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

KIMBERLEY SMITH, MICHAEL )  
B. HINCKLEY, JACQUELINE T. )  
HLADUN, MARILYN J. CRAIG, )  
JEFFERY P. CLEVINGER, and )  
TIMOTHY C. KAUFMANN, )  
individually and on behalf )  
of those similarly situated, )

Plaintiffs, )

vs. )

MICRON ELECTRONICS, INC., a )  
Minnesota corporation, )

Defendant. )

Case No. CIV 01-0244-S-BLW

**AFFIDAVIT OF DANIEL E.  
WILLIAMS RE: DEFENDANT'S  
CROSS-MOTION FOR PARTIAL  
SUMMARY JUDGMENT**

AFFIDAVIT OF DANIEL E. WILLIAMS RE: DEFENDANT'S CROSS-MOTION  
FOR PARTIAL SUMMARY JUDGMENT, P. 1

288



Subscribed and sworn to before me this 1<sup>st</sup> day of October, 2004.



Glenys McPherson  
Notary Public for Idaho  
Residing at Boise, Idaho  
My Commission Expires: 11/7/06

CERTIFICATE OF SERVICE

I hereby certify that on this 1<sup>st</sup> day of October, 2004, a true and correct copy of the foregoing instrument was served upon opposing counsel as indicated below:

Kim J. Dockstader  
Gregory C. Tollefson  
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101 S. Capitol Blvd., Suite 1900  
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- Via Hand Delivery
- Via Facsimile 389-9040
- Via U. S. Mail

Daniel E. Williams  
Daniel E. Williams



1 A. Please define implicitly.  
 2 Q. You said explicitly, the opposite of  
 3 implicit. Did the supervisor ever explicitly or  
 4 implicitly tell you not to record your overtime?  
 5 A. I do not specifically remember.  
 6 Q. Do you generally remember anything?  
 7 A. I do not generally remember them saying  
 8 that, no.  
 9 Q. Did you ever tell anyone that you were  
 10 not complying with some aspects of the policy in  
 11 Exhibit \*-277 on overtime?  
 12 A. Nobody related to Micron PC.  
 13 Q. You never told anyone at Micron PC?  
 14 A. Not that I remember, no.  
 15 Q. Who did you tell?  
 16 A. Probably my girlfriend or family at the  
 17 time.  
 18 Q. Do you remember specifically any  
 19 conversations with those individuals at that time?  
 20 A. No, no specific conversations.  
 21 (Exhibit \*-278 marked.)  
 22 Q. BY MR. DOCKSTADER: Mr. Blair, I'm  
 23 handing you what we've marked as Deposition  
 24 Exhibit No. \*-278. I'll represent to you that  
 25 this is a print-out of a time sheet history detail

1 per week. Do you see that?  
 2 A. Yes, I do.  
 3 Q. In the weeks in which you recorded  
 4 overtime hours, are we to assume that you failed  
 5 to record some overtime hours or that you recorded  
 6 all of the overtime hours that you worked?  
 7 A. I cannot specifically say for each  
 8 week. I do not remember that specifically.  
 9 Q. How would we go about determining when  
 10 it was that you decided not to record some of your  
 11 overtime hours?  
 12 A. I am not sure.  
 13 Q. Do you have any basis or estimate of  
 14 what number of hours you failed to record on  
 15 overtime while you were at Micron PC? Did you  
 16 understand the question?  
 17 A. Yes, I did. Probably an average of  
 18 four to eight hours a week generally being lunches  
 19 and then every few weeks a few hours after shift.  
 20 Q. Do you know whether there were some  
 21 weeks in which you did not work any overtime?  
 22 A. I'm sure there were, but I do not  
 23 specifically remember.  
 24 Q. Do you know what the average number of  
 25 overtime hours were that you worked per week? Not

1 for you. Could you take a look at the left-hand  
 2 column in the top where it says employee number  
 3 and then it has the No. 32835 listed. Do you see  
 4 that?  
 5 A. I do.  
 6 Q. Was that your employee number while you  
 7 were assigned to work at Micron PC?  
 8 A. It was.  
 9 Q. Do you recall ever seeing this document  
 10 reflected in Exhibit \*-278?  
 11 A. No, I have never seen this document  
 12 before.  
 13 Q. You'll notice off in the right-hand  
 14 column there's a total for hours recorded during a  
 15 particular week, and starting on the first one it  
 16 reflects 40.50 hours. Do you see that?  
 17 A. Yes, I do.  
 18 Q. You go down it says 48 hours. Do you  
 19 see that?  
 20 A. Yes, I do.  
 21 Q. Then it says 50.05 hours and so on. Do  
 22 you see that?  
 23 A. Correct, yes, I do.  
 24 Q. Some of these weeks it reflects that  
 25 you recorded hours in excess of 40 hours worked

1 that you recorded but that you worked on average.  
 2 In other words, what average number of hours did  
 3 you work in excess of 40 per week? Without  
 4 reference to the deposition exhibit.  
 5 A. Without reference, my recollection is I  
 6 averaged over 50 hours per week.  
 7 Q. Some weeks you worked less than that?  
 8 A. I don't specifically remember weeks I  
 9 worked less than that. It is certainly possible  
 10 that I had a week where I worked less than that.  
 11 But I do remember working generally over 50 hours  
 12 per week because I specifically remember at the  
 13 time when I switched from Staples to Micron and I  
 14 had been working very long hours at Staples  
 15 thinking I thought my hours were long at Staples  
 16 until I moved to Micron. So I specifically  
 17 remember the hours being longer than I had  
 18 anticipated.  
 19 Q. Of the hours that you worked overtime  
 20 of roughly 50, how much of that would you record  
 21 on average without reference to the exhibit, if  
 22 you remember?  
 23 A. I cannot honestly remember specifically  
 24 what I did and did not record.  
 25 Q. There are certain weeks reflected on

1 Exhibit \*-278 in which you recorded more than 40  
 2 hours of work in a week. Would that indicate that  
 3 you accurately recorded your time for that week  
 4 including all overtime?  
 5 A. It could have, yes.  
 6 Q. Do you have an idea of how many  
 7 unrecorded overtime hours you worked while you  
 8 were at Micron PC total?  
 9 A. My best guess would be a total of 60 to  
 10 80 hours during the entire time of employment.  
 11 Q. What is that guess based on?  
 12 A. The guess is based on an average of  
 13 four hours per week of unrecorded lunches over  
 14 approximately a 15-week period and two or three  
 15 extra after-hour four-hour shifts is what that is  
 16 based on.  
 17 Q. When you say the four hours of  
 18 unrecorded lunch time, I understood your testimony  
 19 earlier to be that there were times when you  
 20 worked through lunch but you didn't clock out.  
 21 Right? In other words, it was recorded as work  
 22 time?  
 23 A. Correct.  
 24 Q. And then when you would leave to go on  
 25 an errand for lunch, you would clock out and clock

1 recording your lunchtime either as work or  
 2 nonwork.  
 3 A. The only thing that might help is in  
 4 general I remember working an average of 10- or  
 5 11-hour shifts.  
 6 Q. Including lunchtime?  
 7 A. Including lunchtime. And I  
 8 specifically see a great number of eight-, eight-  
 9 and-a-half-, and nine-hour shifts listed, which  
 10 does not jog in my memory as being the amount of  
 11 time I had worked.  
 12 Q. Anything else?  
 13 A. No, nothing else.  
 14 Q. There's an individual by the name of  
 15 Carey Culkins referenced as the supervisor on each  
 16 of these. Do you remember Carey Culkins being  
 17 your supervisor?  
 18 A. No, I do not.  
 19 Q. Do you remember an individual by the  
 20 name of John Church?  
 21 A. I do remember him. That was the  
 22 gentleman I had referred to earlier as my  
 23 supervisor at the time, I believed.  
 24 Q. So John Church you think was your  
 25 supervisor?

1 back in when you came in. Correct?  
 2 A. Correct.  
 3 Q. So the four hours roughly was already  
 4 recorded as work time if that was your practice of  
 5 reporting. Correct?  
 6 MR. HUNTLEY: Objection.  
 7 THE WITNESS: I'm honestly not sure.  
 8 Q. BY MR. DOCKSTADER: You're not sure  
 9 about my question or what you testified to  
 10 earlier?  
 11 A. I understand the question and I  
 12 understand what I testified to earlier, but I am  
 13 confused on the way I remember it being recorded.  
 14 I do not remember if the lunches had automatically  
 15 been subtracted out or if I specifically went in  
 16 and placed them in the computer and then worked  
 17 through lunch. I do not honestly remember.  
 18 Q. Does anything on Exhibit \*-278 help you  
 19 remember what it is that you may have done with  
 20 respect to recording your lunchtime?  
 21 A. No, it does not.  
 22 Q. Make sure you look at each page. Just  
 23 look at the top page, look at the next two pages,  
 24 see if there's anything in Exhibit \*-278 that  
 25 would help you remember what you did in terms of

1 A. Correct or team leader, I had assumed.  
 2 Q. But you don't recall an individual by  
 3 the name of Carey Culkins?  
 4 A. I do not.  
 5 Q. Did you ever receive any promotions  
 6 while you were at Micron PC?  
 7 A. No, I did not.  
 8 Q. Could you describe the nature of your  
 9 relationship with Mr. Church?  
 10 A. I got along excellently with him. I  
 11 felt he was a good man.  
 12 Q. Did Mr. Church treat you fairly?  
 13 A. Yes, he did.  
 14 Q. Did you ever complain to anyone about  
 15 Mr. Church?  
 16 A. No.  
 17 Q. Do you know whether there were any  
 18 attendance records kept on you while you were at  
 19 Micron PC in terms of the number of days you were  
 20 absent from work?  
 21 A. I do not know if they had kept those  
 22 records or not.  
 23 Q. Do you know of any records of tardiness  
 24 or your arrival at work late?  
 25 A. I do not know.

**In the United States District Court for the District of Idaho**

KIMBERLEY SMITH and MICHAEL B.	)	Case No.
HINCKLEY, individually and on behalf of	)	CIV 01-0244-S-BLW
those similarly situated,	)	
	)	
	)	
vs.	)	
	)	
MICRON ELECTRONICS, INC., a	)	
Minnesota corporation,	)	
	)	
	)	

Plaintiffs,

Defendant.



