

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

CHRISTIE STONE, Individually
and on behalf of All Others
Similarly Situated Who Consent to Their
Inclusion in a Collective Action;

Plaintiff,

v.

CASE NO.:

AVMED, INC.,

COLLECTIVE ACTION
REPRESENTATION

Defendant.

FLSA COLLECTIVE ACTION COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, **CHRISTIE STONE**, individually (collectively referred to herein as “Plaintiff”), and on behalf of all others similarly situated, who consent to their inclusion in this collective action (hereinafter the “Putative Class”), sues the above captioned Defendant, **AVMED, INC.**, pursuant to 29 U.S.C. 216(b), the Fair Labor Standards Act (the “FLSA”), for failing to pay Plaintiff and the Putative Class and in support thereof, Plaintiff states as follows:

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction over claims under the FLSA pursuant to 29 U.S.C. §216 (b), which states, in relevant part, “[a]n action to recover... may be maintained ... in any Federal or State court of competent jurisdiction.”

2. This Court has personal jurisdiction over this action, because Defendant is engaged in business throughout the state of Florida and operates substantial business in Hillsborough County, Florida. Additionally, the damages at issue occurred in Hillsborough County, Florida.

3. Venue is proper to this Court pursuant to 29 U.S.C. § 216(b) and Fla. Stat. §47.011, because the acts complained of herein took place in Hillsborough County at Defendant's place of business located at 1511 N West Shore Blvd., Tampa, FL 33607.

THE PARTIES

4. Defendant, AVMED, INC. (hereinafter "AVMED"), is a Florida Not For Profit Corporation with its principle place of business at 9400 South Dadeland Blvd., Miami, Florida 33156.

5. AVMED's registered agent for service of process in the State of Florida is Steven Ziegler, whose address is 4300 NW 89th Blvd., Gainesville, Florida 32606.

6. AVMED is an employer subject to the FLSA.

REPRESENTATIVE PLAINTIFF

7. At all times relevant to this action, Representative Plaintiff, Christie Stone (hereinafter "Plaintiff" or "Stone"), resided in Clearwater, Pinellas County, Florida.

8. At all times relevant to this action, Stone was employed by AVMED.

9. Plaintiff was employed by Defendant from approximately November of 2014 until December of 2016 as a "Sales Rep."

10. Plaintiff, and all other members of the proposed collective action, were or are employees of AVMED within the meaning of 29 U.S.C §203(e)(1).

11. Plaintiff was improperly classified by Defendant as an exempt employee. However, Plaintiff's work duties and responsibilities dictate that she should have been classified and compensated as a non-exempt employee under the FLSA.

12. Throughout the course of her employment by AVMED, Plaintiff was routinely denied overtime compensation even though she worked at least 10 hours of overtime every week.

13. For purposes of the Class, Plaintiff consents in writing to be a party to this action pursuant to 29 U.S.C. §216(b).

REPRESENTATIVE PLAINTIFF, CHRISTIE STONE

14. At all times relevant to this action, Representative Plaintiff, Christie Stone (hereinafter “Stone”), resided in Pinellas County, Florida.

15. At all times relevant to this action, Plaintiff was employed by AVMED.

16. Plaintiff was employed by Defendant from approximately November of 2014 until December of 2016 as a “Sales Rep.”

17. Plaintiff, and all other members of the proposed action, were or are employees of AVMED within the meaning of 29 U.S.C §203(e)(1).

18. Plaintiff was improperly classified by AVMED as an exempt employee. However, Plaintiff’s work duties and responsibilities dictate that she should have been classified and compensated as a non-exempt employee under the FLSA.

19. Throughout the course of her employment by AVMED, Plaintiff was routinely denied overtime compensation even though she worked at least 10 hours of overtime every week.

20. For purposes of the Class, Plaintiff consents in writing to be a party to this action pursuant to 29 U.S.C. §216(b).

SUMMARY OF CLASS

21. The class are brought as a collective action to recover from AVMED overtime compensation, liquidated damages, and the costs of reasonable attorney’s fees under 29 U.S.C. §216(b), on behalf of the Plaintiff and similarly situated persons composed of:

- a. Sales Representatives who have worked for AVMED in the past **three (3)** years preceding this lawsuit, and who elect to opt-in to this action

pursuant to FLSA, 29 U.S.C. §216 (b) and who worked in excess of forty (40) hours during one or more work weeks.

22. In the course of employment with AVMED during the material time, Plaintiff, and other employees in the asserted Putative Class, regularly worked in excess of forty (40) hours per work week and were not paid overtime compensation at the lawful overtime rate for all of the overtime hours worked, based on Defendant's custom and practice of misclassifying employees as exempt employees.

