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ORIGINAL

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

KIMBERLEY SMITH and MICHAEL B.)
HINCKLEY, individually and on behalf)
of those similarly situated,)
)
) Plaintiffs,)
vs.)
)
) MICRON ELECTRONICS, INC., a)
) Minnesota corporation,)
)
) Defendant.)
)

Case No. CIV 01-0244-S-BLW

PLAINTIFFS' MOTION FOR
LEAVE TO AMEND AND FILE
SECOND AMENDED COMPLAINT
AND DEMAND FOR JURY TRIAL.

Plaintiffs, by and through their attorneys of record, request leave of Court to file a Second Amended Complaint and Demand for Jury Trial, a copy of which is attached to this motion. This motion is made pursuant to Fed. R. Civ. P. 15(a).

PLAINTIFFS' MOTION FOR LEAVE TO AMEND AND FILE SECOND
AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL, 1

1. Plaintiffs filed their original complaint against defendant on June 6, 2001, alleging that defendant violated the Fair Labor Standards Act ("FLSA"), by failing to pay overtime for time worked off the clock and other violations of the FLSA.

2. On June 8, 2001, plaintiffs filed their first Amended Complaint and Demand for Jury Trial adding an additional plaintiff.

3. Defendants filed their Answer to the first Amended Complaint on June 29, 2001, denying that the Plaintiffs named in the Amended Complaint were appropriate class representatives.

4. Plaintiffs seek to amend their complaint to add four additional plaintiffs, as well as to add and amend several allegations in the body of the first Amended Complaint. In particular, plaintiffs seek to amend the complaint to add as parties plaintiff the following individuals:

a. Jacqueline T. Hladun was employed by Defendant Micron or its predecessor Zeos International, Ltd. at its Roseville, Minnesota, sales center from August 1994 to August 2000. She was employed as an inside sales representative selling to "domestic" and commercial customers in the commercial sales department. At all times relevant to this Complaint, Defendant Micron classified Hladun "non-exempt" under the FLSA. Hladun was paid a basic hourly rate and, in addition, Hladun received a commission based upon the volume of her sales. During her employment with defendant Micron, plaintiff Hladun worked off-the-clock overtime hours for which she was not paid.

b. Marilyn J. Craig was employed by Defendant Micron or its predecessor Zeos International, Ltd. at its Roseville, Minnesota sales center from March 1995 until September 2000. She was employed as an inside sales representative in the commercial sales department. Defendant Micron classified Craig as "non-exempt" under the FLSA. Craig was paid a base hourly rate and, in addition, Craig received a commission based upon the volume of her sales. During her employment with defendant Micron, plaintiff Craig worked off-the-clock overtime hours for which she was not paid.

c. Jeffery P. Clevenger was employed by Defendant Micron at its Meridian, Idaho sales center from November 1998 until March 2000. He was employed as an inside sales representative in the consumer and small business department and in the web/small business department. Defendant Micron classified Clevenger as "non-exempt" under the FLSA. Clevenger was paid a base hourly rate and, in addition, received a commission based upon the volume of his sales. During his employment with defendant Micron, plaintiff Clevenger worked off-the-clock overtime for which he was not paid.

d. Plaintiff Kaufmann was employed by Defendant Micron at its Meridian, Idaho, sales center during several different time periods between 1996 and 2000. He most recently was employed as an inside federal sales representative in the government sales department. Defendant Micron classified Kaufmann as "non-exempt" under the FLSA. Kaufmann was paid a base hourly rate and, in addition, received a commission based upon the volume of his sales. During his employment with defendant Micron, plaintiff Kaufmann worked off-the-clock overtime for which he was not paid.

5. Plaintiffs are also adding additional allegations in the Second Amended Complaint to substantiate earlier allegations that defendant Micron Electronics, Inc. maintains a unity of interest, ownership and management of its alleged "subsidiaries" in the various states where its plants and other operations are located. In these allegations, Plaintiffs allege, *inter alia*, that Micron Electronics, Inc. conducts its business with little or no thought to the individual character of any "subsidiary."

6. Unless defendant Micron Electronics, Inc. can show prejudice, bad faith, or undue delay, a court should grant plaintiffs leave to file their Second Amended Complaint and Jury Demand. *Foman v. Davis*, 371 U.S. 178, 182, 83 S.Ct. 227, 230 (1962); *see* Fed R. Civ. P. 15(a).

7. Defendant Micron Electronics, Inc. will not be prejudiced by plaintiffs filing a Second Amended Complaint and Jury Demand since the factual allegations consistently allege that defendant violated the FLSA in each of its operating units, the federal law as applied to the case will remain the same whether there are only two employees as plaintiffs or a class of all similarly situated employees.

8. For the above stated reasons, plaintiffs ask the court to grant leave to file their Second Amended Complaint and Jury Demand.

DATED this 22nd day of February, 2002.

HUNTLEY, PARK, THOMAS, BURKETT,
OLSEN & WILLIAMS



William H. Thomas
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of February, 2002, a true and correct copy of the foregoing instrument was served upon opposing counsel as indicated below:

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Via Hand Delivery
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