**DEPOSITION OF ALAN CLAFLIN**

**September 1, 2004**

VOLUME 1

Pages 1 - 102

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00082

1 how many additional hours you started working at  
2 that time?

3 A. I started coming in after 7:00 and  
4 never leaving generally before 7:00. And I would  
5 not go to lunch. So I would approximately say  
6 above and beyond what I was already working I was  
7 probably putting an additional two, two and a half  
8 hours a day above and beyond what I was already  
9 working.

10 Q. One of the times when Mr. Robinson was  
11 your supervisor -- we started covering this  
12 earlier and we got sidetracked. One of the times  
13 when Mr. Robinson was your supervisor, do you know  
14 for certain that there were times which you worked  
15 a longer shift than eight hours but you were not  
16 paid for all the time that you worked?

17 A. Yes.

18 Q. And that's based on you estimating in  
19 your mind what hours you worked for the week and  
20 then looking at the amount of money that was  
21 direct deposited in your account?

22 A. I was consistently working nine, ten  
23 hours a day at that time and I was receiving a  
24 paycheck for 40 hours a week.

25 Q. And for times when you did receive some

00083

1 overtime pay, do you have any reason to believe  
2 that you weren't paid for all the overtime that  
3 you worked for that particular week?

4 A. Yes.

5 Q. What's the basis for that, again?

6 A. We would work through lunch. They  
7 would provide food. We were paid for lunch. But  
8 to make goals, to do callbacks, to answer E-mail,  
9 instead of leaving at 4:00, leave at 6:00.

10 Q. So you might have worked ten hours on  
11 the day then?

12 A. That would have been 11 because I'd  
13 come in at 7:00. If I was able to leave at 4:00,  
14 that would have been a week I came in at 7:00.

15 Q. So if the company's records show that  
16 the week of August 28, 1999 you worked and were  
17 paid for ten and a half hours on a Monday, would  
18 you have any reason to dispute that you  
19 actually -- well, would you have any reason to  
20 believe you actually worked more than ten and a  
21 half hours?

22 A. Not for that day, no. You said August  
23 '99?

24 Q. Yes.

25 A. That would have been consumer sales,

00090

1 Micron.

2 Q. BY MR. TOLLEFSON: In what way is the  
3 recollection accurate? You testified you came in  
4 and left at different times, that your hours  
5 shifted, that there were times when you were told  
6 to stay late, that there were times you stayed  
7 late on your own. I'm trying to understand. And  
8 you also just told me you're not clear on what  
9 time periods were always busy and which times  
10 weren't.

11 Doesn't all that affect in what way you  
12 recall your work habits?

13 MR. HUNTLEY: Objection.

14 THE WITNESS: My work habits at Micron were  
15 on average ten hours a day regardless of the  
16 season.

17 Q. BY MR. TOLLEFSON: If the company would  
18 review its scanning records, would the scanning  
19 records show that you were there ten hours a day  
20 on average the whole time you worked at Micron?

21 A. I believe so. I do not know. That is  
22 my recollection.

23 Q. Since that was five years ago, what are  
24 you basing that recollection on?

25 A. My memory.

00094

1 Q. And is it your handwriting the  
2 handwritten portions of the document?

3 A. Yes, it is.

4 Q. Let's go back to the first page.

5 What's your understanding of what this document  
6 is?

7 A. That I was employed by Micron  
8 Electronics as an inside sales representative  
9 between the dates that are listed.

10 Q. What's your understanding what the  
11 purpose of this document is?

12 A. Basically this document allows these  
13 attorneys to represent my interest in a case  
14 against Micron Electronics.

15 Q. Tell me why did you sign up for the  
16 lawsuit?

17 A. I signed up for the lawsuit because I  
18 figured there was some basis for the lawsuit.

19 Q. And what's the basis that you are  
20 referring to?

21 A. The fact that we would work off the  
22 clock. We would work more than 40 hours a week,  
23 and we were not paid for it in several instances.

24 Q. Any other basis for the lawsuit?

25 A. That's the only one I was aware of. I

00098

1 A. I was never told that, no.

2 Q. Were you ever told that people could  
3 have no more than 47 hours of overtime, 47 total  
4 hours of time in a particular week?

5 A. No.

6 Q. Do you ever remember any number being  
7 discussed by anyone in management or supervisors  
8 about a particular amount of overtime hours that  
9 were going to be allowed for a particular week?

10 A. No. Oh, I'd like to add to that. I  
11 did have managers tell me overtime was not  
12 authorized. I don't know if you consider that a  
13 discussion under the question that you just asked.

14 Q. Well, first you don't recall there ever  
15 being a particular like saying we're authorizing  
16 45 or 48 or 50 hours?

17 A. No.

18 Q. What managers do you recall telling you  
19 that overtime was not authorized?

20 A. Jay Church.

21 Q. Any other managers, supervisors aside  
22 from Mr. Church?

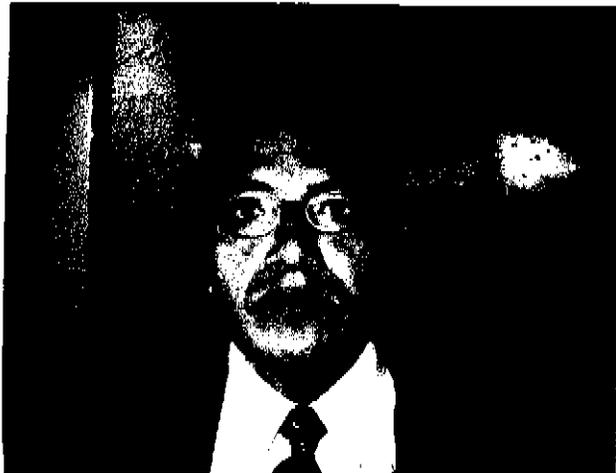
23 A. No.

24 Q. Did either of your supervisors at  
25 Micron Electronics ever prevent you from recording

Smith v. Micron

Deposition of Dimas, Hector

August 16, 2004



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00120

1 A. Probably 2001.

2 Q. Meaning fiscal June of 2001?

3 A. Uh-huh, yes.

4 Q. If you could take a look at Exhibit 422, that's

5 another envelope, dated February 2002, and some pay stubs that

6 were copied. Are those the other pay stubs that you looked at

7 last night in preparing your notes?

8 A. Yes.

9 Q. And you would have looked at these pay stubs on 4/21

10 and 4/22 to do the calculations on the envelope that

11 Mr. Williams now has?

12 A. That's correct.

13 Q. Did you look at any other documents in preparing

14 those notes and doing those calculations?

15 A. No, sir.

16 Q. Prior to your deposition testimony here today, had

17 you shared that envelope or those computations with

18 Mr. Williams?

19 A. No.

20 Q. The first time that you recalled having those

21 computations was during your deposition when I asked you if

22 you could estimate the amount of time that you had worked

23 overtime; is that correct?

24 A. That's correct.

25 Q. Do you have an estimate of the amount of time that

00121

1 you believe you worked overtime that you were not paid for?

2 A. I would estimate two weeks per week -- I'm sorry, two  
3 hours per week during that time period.

4 Q. During what time period?

5 A. During that time period that you mentioned on the  
6 lawsuit, during June -- June 2000 -- I'm sorry, 1998 -- I'm  
7 sorry, June 1998 to May 2001.

8 Q. And it's your estimate that you worked two hours of  
9 overtime that you didn't get paid for?

10 A. That's correct.

11 Q. Each week?

12 A. Each week, yes.

13 Q. And how do you reach that estimate of two hours?

14 A. Well, by the time that I stayed extra times,  
15 sometimes extra minutes, sometimes come on Saturday an hour,  
16 and I would also, by the notes that you have seen consistently  
17 by my supervisors, that I had a lot of work. As you read in  
18 one of the notes in one of the evaluations, Hector is busier  
19 than most people are. I had a lot of work to do. One of the  
20 evaluations said, Hector had more work than most people.

21 Q. Any other basis you have for that two hours per week  
22 estimate?

23 A. No, no, that's it. I don't recall any other. Again,  
24 that is an average.

25 Q. Is that the same average that you put on the notes of

Smith v. Micron

Deposition of Shelly L. Dyer

September 20, 2004



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1 IN THE UNITED STATES DISTRICT COURT  
2 IN AND FOR THE DISTRICT OF IDAHO

3  
4 KIMBERLEY SMITH and MICHAEL )  
B. HINCKLEY, JACQUELINE T. )  
5 HLADUN, MARILYN J. CRAIG, )  
JEFFERY P. CLEVINGER, and )  
6 TIMOTHY C. KAUFMANN, )  
individually and on behalf )  
7 of those similarly situated, )

8 Plaintiffs, )

9 vs. )

No. CIV 01-0244-S-BLW

10 MICRON ELECTRONICS, INC., a )  
Minnesota corporation, )

11 Defendant. )

12  
13

14 DEPOSITION UPON ORAL EXAMINATION  
15 OF  
16 SHELLY L. DYER

17  
18 Taken at 900 SW Fifth Avenue  
19 Portland, Oregon

20  
21  
22  
23

24 DATE TAKEN: SEPTEMBER 20, 2004  
25 REPORTED BY: JOLENE C. HANCA, RPR, CCR #2741

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\* \* \* \* \*

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00062

1 than -- you have already testified about 40 hours, but do  
2 you ever remember any other number aside from that?

3 A. No, I don't remember a number. I just remember  
4 no overtime, those words being used.

5 Q. So just to make sure I understand, you believe  
6 that there were occasions when you were not to record  
7 more than 40 hours in a particular workweek and that  
8 there were also occasions when it was okay for you to  
9 record all of the overtime that you worked; is that  
10 correct?

11 A. I'm sorry, could you repeat that?

12 MR. TOLLEFSON: Would you read that back.

13 (Record read.)

14 A. That is correct.

15 Q. Do you remember on the occasions when it was  
16 okay for you to record all of the overtime that you  
17 worked, was there any limit placed on the amount of  
18 overtime that you could work and record?

