for work in excess of forty  
25 hours per week within the time periods specified in Ariz. Rev. Stat. § 23-351.

26 53. As a result of Defendant’s violations of Ariz. Rev. Stat. § 23-351, Plaintiffs  
27 and members of the Class are entitled to an award of the unpaid wages, with  
28 prejudgment-interest thereon, and are entitled to treble the amount of such wages,

1 together with attorneys' fees and costs pursuant to Ariz. Rev. Stat. §23-355.

2 **PRAYER FOR RELIEF**

3 WHEREFORE, Plaintiffs, Keith Ader and Jeffrey Cochran, individually and on  
4 behalf of all others similarly situated, pray that judgment be entered against Defendant  
5 and that the Court award the following relief including but not limited to:

- 6 A. That, at the earliest possible time, Plaintiffs be allowed to give notice of  
7 this collective action or that the Court issue such notice to all persons who  
8 are presently, or have at any time during the three years immediately  
9 preceding the commencement of this suit, up through and including the  
10 date of this Court's issuance of Court-supervised notice been employed by  
11 Defendant as Modality Service Engineer, MRI Field Engineer and similarly  
12 situated SimonMed employees. Such notice shall inform them that this  
13 civil action has been filed, the nature of the action, and the right to join this  
14 lawsuit if they were denied proper wages;
- 15 B. Certification of this action as a collective action under the FLSA, 29 U.S.C.  
16 § 216(b) and as a class action under the FLSA and under Arizona's wage  
17 statue for all purposes of liability and relief and appointment of  
18 undersigned counsel as Class Counsel pursuant to Fed. R. Civ. P. 23(g);
- 19 C. An Order declaring that Defendant has violated the FLSA;
- 20 D. An Order declaring that Defendant has violated Arizona's Wage Act;
- 21 E. Judgment for Plaintiffs and the Class against Defendant for the wages and  
22 overtime payments due them for the hours worked by them for Defendant  
23 without proper compensation as set forth in 29 U.S.C. § 216(b);
- 24 F. Judgment for Plaintiffs and the Class against Defendant for liquidated  
25 damages as set forth in 29 U.S.C. § 216(b);
- 26 G. Judgment for Plaintiffs and the Class against Defendant for treble damages  
27 as set forth in Ariz. Rev. Stat. §23-355;
- 28 H. Judgment against Defendant declaring Defendant's conduct as set forth in

1 this Complaint constitutes violation of the FLSA as well as Arizona wage  
2 laws and other applicable laws;

- 3 I. Judgment against Defendant enjoining Defendant from continuing to  
4 classify Modality Service Engineer, MRI Field Engineer and similarly  
5 situated SimonMed employees as exempt from the provisions of the FLSA;
- 6 J. An order awarding, declaring or otherwise providing Plaintiffs and the  
7 Class all other such injunctive, equitable and legal relief to which Plaintiffs  
8 and the Class are or may be entitled whether or not specified herein;
- 9 K. An order awarding Plaintiffs and the Class reasonable attorneys' fees along  
10 with costs pursuant to 29 U.S.C. § 216(b), Ariz. Rev. Stat. § 23-355, and/or  
11 the common fund theory;
- 12 L. Any and all other relief the Court deems just and proper.

13 Dated this 29th day of June, 2017.

14 s/Daniel L. Bonnett  
15 **MARTIN & BONNETT, P.L.L.C.**  
16 Susan Martin  
17 Daniel Bonnett  
18 Jennifer Kroll  
19 4647 N. 32<sup>nd</sup> Street, Suite 185  
20 Phoenix, Arizona 85018  
21 Telephone: (602) 240-6900

22 *ATTORNEYS FOR PLAINTIFFS AND*  
23 *THE PROPOSED CLASS*  
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# EXHIBIT A

1 Daniel Bonnett, SBA # 014127  
2 **MARTIN & BONNETT, P.L.L.C**  
3 1850 N. Central Avenue, Suite 2010  
4 Phoenix, AZ 85004  
5 Telephone: (602) 240-6900  
6 [dbonnett@martinbonnett.com](mailto:dbonnett@martinbonnett.com)

7 *Attorney for Plaintiffs*

8 **IN THE UNITED STATES DISTRICT COURT**  
9 **FOR THE DISTRICT OF ARIZONA**

10 KEITH ADLER and JEFFREY COCHRAN,  
11 individually, and on behalf of other similarly  
12 situated individuals,

13 Plaintiffs,

14 vs.