23. Plaintiff alleges on behalf of herself and the Putative Class that they are entitled to unpaid wages from AVMED for overtime work for which they did not receive overtime compensation, as required by law.

GENERAL ALLEGATIONS

24. AVMED had a practice and policy of denying its "Sales Reps" overtime pay for hours worked in excess of forty (40) hours per work week.

25. At all material times, AVMED required its "Sales Reps" to work in excess of forty (40) hours a week, misclassifying the Class as exempt employees.

26. Upon information and belief, for the three-year period of time before this filing, (the "Class Period"), the continued violations of the FLSA §207 that are complained of herein have been practiced and imposed upon all "Sales Reps", who have regularly worked in excess of forty hours per week.

27. Plaintiff and the Putative Class are not considered exempt because "[a] job title alone is insufficient to establish the exempt status of any particular employee ... [but rather] [t]he exempt or nonexempt status of any particular employee must be determined on the basis of whether

the employee's salary and duties meet the requirements of the regulations in this part." 29 C.F.R. § 541.2.

**GENERAL ALLEGATIONS AS TO
WHETHER "SALES REPS" WERE EXEMPT**

28. Plaintiff and other similarly situated members of the Putative Class, were titled as "Sales Reps". Upon hiring Plaintiff, and other similarly situated members of the Putative Class of "Sales Reps", they were not given any discretion to make any independent decisions related to hiring or firing employees or to create or change policies with respect to the employees they supervised.

29. The Defendant will likely argue to no avail that the Plaintiff and members of the Putative Class of "Sales Reps" are exempt under the executive and administrative exemptions.

30. However, under the FLSA, an executive employee is defined as an employee "who has the authority to hire or fire other employees or whose suggestion and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees are given particular weight." 29 C.F.R. §541.100(a).

31. Plaintiff, and similarly situated "Sales Reps" do not qualify for the executive exemption because they did not have the authority to hire or fire other employees.

32. Under the FLSA, an administrative employee is defined as an employee who has "discretion and independent judgment with respect to matters of significance." 29 C.F.R. §541.200. In order to possess such discretion the employee must have the authority to make "independent choice[s], free from immediate direction or supervision...even if their decisions or recommendations are reviewed at a higher level." 29 C.F.R. §541.202(c).

33. Plaintiff and similarly situated “Sales Reps” do not qualify for the administrative exemption because they were not allowed to hire, fire, train, mentor, or discipline any employees without immediate and direct supervision and authority of the Regional Administrators from whom they took their orders.

34. Accordingly, Plaintiff and members of the Class of “Sales Reps” are not exempt from the requirements of overtime, minimum wage, or FLSA.

35. Plaintiff alleges on behalf of herself and the Class of “Sales Reps” that AVMED’s failure to pay overtime compensation was knowing and willful. Accordingly, Plaintiff and the Class are entitled to recover all overtime pay due from overtime hours worked for which compensation was not paid, liquidated damages and attorneys’ fees under the FLSA’s three year statute of limitations.

COLLECTIVE ACTION ALLEGATIONS UNDER THE FLSA

36. Plaintiff brings this action on behalf of the Class as a collective action pursuant to the Fair Labor Standards Act § 216(b).

37. The members of the Putative Class are so numerous that joinder of all members is impracticable. The exact number of the members of the Class is unknown to the Plaintiff at this time, and can only be ascertained through appropriate discovery.

38. Plaintiff will fairly and adequately protect the interests of the Putative Class and have retained counsel that is experienced and competent in class action and employment litigation. Plaintiff has no interest that is contrary to, or in conflict with, members of the Putative Class.

39. Pursuant to 20 U.S.C. § 207, Plaintiff seeks to prosecute the FLSA claims as a collective action on behalf of:

All persons, who (i) were employed as Sales Reps by AvMed; (ii) are/were not paid or properly paid for all the hours worked in a given work week; (iii) are/were not paid overtime compensation, at a rate not less than one and one-half times the rate at which they are employed, for work performed beyond a forty (40) hour work week; and (iv) who choose to opt-in to this action (the “Collective Action Members”), in the past three years preceding this lawsuit.

40. Notice of the pendency and any resolution of this action can be provided to Collective Action Members by mail, print, and/or internet publication.

41. Plaintiff brings this action as a collective action pursuant Section 216(b) of the FLSA.

COUNT I – OVERTIME DUE UNDER THE FLSA
FOR THE “PUTATIVE CLASS”

42. The Plaintiff readopts and realleges the allegations set forth in paragraphs one (1) through forty-one (41) as if fully set forth herein, and further alleges:

43. Plaintiff brings this FLSA claim on behalf of themselves and all other similarly situated current and/or former employees of AvMed who work or have worked for AvMed as Sales Reps at any time in the three (3) years preceding this filing.