19 A. I don't recall a limit.

20 Q. Ms. Dyer, have you done any sort of computation  
21 of how many hours you believe that you worked at Micron  
22 that you were not paid for?

23 A. Just in my head I can imagine coming in  
24 one hour early a day and working through lunch, would be  
25 two hours. So possibly, you know, five to ten hours a

00063

1 week.

2 Q. For those weeks for which you were not

3 recording the overtime that you worked?

4 A. Correct.

5 Q. And do you have any sense of how many weeks

6 that is versus how many weeks you did record and get paid

7 for the overtime that you worked?

8 A. I don't.

9 Q. There are two potential cutoffs for damages in

10 this case.

11 If you were to only go from, let's see,

12 June 1st of 1999 until August 16th of 1999, for those

13 2-1/2 months of 1999, do you have a sense of how many

14 hours during that time period you might have worked that

15 you did not record?

16 A. I don't.

17 Q. What if you were to go from June 1st of 1998 up

18 to August 16th of 1999, a little over a year?

19 A. I couldn't say. I don't recall.

20 Q. Is there any particular amount of money that

21 you feel that Micron owes you for the work that you

22 performed for which you were not paid?

23 A. I feel like there is an amount. I have not

24 calculated a dollar amount.

25 Q. Have you spoken with any -- and this would be

**Copy**

In the United States District Court  
for the District of Idaho

KENNAN D.E. FORD 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



**DEPOSITION OF KENNAN D.E. FORD**

February 20, 2002

Reported by  
Patricia J. Terry, RPR  
CSR. No. 653

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[1] record?  
 [2] A: Yes.  
 [3] Q: For Ms. Weaver, did you request prior  
 [4] approval before you worked the overtime?  
 [5] A: Not that I recall.  
 [6] Q: When Mr. Robinson was your supervisor,  
 [7] did you ever request prior approval before you  
 [8] worked overtime?  
 [9] A: No.  
 [10] Q: Were you ever verbally reprimanded or  
 [11] spoken to by Mr. Robinson for working overtime  
 [12] without prior approval?  
 [13] A: Not that I recall.  
 [14] Q: Were you ever verbally reprimanded or  
 [15] spoken to by Ms. Weaver for working overtime  
 [16] without prior approval?  
 [17] A: Not that I recall.  
 [18] Q: Did Mr. Robinson ever tell you you were  
 [19] working too much overtime, you specifically?  
 [20] A: No.  
 [21] Q: Did Ms. Weaver ever tell you you were  
 [22] working too much overtime?  
 [23] A: I'm not sure. I don't think so.  
 [24] Q: Do you see paragraph F, the first  
 [25] sentence, where it says non-exempt employees are

[1] Q: Two to four a day would be spent on  
 [2] overtime that was not recorded when Ms. Weaver was  
 [3] your supervisor?  
 [4] A: Yes.  
 [5] Q: What about for the period when  
 [6] Mr. Robinson was your supervisor?  
 [7] A: Same.  
 [8] Q: You told me that for the period that  
 [9] Mr. Robinson or Ms. Weaver was your supervisor that  
 [10] you were paid for the overtime that you did report?  
 [11] A: Correct.  
 [12] Q: Do you have any reason to believe that  
 [13] if you had reported additional overtime hours that  
 [14] you wouldn't have been paid for those hours?  
 [15] MR. THOMAS: Object to the form of the  
 [16] question.  
 [17] THE WITNESS: It might have been my last  
 [18] check.  
 [19] Q: BY MR. TOLLEFSON: What do you mean by  
 [20] that?  
 [21] A: If I would have reported it, there's  
 [22] reason to believe that formal discipline would have  
 [23] been taken.  
 [24] Q: Why do you say that?  
 [25] A: Because your value as a sales rep was

[1] not allowed to work off the clock?  
 [2] MR. THOMAS: Object to the form of the  
 [3] question.  
 [4] THE WITNESS: Yes.  
 [5] Q: BY MR. TOLLEFSON: And you told me that  
 [6] while Ms. Weaver and Mr. Robinson were your  
 [7] supervisors, you did perform some work off the  
 [8] clock; is that correct?  
 [9] A: Yes.  
 [10] Q: For the period that Ms. Weaver was your  
 [11] supervisor, do you have an estimate as to on a  
 [12] weekly basis how much time you worked that you did  
 [13] not record?  
 [14] A: On a weekly basis?  
 [15] Q: Yes.  
 [16] A: Anywhere from 80 to 160. I'm sorry.  
 [17] Wait a minute.  
 [18] Q: That's okay.  
 [19] A: Good scout. On a weekly basis.  
 [20] Q: Would you like the question again?  
 [21] A: No. I'm not a math person. Twenty  
 [22] would be the max.  
 [23] Q: Did you say 20 would be the maximum?  
 [24] A: Right. Two to four a day I'll just say  
 [25] my simple mind can come up with.

[1] based upon the amount of sales based on --  
 [2] multiplied by the amount of hours that you spent at  
 [3] the company.  
 [4] Q: You say it was based on the amount of  
 [5] sales you made multiplied by the hours you spent at  
 [6] the company? I'm sorry. I didn't catch your  
 [7] answer. You said that your value as a sales rep  
 [8] was based upon what?  
 [9] A: Amount of sales so probably divided by  
 [10] the amount of hours that you spend.  
 [11] Q: You told me earlier that Mr. Robinson  
 [12] never reprimanded you for the amount of overtime  
 [13] that you recorded; is that correct?  
 [14] A: That is correct.  
 [15] Q: So what led you to believe that if you  
 [16] had recorded more overtime that you would have been  
 [17] in trouble in some respects?  
 [18] A: Experience based on seeing employees who  
 [19] submitted a lot of overtime and whose sales were  
 [20] not in the top percentage.  
 [21] Q: Are you referring to any employees in  
 [22] particular?  
 [23] A: I can't recall names.  
 [24] Q: You just told me it was a combination of  
 [25] two things, submitting a lot of overtime and having

E

IN THE UNITED STATES DISTRICT COURT  
IN AND FOR THE DISTRICT OF IDAHO

KIMBERLEY SMITH, MICHAEL B.  
HINCKLEY, JACQUELINE T.  
HARDON, MARILYN J. CRAIG,  
JEFFREY P. CLEVINGER and  
TIMOTHY C. KAUFMANN,  
individually and on behalf of  
all those similarly situated,

Plaintiffs,

vs. Case No. CIV 01 0244 S BLW

MICRON ELECTRONICS, INC., a  
Minnesota corporation,

Defendant.

COPY

The Deposition of MATT HAGMAN, taken  
pursuant to Notice of Taking Deposition, taken  
before Christine K. Peterson, RPR, a Notary Public  
in and for the County of Hennepin, State of  
Minnesota, taken on the 29th day of April, 2004,  
at 220 South Sixth Street, Suite 600, Minneapolis,  
Minnesota, commencing at approximately 1:30 p.m.

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1 APPEARANCES

2 DANIEL E. WILLIAMS, ESQUIRE, of the law firm  
3 of Huntley Park, LLP, 250 South Fifth, Suite 660,  
4 P.O. Box 2188, Boise, Idaho 83701,  
5 appeared for and on behalf of the Plaintiffs.

6 GREGORY C. TOLLEFSON, ESQUIRE, of the law  
7 firm of Stoel Rives, LLP, 101 South Capitol  
8 Boulevard, Suite 1900, Boise, Idaho 83702-5958,  
9 appeared for and on behalf of the Defendant.

12 \*\*\*

13 The original is in the possession of  
14 Attorney Gregory Tollefson

15 \*\*\*

1 THURSDAY, APRIL 29, 2004

2 Whereupon,

3 MATT HAGMAN,

4 a witness in the above-entitled matter,

5 after having been first duly sworn,

6 deposes and says as follows:

7 MR. TOLLEFSON: Let the record reflect

8 that this is the time and place for the taking of

9 the deposition of Matt Hagman. The deposition is

10 being taken pursuant to the Federal Rules of Civil

11 Procedure, scheduled pursuant to notice and

12 agreement of the parties.

13 EXAMINATION

14 BY MR. TOLLEFSON:

15 Q Mr., is it Hagman?

16 A Hagman.

17 Q Hagman. We've been introduced briefly off

18 the record. For the record, my name is Greg

19 Tollefson. I'm a lawyer with the law firm of

20 Stoel Rives, and we represent the defendant in this

21 lawsuit, Micron Electronics. Do you understand

22 that?

23 A I do.

24 Q And you understand that we are here today

25 for your deposition in this lawsuit against Micron

00059

1 spend going to the gym?

2 A Half an hour.

3 Q Okay. On those days what did you do for

4 the other half an hour of your hour-long lunch

5 break?

6 A I ate lunch at my desk.

7 Q And on those days when you went to the gym

8 and you spent the other half of the lunch at your

9 desk, did you ever perform work?

10 A Sure. Could have.

11 Q Okay. There's a difference between could

12 have and did, and my question is, did you ever

13 perform work?

14 A Yes.

15 Q Thinking about the times that you left the

16 building and thinking about the times you went to

17 the gym and thinking about the times that you did

18 anything else except work during your lunch break,

19 can you provide us an estimate, in a typical or

20 average week, of how much time you spent working at

21 your desk during the hour lunch break?

22 A Um, if you figure it's five hours of lunch

23 in a week, maybe a couple hours.

24 Q And is that an average?

25 A Yes.

00062

1 A Specifically authorized, no.

2 Q (BY MR. TOLLEFSON) For the approximately  
3 seven months that you were employed at Micron, do  
4 you have any approximation as to how many phone  
5 calls you made to your outside sales consultant from  
6 your house?

7 A Um, I would say approximately two to three  
8 per week.

9 Q Okay. And on those occasions when you did  
10 call the outside sales consultant from your home,  
11 could you give us the average duration of those  
12 phone calls?

13 A I really couldn't say.

14 Q Well, are we talking typically an hour or  
15 are we talking five minutes? Was there an average  
16 kinda? Could you give us an average?