15 SIMON MED IMAGING, INC., and ABC  
16 ENTITIES 1-20, JOHN AND JANE DOES 1-  
17 20.

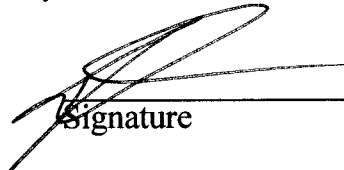
18 Defendants.

CASE NO.:

**CONSENT TO SUE FORM**

19 I hereby consent to be a plaintiff in this case. I understand that this case is brought  
20 under the federal Fair Labor Standards Act and concerns Simon Med Imaging, Inc.  
21 alleged failure to pay employees for overtime.

22 Respectfully submitted this 9th day of June, 2017.

23  \_\_\_\_\_  
Signature Date 6.9.17

24 Keith Adler  
25 Print Name

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City, State and Zip

*Modality Service Engineer*  
Position Held and place of employment  
at Simon Med Imaging, Inc.

Mail this form to:

MARTIN & BONNETT, P.L.L.C.  
1850 N. Central Avenue  
Phoenix, AZ 85004  
Tel: (602) 240-6900; 1 (800) 952-4750

1 Daniel Bonnett, SBA # 014127  
2 **MARTIN & BONNETT, P.L.L.C**  
3 1850 N. Central Avenue, Suite 2010  
4 Phoenix, AZ 85004  
5 Telephone: (602) 240-6900  
6 dbonnett@martinbonnett.com

7 *Attorney for Plaintiffs*

8 **IN THE UNITED STATES DISTRICT COURT**  
9 **FOR THE DISTRICT OF ARIZONA**

10 KEITH ADLER and JEFFREY COCHRAN,  
11 individually, and on behalf of other similarly  
12 situated individuals,

13 Plaintiffs,

14 vs.

15 SIMON MED IMAGING, INC., and ABC  
16 ENTITIES 1-20, JOHN AND JANE DOES 1-  
17 20.

18 Defendants.

CASE NO.:

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22 Respectfully submitted this 9th day of June, 2017.

23  6/9/17  
Signature Date

24 Jeffrey R Cochran  
25 Print Name

26   
27 Street Address 

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City, State and Zip

MRI Field Service Engineer

Position Held and place of employment  
at Simon Med Imaging, Inc.

Mail this form to:

MARTIN & BONNETT, P.L.L.C.  
1850 N. Central Avenue  
Phoenix, AZ 85004  
Tel: (602) 240-6900; 1 (800) 952-4750



**UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA**

**Civil Cover Sheet**

This automated JS-44 conforms generally to the manual JS-44 approved by the Judicial Conference of the United States in September 1974. The data is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. The information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is authorized for use only in the District of Arizona.

**The completed cover sheet must be printed directly to PDF and filed as an attachment to the Complaint or Notice of Removal.**

**Plaintiff** **Keith Ader ; Jeffrey Cochran,**  
**(s):** **individually and on behalf of**  
**similarly situated individuals**

County of Residence: Maricopa

County Where Claim For Relief Arose: Maricopa

Plaintiff's Atty(s):

**Daniel Bonnett**  
**Martin & Bonnett, P.L.L.C.**  
**4647 N. 32nd Street, Suite 185**  
**Phoenix, Arizona 85018**  
**(602) 240-6900**

**SimonMed Imaging Incorporated,**  
**Defendant an Arizona Corporation ; ABC**  
**(s):** **Entities 1-20 ; John and Jane Does**  
**1-20**

County of Residence: Maricopa

Defendant's Atty(s):

II. Basis of Jurisdiction: **3. Federal Question (U.S. not a party)**

III. Citizenship of Principal Parties (Diversity Cases Only)

Plaintiff:- N/A  
Defendant:- N/A

IV. Origin : **1. Original Proceeding**

V. Nature of Suit: **710 Fair Labor Standards Act**

VI.Cause of Action: **Violations of the Fair Labor Standards Act ("FLSA"), Specifically, this action is brought under 29 U.S.C. § 201 et. seq. and Ariz. Rev. Stat. § 23-350 et. seq. Jurisdiction under 28.U.S.C. §§ 1331 & 1367.**

**VII. Requested in Complaint**

Class Action: **Yes**  
Dollar Demand: **TBD**  
Jury Demand: **No**

**VIII. This case is not related** to another case.

---

**Signature: s/Daniel L. Bonnett**

**Date: 6/28/17**

**If any of this information is incorrect, please go back to the Civil Cover Sheet Input form using the *Back* button in your browser and change it. Once correct, save this form as a PDF and include it as an attachment to your case opening documents.**

Revised: 01/2014

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [SimonMed Employees Claim Unpaid Overtime Wages](#)

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