44. At all relevant times, AvMed has been and continues to be an employer engaged in commerce and/or the productions of goods for commerce within the meaning of FLSA 29 U.S.C. §§ 206(a) and 207(a).

45. At all relevant times, AvMed employed Plaintiff and the Putative Class within the meaning of the FLSA.

46. At all relevant times, Plaintiff and the Putative Class worked overtime regularly.

47. As stated herein, AvMed has a policy and practice of refusing to pay overtime compensated to its Sales Reps for the hours worked in excess of forty (40) hours per work week.

48. AvMed failed to compensate Plaintiff and the Putative Class for overtime hours they regularly worked.

49. AVMED'S failure to pay Plaintiff and the Putative Class an overtime compensation at a rate not less than one and one-half times the rate at which they are employed for work performed beyond the forty (40) hour work week, is a violation of the FLSA, in particular 29 U.S.C. §§ 206 and 207.

50. AVMED has not made a good faith effort to comply with the FLSA and the overtime compensation requirements with respect to Plaintiff and the Putative Class. AVMED'S violations of the FLSA are willful and deliberate.

51. The foregoing conduct, as alleged, constitutes a willful violation of the FLSA within the meaning of 29 U.S.C. § 255(a).

52. Due to AVMED's FLSA violations, Plaintiff and the Putative Class have suffered damages and are entitled to recover from AVMED the unpaid overtime compensation, and an additional amount equal as liquidated damages, reasonable attorney's fees, and costs and disbursements of this action, pursuant to 29 U.S.C. § 216(b).

PRAYER FOR RELIEF

WHEREFORE Plaintiff prays for:

- a. A Declaration that AVMED has violated the FLSA;
- b. An order designating this action as a collective action and issuance of notice pursuant to 29 U.S.C. § 216(b) to all similarly situated individuals with instructions to permit them to assert timely FLSA claims in this action by filing individual Consents to Sue pursuant to §216(b) and that this notice be sent to all past and present employees of Defendant at any time during the three (3) year period immediately preceding the filing of

this suit, through and including the date of this Court's issuance of the Court Supervised Notice;

- c. An order appointing Plaintiff and their counsel to represent the Putative Class;
- d. Imposition of a Constructive Trust on any amount by which AVMED was unjustly enriched at the expense of the Putative Class as the result of the actions described above;
- e. An order enjoining AVMED from any further violations of the FLSA;
- f. For all wages and double as liquidated damages;
- g. Interest;
- h. An order awarding reasonable attorneys' fees and costs pursuant to 29 U.S.C. § 216(b);
- i. That the Court finds AVMED in violation the overtime provisions of the FLSA;
- j. That the Court find that Defendant's violation of the FLSA were and are willful;
- k. That the Court enjoin Defendant, pursuant to 29 U.S.C. § 217, from withholding future payment of compensation owed to members of the Putative Class;
- l. That the Court award Plaintiff and members of the Putative Class overtime compensation for all the previous hours worked over forty (40) hours, that they did not receive at least one and one-half time compensation for, in any given week during the past three years, AND liquidated damages of an equal amount of the minimum compensation; in addition to penalties and interest on said award pursuant to § 216 of the FLSA;
- m. That the Court award Plaintiff a collective action representative fee for their efforts and time dedicated to bringing justice through this action; AND
- n. That the Court award any other legal and equitable relief as this Court may deem appropriate.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs demand a trial by jury on all questions of fact raised by this Complaint.

Dated this 6th day of February, 2017.

/s/ Mitchell L. Feldman, Esq.
MITCHELL L. FELDMAN, ESQUIRE
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and the Plaintiff Class

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

CHRISTIE STONE, Individually, and on behalf of All Others Similarly Situated,

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

(c) Attorneys (Firm Name, Address, and Telephone Number) MITCHELL L. FELDMAN, ESQ., 18801 N. Dale Mabry Highway, #563 Lutz, FL 33548; Tel: (813) 639-9366; Fax: (813) 639-9376

DEFENDANTS

AVMED, INC.

County of Residence of First Listed Defendant Miami-Dade 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: 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)

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

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

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): Fair Labor Standards Act, 29. U.S.C. Section 201, et. seq. (the "FLSA"). Brief description of cause: Overtime violation.

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 02/06/2017 SIGNATURE OF ATTORNEY OF RECORD /s/ Mitchell L. Feldman, Esq.

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

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

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

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Collective Action Claims Avmed, Inc. Owes Unpaid Overtime](#)