17 A Closer to 10 minutes.

18 Q Earlier you provided Mr. Williams an  
19 estimate of the maybe -- your testimony was maybe a  
20 couple hours per week that you spent working at your  
21 desk during the hour lunch break, and you explained  
22 that that was also an average, perhaps an average.  
23 Is that correct?

24 A Yes.

25 Q I'm just trying to understand, your



00347

1 Q. Do you have any idea of what the  
2 difference would be between the amount of time  
3 when you worked overtime and the amount of time  
4 that you recorded?

5 A. I would say anywhere from eight to  
6 16 -- eight to 15, eight to 16 hours a week.

7 Q. Would be the difference between what  
8 you say you worked and what you recorded?

9 A. That's right.

10 Q. Previously you testified that you  
11 thought that difference was between four and seven  
12 hours. Have you changed your testimony on that?

13 A. It's been a long time ago.

14 Q. Are you just throwing out a number as  
15 your best guess today?

16 A. I would say an average of about eight  
17 hours. I would say average of about eight hours.

18 Q. An average of eight hours per week?

19 A. Per week.

20 Q. You're saying that you believe an  
21 average of an hour to an hour-and-a-half a day; is  
22 that correct?

23 A. That sounds about right. Well, two  
24 hours a day. I would say an average of -- well,  
25 of what I recorded or what I worked?

00348

1 Q. What you worked.

2 A. What I worked?

3 Q. I thought your testimony was an hour to

4 an hour-and-a-half per day that you worked.

5 MR. HUNTLEY: Objection. Mischaracterizes

6 his testimony.

7 THE WITNESS: On average I worked between an

8 hour-and-a-half -- or between an hour and three

9 hours a day of overtime.

10 Q. BY MR. DOCKSTADER: Of that hour to

11 three per day on average that you think you worked

12 overtime, how much of that do you think was not

13 recorded?

14 A. An hour and a half to two hours.

15 Q. So that would be seven-and-a-half to

16 ten hours, if my math serves me right --

17 A. That sounds about right.

18 Q. -- on average per week is what you're

19 saying; is that right?

20 A. That sounds about right.

21 Q. You have not included in that

22 estimation any discount for days in which you, in

23 fact, may have only worked eight hours, as you

24 testified earlier, that there were probably some

25 days, correct?



1 to make more in commissions?

2 A. Yes.

3 Q. You also said that there were times  
4 that you were not allowed to record over – not  
5 allowed to work overtime. Can you tell me a  
6 little bit more about that?

7 A. We were directed by our supervisor that  
8 there would be no overtime approved.

9 Q. Your first supervisor was Marvin  
10 Stewart. Do you remember, was there any period  
11 when Mr. Stewart was your supervisor that you were  
12 told there would be no overtime approved?

13 A. Don't know for sure, but I'm fairly  
14 positive there was. I couldn't tell you when.

15 Q. How about when Doug Case was your  
16 supervisor? Do you remember at any time when  
17 Mr. Case was your supervisor you were told that  
18 there would be no overtime approved?

19 A. I believe that would be the same  
20 situation of I'm sure there was, but I don't know  
21 when.

22 Q. Finally, when Mr. Church was your  
23 supervisor, were there occasions during that  
24 period when you were told that there would be no  
25 overtime approved?

1 A. I don't recall how long of a duration  
2 it was, no.

3 Q. At some points, then, Mr. Church would  
4 come back and say, "Now, it's okay; now you can  
5 work overtime," and then later come back and say,  
6 "Now you can't, now overtime is not approved?"

7 Do you understand what I'm trying to  
8 ask? I'm trying to get a sense of, during the  
9 period Mr. Church was your supervisor – I  
10 apologize; this is going to be a horrible  
11 question – during the period Mr. Church was your  
12 supervisor, tell me a little bit more about what  
13 you recall how the overtime either being approved  
14 or not approved, how did that work.

15 A. It was just a communication he had with  
16 the sales team stating that business was slow and  
17 no overtime would be approved until otherwise.

18 Q. Were you finished with your answer?

19 A. Yes.

20 Q. And then at some point in the future he  
21 would advise you, "Now overtime will be approved"?

22 A. Correct.

23 Q. I'm just looking for an estimation if  
24 you have one. During the period that Mr. Church  
25 was your supervisor, do you have any estimation as

1 A. Again, the same, but I couldn't  
2 remember dates.

3 Q. We have established earlier through  
4 your testimony Mr. Church was your supervisor from  
5 at least April of 1998 through June of '99,  
6 correct?

7 A. Yes, I believe that's correct.

8 Q. Tell me, do you remember anything  
9 specifically that you were told by Mr. Church  
10 about working overtime?

11 A. I know there were times that he told us  
12 that our overtime would not be approved.

13 Q. But yet, even though on those occasions  
14 when Mr. Church told you that the overtime would  
15 not be approved, you chose to go ahead and work  
16 overtime in order to make more in commissions; is  
17 that correct?

18 A. Yes.

19 Q. Again, I want to focus on the period  
20 when Mr. Church was your supervisor. Do you have  
21 any recollection as to, were there times when he  
22 said overtime would not be approved, would it  
23 sometimes last for a week or a month? Or how --  
24 I'm trying to get a sense of what your testimony  
25 is on that issue.

1 to how many times he told you that overtime was  
2 not going to be approved?

3 A. I couldn't honestly tell you.

4 Q. Even though there were periods  
5 Mr. Church told you the overtime would not be  
6 approved, during those periods, did you ever work  
7 and record some overtime anyway?

8 A. Could you repeat that?

9 Q. Sure. Focusing on the periods when  
10 your testimony is that Mr. Church said no overtime  
11 would be approved, when you were working under  
12 that direction from Mr. Church, when that was your  
13 marching orders for the week, or whatever  
14 duration, during those periods, did you ever still  
15 go ahead and work some overtime and record the  
16 overtime that you worked?

17 A. No.

18 Q. So is it correct, then, to say that any  
19 time Mr. Church told you that no overtime would be  
20 approved, your time sheet would just show a  
21 straight 40 hours recorded for that week; is that  
22 correct?

23 A. I believe so, yes.

24 Q. Did you ever work on any Saturdays or  
25 Sundays?

1 A. I believe I spoke with her or someone  
2 else in human resources regarding, again, time off  
3 pay and final -- receipt of final check.

4 Q. And during any of those phone  
5 conversations, did you bring up the fact there  
6 were hours that were you worked for which you  
7 claim you weren't paid?

8 A. No.

9 Q. Why did you not bring that up in one of  
10 those phone conversations?

11 A. At the time it wasn't an issue to me.  
12 I don't recall.

13 (Exhibit \*-288 marked.)

14 Q. BY MR. TOLLEFSON: Mr. Larscheid, I  
15 have handed you a document which has been marked  
16 Exhibit \*-288. I'll represent for the record that  
17 this is an affidavit, yours, that was filed in  
18 this case. And it also contains Exhibits A  
19 through G that were attached to the original  
20 affidavit.

21 Do you recall signing this affidavit?

22 A. I do.

23 Q. That is your signature on the fourth  
24 page?

25 A. Yes, it is.

1 A. I'm still not clear on the question.

2 Q. I asked you earlier -- let's focus on  
3 the period Mr. Church was your supervisor. During  
4 the period when Mr. Church was your supervisor, I  
5 asked you, taking away the periods when no  
6 overtime was approved, you testified that you did  
7 accurately record your time on all those other  
8 occasions.

9 Do you recall that testimony?

10 MR. HUNTLEY: Objection.

11 THE WITNESS: You're asking me if during the  
12 period that overtime was authorized I did record  
13 it correctly?

14 MR. TOLLEFSON: Yes.

15 THE WITNESS: I believe I did.

16 Q. BY MR. TOLLEFSON: So, again, let's  
17 focus when Mr. Church was your supervisor because  
18 I recognize I don't want to go back all the way to  
19 1997. The periods that you are referring to in  
20 this affidavit when you did not record the time  
21 you worked, if that was when Mr. Church was your  
22 supervisor, those are the same periods as when  
23 Mr. Church told you that no overtime was approved;  
24 is that correct?

25 A. I'm sorry. Repeat the question.

1 Q. You mention in here on paragraph No. 14  
2 there were times that you worked through your  
3 lunch and also times that you either came in  
4 before your shift or worked past your shift; is  
5 that correct?

6 A. Yes.

7 Q. We have established already through  
8 your testimony today that those occasions when you  
9 did not record time were when you were told by  
10 your supervisor -- those times when you did not  
11 record all time you worked were when you were told  
12 overtime was not approved; do you remember that?

13 MR. HUNTLEY: Objection. Mischaracterizes  
14 his testimony.

15 MR. TOLLEFSON: Do you understand the  
16 question?

17 THE WITNESS: I don't understand the  
18 question.

19 Q. BY MR. TOLLEFSON: Sure. In this  
20 affidavit where you were referring to time you  
21 worked but did not record, isn't it correct that,  
22 based on your testimony earlier today, that those  
23 times when you worked but did not record all the  
24 time you worked is when your supervisors told you  
25 no overtime was approved?

1 Q. You've got on your affidavit here, you  
2 estimated you worked two to three hours per week  
3 off the clock for which you were not paid.

4 Do you see that?

5 A. Correct, I do.

6 Q. So let's focus on the period when  
7 Mr. Church was your supervisor. During the weeks  
8 which no overtime was authorized, is it correct  
9 that, according to this affidavit, you worked two  
10 to three hours per week off the clock during those  
11 weeks?

12 MR. HUNTLEY: Objection.

13 THE WITNESS: Yes, I believe that is a  
14 conservative estimate.

15 Q. BY MR. TOLLEFSON: That is in fact your  
16 sworn testimony on this affidavit, isn't it?

17 A. Yes.

18 Q. Why are you calling it a conservative  
19 estimate if that's what your testimony is in the  
20 affidavit?

21 A. Because I'm not exactly sure of the  
22 times.

23 Q. You did testify earlier today that you  
24 estimated four to five hours a week; is that  
25 correct?

1 A. Yes, I did.

2 Q. So, again, I recognize that my question  
3 to you earlier today, I was asking you to focus on  
4 the period Mr. Church was your supervisor, how  
5 many hours per week off the clock did you work,  
6 when Mr. Church was your supervisor, when he told  
7 you that no overtime was authorized?

8 A. Right now I would say it would have  
9 been four to five.

10 Q. Why was it two to three hours when you  
11 did this affidavit?

12 A. After the affidavit, there was more  
13 time to actually sit down and go over the numbers.

14 Q. What numbers did you go over with the  
15 change in estimate from two to three to four to  
16 five?

17 A. Just calculating the times in my head;  
18 the early mornings, the lunches at my desk.

19 Q. Don't you have all that here in your  
20 affidavit? You have got lunch, "before my shift,"  
21 and "after my shift." Is that in your affidavit?

22 A. Yes, it is.

23 Q. What was different about thinking about  
24 those times when you did your affidavit versus  
25 later?

1 Q. Based on the testimony you had earlier  
2 today, is it correct that, for any week in which  
3 you recorded and were paid for overtime, that that  
4 was not a week when Mr. Church would have said no  
5 overtime was approved?

6 A. Can you repeat that? I'm sorry.

7 Q. Sure. Maybe I can word it a little  
8 better.

9 Anytime -- if there is on a weekly  
10 basis that it shows you worked more than 40 hours  
11 a week -- again, I'm going to focus when  
12 Mr. Church was your supervisor -- but during the  
13 period that Mr. Church was your supervisor, any  
14 time there is a week in which you worked more than  
15 40 hours, is it correct that, based on your  
16 testimony, that that was a week -- was not a week  
17 in which Mr. Church had told you no overtime was  
18 approved?

19 A. If I recorded overtime on my time  
20 sheet, it would have had to have been a week it  
21 would have been approved in advance.

22 Q. Do you have any estimation as to the  
23 number of weeks between June 1st of 1998 and when  
24 you left in 1999, approximately 52 weeks in that  
25 period, how many of those weeks you recorded and

1 A. The current numbers, the four to five  
2 is, how I remember it today.

3 Q. But you actually did this affidavit,  
4 not two years ago, but wasn't the time you  
5 executed the affidavit closer in time to your  
6 employment at Micron than today?

7 A. Yes.

8 Q. If I told you that the company's  
9 payroll records indicated that, from June 1 of  
10 1998 through June, whenever you quit or were  
11 fired, that you were paid for 254.4 overtime hours  
12 during that approximately one-year period, would  
13 you have any documents or facts to dispute that?

14 A. No, I would not.

15 Q. Your testimony is that, in addition to  
16 those 254 overtime hours, you also worked on some  
17 occasions an extra four to five hours per week  
18 that you did not record?

19 A. Correct.

20 Q. Since you have in your affidavit two to  
21 three hours, is it possible that there were  
22 occasions when Mr. Church was your supervisor when  
23 he said no overtime was approved that you might  
24 have only worked two to three hours?

25 A. It's very possible.

1 were paid for overtime?

2 A. I'm not sure.

3 Q. Would it surprise you if there were  
4 more than 40 weeks within that period in which you  
5 recorded and were paid for overtime?

6 A. It would surprise me.

7 Q. If the company's payroll records  
8 indicated that there in fact were only seven weeks  
9 between June of 1998 and June of 1999 in which you  
10 did not record any overtime, would you have any  
11 facts or reason to dispute that?

12 A. I would have no fact to dispute it, I  
13 guess.

14 (Exhibit \*-289 marked.)

15 Q. BY MR. TOLLEFSON: Mr. Larscheid, I  
16 have handed you what's been marked as Exhibit  
17 \*-289.

18 Is that your signature on this  
19 document?

20 A. Yes, it is.

21 Q. What's your understanding of what that  
22 document is?

23 A. It's my agreement to be part of the  
24 suit.

25 Q. Who gave this consent form to you?



1 September.

2 THE WITNESS: That would be a very hard  
3 period of time for me to find an estimate for.

4 Q. BY MR. TOLLEFSON: Is there any  
5 difference between those periods of time and you  
6 testified earlier that it varied from one to five  
7 hours per week? Is that still true for those  
8 months?

9 A. No, those months were busier.

10 Q. Why is that?

11 A. I'm not exactly sure. It was due to the  
12 overwhelming -- the huge volume of the systems  
13 sales and how they couldn't man their phones. And  
14 my department was basically stripped away. So  
15 fewer salespeople in my department were having to  
16 take more calls.

17 Q. I'll represent to you that the company's  
18 records show your last day of work was September  
19 1st of '98. So based upon that, can you give me a  
20 sense of, for the months of June, July, and August  
21 of 1998, how many hours per week do you think that  
22 you worked which you did not record?

23 A. I would say approximately three to five  
24 per week.

25 Q. Okay. Mr. McCarter, for the year period

1 recording all of your overtime?

2 MR. THOMAS: Object to the form.

3 THE WITNESS: No.

4 Q. BY MR. TOLLEFSON: You told me that you  
5 do remember the conversation with Mr. Kvist; is  
6 that correct?

7 A. Yes.

8 Q. And you do not remember any conversation  
9 with Mr. Jones where he instructed you not to  
10 record all of the overtime that you were working;  
11 is that correct?

12 A. Yes.

13 Q. And you don't remember any conversation  
14 with any other supervisor at Micron telling you not  
15 to record all of the overtime that you were  
16 working; is that correct?

17 A. Yes.

18 Q. I'm sorry. I'm trying to check the  
19 record here to make sure I have got this.

20 You don't remember Mr. Jones ever  
21 instructing or advising you to not accurately  
22 record all time that you worked; is that correct?

23 A. Could you ask the question again? I'm  
24 sorry.

25 Q. Sure. You don't remember Mr. Jones --

1 that you worked at Micron Electronics, did more  
2 than half of your total earnings come from  
3 commissions that you were paid?

4 A. I don't remember.

5 Q. Do you remember, did you typically make  
6 more from commissions than you did from your hourly  
7 pay?

8 A. I don't remember.

9 Q. Do you remember what the approximate  
10 amount of your -- I'm sorry. Strike that. Let me  
11 ask you this a different way.

12 Was there a typical amount you remember  
13 of what your take-home pay was for each month? Did  
14 it vary quite a bit?

15 A. I don't remember.

16 Q. Mr. McCarter, did Mike Jones ever  
17 prevent you from recording any of your overtime?

18 A. I don't remember.

19 Q. Did any supervisor at Micron Electronics  
20 ever prevent you from recording all of the overtime  
21 that you worked?

22 A. I don't remember.

23 Q. You remember the conversation with  
24 Mr. Kvist because you don't remember -- is it  
25 likely that Mr. Jones never prevented you from

1 Mike Jones, your supervisor -- ever instructing or  
2 advising you to not accurately record all time that  
3 you worked?

4 MR. THOMAS: Object to the form of the  
5 question.

6 THE WITNESS: That's correct.

7 Q. BY MR. TOLLEFSON: Mr. McCarter, can you  
8 recall any names of people who you think would  
9 be -- who you would want to call as witnesses to  
10 support your testimony about the way you recorded  
11 your time at Micron?

12 A. Well, Corey Kvist.

13 Q. Anyone besides Mr. Kvist?

14 A. Not that I can think of at this moment.

15 Q. You mentioned earlier that you were  
16 aware of the other people in the Additions Group  
17 not recording all of the overtime that they worked.  
18 Do you remember any of those people's names?

19 A. Yes, yes.

20 Q. What names do you remember?

21 A. There was a lady named Sharon. I can't  
22 recall her last name. Another coworker named --  
23 first name was Josh, Kreibich.

24 Q. Any other names?

25 A. Not that I recall specifically.



1 Q. You never actually spoke to Mr. Casey  
 2 about the fact that it had been?  
 3 A. Boy, it was a long time ago.  
 4 Q. So your memory's not clear one way or  
 5 the other on what happened?  
 6 A. No, not one way or the other. I'm real  
 7 clear on the fact that I did not get paid for  
 8 everything I worked.  
 9 Q. Right. I'm not asking about that.  
 10 A. I just assumed I was just trying to get  
 11 my commission done.  
 12 Q. Right. I'm not asking about that. I'm  
 13 focusing on a specific instance that you're  
 14 testifying about that you remember your time sheet  
 15 being not approved on one occasion.  
 16 A. Whether I recall that being, yes.  
 17 MR. HUNTLEY: Is this okay for a break,  
 18 Greg?  
 19 MR. TOLLEFSON: Yes. That's fine.  
 20 (Recess.)  
 21 Q. BY MR. TOLLEFSON: Mr. McGuire, before  
 22 we took a break, we were talking about this  
 23 instance you were testifying about where you were  
 24 in the commercial group working under Mr. Casey  
 25 and you had a time sheet that you submitted that

1 happened?  
 2 A. I don't recall.  
 3 Q. On some of those occasions could it  
 4 have been like you said that somebody told you it  
 5 wasn't going to be approved?  
 6 A. On an occasion or two, that could have  
 7 happened.  
 8 Q. Because that was your testimony a  
 9 moment ago.  
 10 A. Right.  
 11 Q. Isn't that correct? You told me,  
 12 "Honestly, I really cannot recall. You know, you  
 13 just don't know if somebody around you said, 'Hey,  
 14 he's not going to approve that' or if it was  
 15 rejected or he came by."  
 16 Were there other occasions -- let me  
 17 ask it this way. Are you certain that there were  
 18 other occasions where your time sheet that you  
 19 submitted for time worked was rejected when  
 20 Mr. Casey was your supervisor?  
 21 A. Yes.  
 22 Q. And what do you remember about those  
 23 other occasions?  
 24 A. Can I answer it as I recall or as I  
 25 remember this to be?

1 was rejected?  
 2 A. Yes.  
 3 Q. And was I correct that in order for you  
 4 to find out that it was rejected you actually had  
 5 to check something; you weren't notified that it  
 6 was rejected?  
 7 A. Honestly, I really cannot recall. You  
 8 know, you don't know if, you know, somebody around  
 9 you said, "Hey, he's not going to approve that" or  
 10 it was rejected or he came by or something  
 11 happened to make me have to adjust it.  
 12 Q. But as you sit here today, you don't  
 13 recall what it was?  
 14 A. Honestly, to the best of my knowledge  
 15 it was rejected.  
 16 Q. You don't recall whether you did speak  
 17 with Mr. Casey about the fact it was rejected?  
 18 A. On that particular -- on that instance,  
 19 no.  
 20 Q. Okay. Were there any other instances  
 21 when Mr. Casey was your supervisor that you think  
 22 that your time sheet that you submitted for a  
 23 particular workweek was rejected?  
 24 A. Yes.  
 25 Q. On how many occasions do you think that

1 Q. I'm just asking for your most accurate  
 2 and truthful testimony as you sit here today.  
 3 A. Then that's what I'm trying to give. I  
 4 guess I don't understand your questions.  
 5 Q. Well, you told me a moment ago you  
 6 don't really recall, and now you're telling me  
 7 that you're certain about certain things. So I'm  
 8 trying to understand.  
 9 A. You know, it was a long time ago. And  
 10 it was a time where it was difficult. And there  
 11 was a lot of things said. And who said and what  
 12 was said, you know, is sometimes blurred together  
 13 in who said it to you. Whether it was Dominic or  
 14 somebody in my cubicle that it came down from  
 15 Dominic, it still was a direct -- somebody in a  
 16 supervisory capacity said we cannot go over 40  
 17 hours that week or we cannot go over X hours that  
 18 week.  
 19 Whether I was submitting my time sheet  
 20 and somebody happened to be watching me do it or  
 21 saying you've got eight, ten, 12 hours over and  
 22 they said he'll never approve that and whether it  
 23 was Dominic that said it to me directly, honestly,  
 24 I cannot recall. But it was -- there was  
 25 something that said -- there was somebody that

Page 80

1 A. No, I haven't.  
2 Q. Did you ever work with Mr. Clevenger?  
3 A. On occasion.  
4 Q. Was he ever on a sales team that you  
5 were on?  
6 A. No. When I was working as an SE.  
7 Q. Did you ever discuss with Mr. Clevenger  
8 any issues about working off the clock or overtime  
9 or anything like that?  
10 A. No, I haven't.  
11 Q. When you were estimating for me this 10  
12 to 15 hours per week that you worked that you did  
13 not record, is that estimate just for when  
14 Mr. Casey was your supervisor in the commercial  
15 group?  
16 A. No, it's pretty much across the board.  
17 Even in the web group we worked weekends. I mean,  
18 we were just piled on. It was basically a new  
19 innovation with taking sales in, and we were just  
20 at that time just totally inundated. We were  
21 working all the time.  
22 Q. Were there occasions when you were in  
23 the web sales group that you recorded all the time  
24 that you worked?  
25 A. When I was not instructed not to.

Page 81

1 MR. TOLLEFSON: Chris, do you have any  
2 questions?  
3 MR. HUNTLEY: I don't have any questions.  
4 MR. TOLLEFSON: We'll adjourn the deposition  
5 then.  
6 (The deposition concluded at  
7 11:11 a.m.)  
8 -oo0oo-  
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25

**In the United States District Court for the District of Idaho**

KIMBERLEY SMITH and MICHAEL B.	)	Case No.
HINCKLEY, individually and on behalf of	)	CIV 01-0244-S-BLW
those similarly situated,	)	
	)	
	)	
	)	
vs.	)	
	)	
	)	
MICRON ELECTRONICS, INC., a	)	
Minnesota corporation,	)	
	)	
	)	

Plaintiffs,

Defendant.



**DEPOSITION OF CHRISTOPHER R. PAPER0**

**July 27, 2004**

VOLUME I  
Pages 1 - 105

Reported by  
Patricia J. Terry  
No. 653

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and **ASSOCIATES, LLC**  
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When excellence is an obligation

1 lawsuit?

2 A. I was explained what it regarded.

3 MR. HUNTLEY: I'm going to caution you if  
4 you were explained by a lawyer or anybody from our  
5 law firm that you shouldn't say anything further,  
6 but if it was from somebody outside the law firm,  
7 then you can answer any further questions he might  
8 have on that subject.

9 THE WITNESS: Okay.

10 Q. BY MR. TOLLEFSON: Just to be clear, I  
11 don't want you to tell me anything that  
12 Mr. Huntley has told you or somebody from his law  
13 firm has told you. So if you can try and keep  
14 that in mind as I ask you questions.

15 You said that you were explained what  
16 the lawsuit regarded. Who was it that explained  
17 that to you?

18 A. It was explained to me by an attorney.

19 Q. Okay. Is that an attorney from  
20 Mr. Huntley's firm?

21 A. Yes.

22 Q. Have you made any sort of computation  
23 as to how many hours you believe that you worked  
24 at Micron prior to June of 2001 for which you were  
25 not paid?

1 weeks than that?

2 A. Yes. On average I would say I worked  
3 probably 50 to 55 hours a week.

4 Q. Is that for the entire duration of your  
5 employment?

6 A. On average I would say, yes. Sometimes  
7 more. Sometimes less.

8 Q. Did you have a typical time that you  
9 arrived at work each day or did it vary from week  
10 to week?

11 A. It varied depending on the shift that  
12 we were working.

13 Q. Have you computed any particular amount  
14 of money that you feel that Micron owes you?

15 A. I have not.

16 Q. Do you recall what your hourly rate of  
17 pay was at the time that you left Micron? And I'm  
18 sorry. In approximately May of 2001 what your  
19 hourly rate of pay was.

20 A. I believe it was about 10.50 or 10. I  
21 don't recall the exact amount. I believe it was  
22 higher than the starting point of \$9.

23 Q. Mr. Papero, I'm going to ask you some  
24 questions about what you did to prepare for your  
25 deposition here today, but again, I want you to

1 A. I would estimate approximately 10 to 12  
2 hours a week.

3 Q. Didn't you tell me that there were  
4 weeks in which you did record and get paid for all  
5 the time that you worked?

6 A. There were a few weeks I would  
7 estimate.

8 Q. What are you basing your estimate of 10  
9 to 12 hours a week that you did not record on?

10 A. Just the amount of hours I would have  
11 been in the building working on average.

12 Q. Do you remember when you worked at  
13 Micron did you have to scan a scanning card to get  
14 into the building?

15 A. To unlock the door certain times we  
16 did.

17 Q. Did you also have to scan a card to get  
18 out of the building?

19 A. It depended on if there was a person  
20 exiting the building in front of us. If we were  
21 exiting alone, we had to scan out.

22 Q. So even if we're talking about a week  
23 where you were approved to work up to 45 hours a  
24 week and you got approval to work additional time,  
25 you still worked 10 to 12 hours more on certain

1 remember the same warning that I told you before  
2 that I don't want you to tell me things that you  
3 and Mr. Huntley or anyone from Mr. Huntley's firm  
4 discussed. Do you understand that?

5 A. Yes.

6 Q. With that warning in mind, can you tell  
7 me what preparations did you undertake for your  
8 deposition here today?

9 A. I did some searching at home for any  
10 electronic documents that I have from the time of  
11 employment.

12 Q. Anything else?

13 A. That's it.

14 Q. Did you speak to anyone else? You  
15 mentioned Kim Smith a moment ago. Did you talk  
16 with anyone else?

17 A. No.

18 Q. No one else at all?

19 A. No.

20 Q. When's the last time that you spoke  
21 with Ms. Weaver?

22 A. I would estimate about 10 to 12 months  
23 ago.

24 Q. Did you review any documents in  
25 preparation for your deposition here today?

E

1 IN THE UNITED STATES DISTRICT COURT  
 2 IN AND FOR THE DISTRICT OF IDAHO  
 3  
 4 \_\_\_\_\_  
 5 KIMBERLEY SMITH, MICHAEL B.  
 6 HINCHEY, JACQUELINE T.  
 7 HLADUN, MARILYN J. CRAIG,  
 8 JEFFREY P. CLEVINGER and  
 9 TIMOTHY C. KAUFMANN,  
 10 individually and on behalf of  
 11 all those similarly situated,  
 12  
 13 Plaintiffs,  
 14  
 15 -vs- Case No. CIV 01-0244-S-BLN  
 16  
 17 MICRON ELECTRONICS, INC., a  
 18 Minnesota corporation,  
 19  
 20 Defendant.

COPY

21 The Deposition of THOMAS ROBERTSON, taken  
 22 pursuant to Notice of Taking Deposition, taken  
 23 before Christine K. Peterson, RPR, a Notary Public  
 24 in and for the County of Hennepin, State of  
 25 Minnesota, taken on the 21st day of July, 2004,  
 at 220 South Sixth Street, Suite 600, Minneapolis,  
 Minnesota, commencing at approximately 2:00 p.m.

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1 APPEARANCES:  
 2  
 3 WILLIAM H. THOMAS, ESQUIRE, of the law firm  
 4 of Huntley Park, LLP, 230 South Fifth, Suite 660,  
 5 P.O. Box 2188, Boise, Idaho 83701,  
 6 appeared for and on behalf of the Plaintiffs.  
 7  
 8 GREGORY C. TOLLEFSON, ESQUIRE, of the law  
 9 firm of Stoel Rives, LLP, 101 South Capitol  
 10 Boulevard, Suite 1900, Boise, Idaho 83702-5958,  
 11 appeared for and on behalf of the Defendant.  
 12  
 13 \*\*\*  
 14 The original is in the possession of  
 15 Attorney Gregory Tollefson  
 16  
 17 \*\*\*  
 18  
 19  
 20  
 21  
 22  
 23  
 24  
 25

1 WEDNESDAY, JULY 21, 2004  
 2 Whereupon,  
 3 THOMAS ROBERTSON,  
 4 a witness in the above-entitled matter,  
 5 after having been first duly sworn,  
 6 deposes and says as follows:  
 7 MR. TOLLEFSON: Let the record reflect  
 8 this is the time and place for the taking of the  
 9 deposition of Thomas Robertson. The deposition is  
 10 being taken pursuant to the Federal Rules of Civil  
 11 Procedure, scheduled pursuant to notice and  
 12 agreement of the parties.  
 13 EXAMINATION  
 14 BY MR. TOLLEFSON:  
 15 Q Mr. Robertson, before the deposition  
 16 begins do you need any time to confer with your  
 17 counsel?  
 18 A No.  
 19 Q Mr. Robertson, we've been introduced off  
 20 the record, but for the official record, my name is  
 21 Greg Tollefson and I'm a lawyer at the law firm of  
 22 Stoel Rives from Boise, Idaho. Do you understand  
 23 that?  
 24 A Yes.  
 25 Q Do you also understand that in this

1 everybody thought that was a no-no.  
 2 Q So if these other five or six guys got the  
 3 bulk of the overtime, you didn't have to work very  
 4 much overtime?  
 5 A I was not given much overtime.  
 6 Q Okay.  
 7 A And I did inquire about that.  
 8 Q Okay. And what was the response to that?  
 9 A There's no favoritism here in the  
 10 department.  
 11 Q And that was --  
 12 A Mr. Rehbock.  
 13 Q Mr. Rehbock?  
 14 A Uh-huh. That was his response.  
 15 Q So you felt like Mr. Rehbock didn't let  
 16 you work as much overtime or make as much money as  
 17 the other guys?  
 18 A I would say that's exact.  
 19 Q So how many hours do you feel like for  
 20 overtime you did get to work --  
 21 A I'm sorry?  
 22 Q For overtime that you did get to work, how  
 23 many hours of overtime do you feel like per week  
 24 that you weren't paid for?  
 25 A Of overtime.

1 A No, sir.  
 2 Q Okay. So were the only times you stayed  
 3 past 5 the instances where Mr. Rehbock tapped you on  
 4 the shoulder?  
 5 A We should back up a little bit, because  
 6 Mike was in the process of transitioning from  
 7 wherever he moved to Minnesota from and he was  
 8 buying a house, had a lot of things going on, and he  
 9 would leave the office, so the answer has got to be  
 10 no to that question. Mr. VanZee or the other  
 11 supervisors, they would come around and ask if you  
 12 wanted to work overtime. They didn't just come  
 13 around and tap you on the shoulder and you're in for  
 14 overtime. That meant overtime. There was no words  
 15 spoke. But he would come around and ask, do you  
 16 want to work overtime? I can't. Okay. Then you're  
 17 done at 5.  
 18 Does that help?  
 19 Q Yes.  
 20 A Okay.  
 21 MR. THOMAS: Can we take a break?  
 22 MR. TOLLEFSON: Oh, sure.  
 23 (Whereupon, a short recess was taken.)  
 24 EXHIBITS:  
 25 (Deposition Exhibit No. 322 marked for

1 Q Yes.  
 2 A If you went by my book, it would be  
 3 between probably five and 10.  
 4 Q Okay.  
 5 A On a consistent basis. That would include  
 6 lunch, being on the clock early and then staying  
 7 late and getting told when to go home.  
 8 Q Okay. So if Mr. Rehbock didn't tap you on  
 9 the shoulder very often, how many days a week did he  
 10 typically tap you on the shoulder to let you stay  
 11 late?  
 12 A I don't even know. Mr. Rehbock was not  
 13 the only supervisor that would stay on overtime  
 14 evenings. Bill VanZee (phonetic) was there quite  
 15 often. And they needed a supervisor there, and Bill  
 16 liked me, but I don't think Mike liked me, and Bill  
 17 would give me some extra time if he was there.  
 18 Q Bill VanZee was a supervisor?  
 19 A Yep.  
 20 Q Okay.  
 21 A Or an acting supervisor, temporary  
 22 supervisor, some --  
 23 Q Did anyone -- Just to make sure I  
 24 understand, did anyone else besides Mr. Rehbock ever  
 25 require you to stay past 5:00?

1 identification.)  
 2 Q (BY MR. TOLLEFSON) Mr. Robertson, I've  
 3 handed you what's been marked as Defendant's  
 4 Exhibit 322. These are your tax returns that you  
 5 brought with you for 1998 and 1999?  
 6 A Yes, sir.  
 7 Q Do you remember, when you worked at  
 8 Micron, what your hourly rate of pay was?  
 9 A I do not.  
 10 Q Okay. Could you turn in your 1998 return  
 11 to the W-2s you received from both Micron PC and  
 12 Micron Electronics?  
 13 A Okay.  
 14 Q If my math is correct, you earned about --  
 15 let's see -- \$2400 from Micron entities in 1998?  
 16 A Correct.  
 17 Q And so that would have been for  
 18 approximately four months' work, September, October,  
 19 November and December?  
 20 A Well, it wouldn't be a whole month of  
 21 September. I think the job fair was in the second  
 22 week of September and the hiring would have taken  
 23 place later in the month. Probably three months.  
 24 Q Then if you would turn in your 1999  
 25 return, can you find your -- It looked to me like

**Copy**

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



**DEPOSITION OF KIMBERLEY SMITH**

February 15 and 18, 2002

Reported by  
Patricia J. Terry, RPR  
CSR. No. 653

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1 Q. Was there any process that you were  
2 aware of to get approval to work overtime?

3 A. We never followed any process.

4 Q. Who is "we"?

5 A. The reps that I knew about.

6 Q. Did you record all of the overtime you  
7 worked from July of 2000 through the end of May  
8 2001?

9 A. No.

10 Q. Of the hours that you did work of  
11 overtime, what did you record?

12 A. It's probably easier to say what I  
13 didn't record. It was probably an average of three  
14 to five a week that I didn't record.

15 Q. Were there weeks in which you recorded  
16 all of the overtime you worked?

17 A. Yes.

18 Q. Were there weeks in which you did not?

19 A. Yes.

20 Q. In the weeks that you did not record all  
21 of the overtime you worked, what was your reason  
22 for not recording it?

23 A. It was excessive. There was a lot of  
24 it. My management, Jaime Nava, had specifically in  
**Smith, Kim 2-15-02**

1 only write down a certain number, but that the  
2 majority of our business came -- our pay came from  
3 commission. And so it would be better to work it  
4 and not write it down because it's like treating it  
5 like your own business. You're trying to build  
6 your own business up.

7 Q. When you say it was excessive, what do  
8 you mean?

9 A. It was more than 47 hours in a week.

10 Q. What made that excessive?

11 A. Jaime Nava in that particular meeting --  
12 and I don't remember the month -- Jaime Nava told  
13 us 47 hours was really all we were supposed to  
14 record.

15 Q. Did he tell you that was all the hours  
16 you were supposed to record or that was all the  
17 hours of overtime you were allowed to work?

18 A. That we were supposed to record.

19 Q. Who was present at this meeting?

20 A. Our entire team.

21 Q. Who?

22 A. I don't know who was on the team at the  
23 time. Everybody. I do know that Mike Moser,  
24 Mike Hinckley, Jeff Parrish, Clint Pulsifer,

00004

1 BOISE, IDAHO

2 Wednesday, April 14, 2004, 9:09 a.m.

3

4 DALE HOPE,

5 produced as a witness at the instance of the  
6 defendants, having been first duly sworn, was  
7 examined and testified as follows:

8

9 EXAMINATION

10 BY MR. TOLLEFSON:

11 Q. Let the record show this is the time  
12 and place for the taking of the deposition of  
13 Mr. Dale Hope. The deposition is being taken  
14 pursuant to the Federal Rules of Civil Procedure,  
15 notice, and agreement of the parties.

16 Mr. Hope, before questioning begins, do  
17 you need any time to confer with your counsel?

18 A. No.

19 Q. Okay. Mr. Hope, we've been introduced  
20 briefly off the record. For the record, my name  
21 is Greg Tollefson. I'm a lawyer here at Stoel  
22 Rives. And I represent the defendant in this  
23 lawsuit, Micron Electronics. Do you understand  
24 that?

25 A. Yes.

00064

1 overtime."

2 Q. When you say "year-end," with regards  
3 to the sales you're talking about, is it fiscal  
4 year or calendar year?

5 A. I understood it to be fiscal year. I  
6 believe it was August, August of each year would  
7 be fiscal year-end. Micron's on a strange quarter  
8 reporting, not calendar.

9 Q. So September would start the next  
10 fiscal year?

11 A. I believe that was correct.

12 Q. When Mr. Arana was your supervisor, did  
13 he ever tell you to work off the clock?

14 A. Nope.

15 Q. When Mr. Brandon was your supervisor,  
16 did he ever tell you to work off the clock?

17 A. No.

18 Q. Did Mr. Casey ever tell you to work off  
19 the clock?

20 A. No.

21 Q. Did Mr. Ellis ever tell you to work off  
22 the clock?

23 A. No. I would like to add that I looked  
24 at my territory as my own business. I managed it.  
25 I used resources to make sure it ran well. I made



00034

1 with Jay Madison about this lawsuit or the allegations of  
2 the lawsuit?

3 A. No.

4 Q. What else do you recall?

5 A. Well, we -- you know, it took us a long time  
6 to even jump in, 'cause I, myself, came from American  
7 Trade Supply where it was just commission sales. I mean,  
8 I worked it like my own business. Whatever I had to do,  
9 if I had to work 10, 12 hours a day, I did it.

10 And when I started there, not so much when I  
11 was in consumer sales, but after that -- well, even when  
12 I was in consumer sales, I still had the same attitude  
13 like always. I treated that job like it's my own  
14 business. I'm there to sell. The commission was the  
15 key, not the hourly wage. You can't survive on that.

16 So, you know, I think he kind of felt the same  
17 way. You know, that we -- you know, we're there to sell  
18 and make money and make commission, and if we had to work  
19 extra hours and we don't get paid for the hourly part, we  
20 don't care because we're going to get paid the commission  
21 part.

22 And we liked Jaime Nava and all those people.  
23 We didn't want to hurt those guys. We didn't really want  
24 to join, you know, because we didn't feel anything  
25 against the company. We liked Micron, we liked the

1 BOISE, IDAHO

2 Monday, January 14, 2002, 9:02 a.m.

3

4 ISAAC B. MOFFETT,

5 produced as a witness on behalf of the defendant,

6 after having been first duly sworn, was examined

7 and testified as follows:

8

9 EXAMINATION

10 BY MR. TOLLEFSON:

11 Q. Let the record reflect that this is the  
12 time and place for the taking of the deposition of  
13 Isaac Moffett. This deposition is being taken  
14 pursuant to the Federal Rules of Civil Procedure  
15 and has been scheduled pursuant to the parties'  
16 agreement.

17 Mr. Moffett, before questioning begins  
18 do you need to take any time to confer with your  
19 counsel before we start?

20 A. I don't believe so.

21 Q. Mr. Moffett, we've been introduced  
22 briefly off the record. For the record, my name is  
23 Greg Tollefson, and I'm an attorney here at the law  
24 firm of Stoel Rives. And we represent the

1 representative, is it fair to say that that was  
2 more relationship oriented than your position as a  
3 consumer sales rep?

4 A. Small business was all about  
5 relationship. Well, let me clarify that.

6 Q. Sure.

7 A. That's what it was supposed to be. And  
8 that's definitely how I'd treat it because  
9 essentially we'd sell the same equipment. What I  
10 had to offer them was me and the service I could  
11 provide them. On the surface that's the way Micron  
12 was. That's the way it was done. But when it came  
13 down to the end of the month, it's all about  
14 numbers. It didn't matter how you'd get it.

15 Q. But in your previous job you were  
16 talking mostly with consumers, just sort of the  
17 average Joe on the street, versus in small business  
18 you were talking mostly to professionals like IT or  
19 IS people; is that accurate?

20 A. Yes.

21 Q. Was it a big change for you to switch  
22 from taking mostly inbound calls to doing mostly  
23 outbound calls?

24 A. Was it a switch? Sure, there's a

E

1 IN THE UNITED STATES DISTRICT COURT  
 2 IN AND FOR THE DISTRICT OF IDAHO  
 3  
 4 KIMBERLEY SMITH, MICHAEL B.  
 5 HINCKLEY, JACQUELINE T.  
 6 HLADUN, MARILYN J. CRAIG,  
 7 JEFFREY P. CLEVINGER and  
 8 TIMOTHY C. KAUFMANN,  
 9 individually and on behalf of  
 10 all those similarly situated,  
 11  
 12 Plaintiffs,  
 13  
 14 -vs- Case No. CIV 01-0244-S-BLW  
 15  
 16 MICRON ELECTRONICS, INC., a  
 17 Minnesota corporation,  
 18  
 19 Defendant.

COPY

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2 PAGE:

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6 EXHIBITS:

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 8 Marked for Identification ..... 14  
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 25

19 The Deposition of MICHELLE SAARI, taken  
 20 pursuant to Notice of Taking Deposition, taken  
 21 before Christine K. Peterson, RPR, a Notary Public  
 22 in and for the County of Kootenai, State of  
 23 Minnesota, taken on the 4th day of May, 2004,  
 24 at 220 South Sixth Street, Suite 600, Minneapolis,  
 25 Minnesota, commencing at approximately 9:00 a.m.

1 APPEARANCES:  
 2  
 3 WILLIAM H. THOMAS, ESQUIRE, of the law firm  
 4 of Huntley Park, LLP, 250 South Fifth, Suite 660,  
 5 P.O. Box 2188, Boise, Idaho 83701,  
 6 appeared for and on behalf of the Plaintiffs.  
 7  
 8 GREGORY C. TOLLEFSON, ESQUIRE, of the law  
 9 firm of Stoel Rives, LLP, 101 South Capitol  
 10 Boulevard, Suite 1900, Boise, Idaho 83702-5958,  
 11 appeared for and on behalf of the Defendant.  
 12  
 13  
 14  
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 16  
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 22  
 23  
 24  
 25

13 \*\*\*  
 14 The original is in the possession of  
 15 Attorney Gregory Tollefson  
 16 \*\*\*

1 TUESDAY, MAY 4, 2004  
 2 Whereupon,  
 3 MICHELLE SAARI,  
 4 a witness in the above-entitled matter,  
 5 after having been first duly sworn,  
 6 deposes and says as follows:  
 7 MR. TOLLEFSON: Let the record show that  
 8 this is the time and place for the taking of the  
 9 deposition of Michelle Saari.  
 10 Did I pronounce that right?  
 11 THE WITNESS: Yes.  
 12 MR. TOLLEFSON: This deposition is being  
 13 taken pursuant to the Federal Rules of Civil  
 14 Procedure and scheduled pursuant to agreement of the  
 15 parties.  
 16 EXAMINATION  
 17 BY MR. TOLLEFSON:  
 18 Q Ms. Saari, we've been introduced briefly  
 19 off the record. For the record, my name is Greg  
 20 Tollefson. I'm an attorney at the law firm of  
 21 Stoel Rives, and I represent the defendant in this  
 22 lawsuit, Micron Electronics. Do you understand  
 23 that?  
 24 A Yes.  
 25 Q And you understand that we are here today

00064

1 that you keep referring to. Was there more than one  
2 freeze, or was it just the '99 --

3 A It was a specific period of time.

4 Q Okay. So at some point there was -- Was  
5 it some point in '99 or 2000 there was no longer a  
6 freeze?

7 A Not that I remember. It was through the  
8 duration of my employment.

9 Q Did you ever speak with any of the other  
10 sales -- inside sales representatives on the  
11 commercial team about the fact that you weren't  
12 recording all the hours that you were working?

13 A I did.

14 Q Who do you remember discussing that issue  
15 with?

16 A I don't remember specific people, but it's  
17 something that we talked about.

18 Q Do you ever remember being told by one of  
19 the supervisors that you were required to work  
20 overtime?

21 A Yes, but not in those words.

22 Q What words would you be referring to?

23 A That the work had to be done, the numbers  
24 needed to be hit, and that we were smart enough to  
25 do whatever we needed to do to make our goals.

Page 1

1 IN THE UNITED STATES DISTRICT COURT  
 2 FOR THE DISTRICT OF IDAHO  
 3 -----  
 4 KIMBERLY SMITH and MICHAEL B.  
 5 HINKLEY, individually and on  
 6 behalf of those similarly  
 7 situated,  
 8 Plaintiffs,  
 9 vs. Case No. CIV 01-0244-S-BLW  
 10 MICRON ELECTRONICS, INC., a  
 11 Minnesota corporation,  
 12 Defendant.  
 13 -----  
 14  
 15 The deposition of MARILYN CRAIG, taken pursuant  
 16 to Notice of Taking Deposition, taken before Shelia D.  
 17 Fearing, RPR, a Notary Public in and for the County of  
 18 Bennequin, State of Minnesota, taken on the 30th day of  
 19 January, 2002, at 220 South Sixth Street, Suite 600,  
 20 Minneapolis, Minnesota, commencing at approximately 9:10  
 21 a.m.  
 22  
 23  
 24  
 25

COPY

Page 3

1 INDEX  
 2 MARILYN CRAIG: PAGE:  
 3 EXHIBIT MARKED:  
 4 87 8  
 5 88 11  
 6 89 18  
 7 90 19  
 8 91 22  
 9 92 23  
 10 93 28  
 11 94 32  
 12 95 38  
 13 96 39  
 14 97 43  
 15 98 47  
 16 99 116  
 17 100 121  
 18 101 148  
 19 PREVIOUSLY MARKED:  
 20 6 56  
 21 26 59  
 22 27 63  
 23 24 66  
 24 17 68  
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1 APPEARANCES:  
 2  
 3  
 4 WILLIAM H. THOMAS, ESQUIRE, of the Law Firm  
 5 of HUNTLEY, PARK, THOMAS, BURKETT, OLSEN & WILLIAMS, LLP,  
 6 250 South Fifth, Suite 660, P.O. Box 2188, Boise, Idaho  
 7 83701, appeared for and on behalf of the Plaintiffs.  
 8  
 9 GREGORY C. TOLLEFSON, ESQUIRE, of the Law  
 10 Firm of STOEL-RIVES, LLP, 101 South Capitol Boulevard, Suite  
 11 1900, Boise, Idaho 83702, appeared for and on behalf of the  
 12 Defendant.  
 13  
 14 \*\*\*  
 15 The original is in the possession of  
 16 Attorney Gregory C. Tollefson  
 17 \*\*\*  
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Page 4

1 PROCEEDINGS  
 2 MARILYN CRAIG,  
 3 the Witness in the above-entitled  
 4 matter after having been first duly  
 5 sworn deposes and says as follows:  
 6  
 7 MR. TOLLEFSON: Let the record show this  
 8 is the time and place for the taking of the deposition of  
 9 Marilyn Craig. This deposition is being taken pursuant to  
 10 the Federal Rules of Civil Procedure scheduled according to  
 11 subpoena and the parties' agreement.  
 12 CROSS-EXAMINATION  
 13 BY MR. TOLLEFSON:  
 14 Q. Before I begin questioning, do you need any  
 15 time to confer with Mr. Thomas?  
 16 A. No.  
 17 Q. We've been introduced briefly off the record.  
 18 For the record, my name is Greg Tollefson. I'm an attorney  
 19 from the law firm of Stoel-Rives in Boise, Idaho and we  
 20 represent Micron Electronics, the named Defendant in this  
 21 lawsuit. Do you understand that?  
 22 A. Yes, I do.  
 23 Q. And you understand that we are here today for  
 24 your deposition in this lawsuit against Micron Electronics?  
 25 A. Yes.

00025

1 Q Would she be yelling these words that  
2 you're stating, or --

3 A No. Talking loud.

4 Q What's your understanding of why telling  
5 people not to record their overtime would keep  
6 Ms. Chitwood from going to jail?

7 A Her understanding was, we had to work off  
8 the clock. She would get in trouble if we put down  
9 overtime, and she just assumed she'd go to jail for  
10 us not being paid overtime, but yet she pushed us to  
11 do that.

12 Q Pushed you to do what?

13 A Work overtime.

14 Q Can you specifically recall Ms. Chitwood  
15 telling you that -- or directing you that you had to  
16 work overtime but not record it?

17 A Yes.

18 Q And on how many instances do you believe  
19 that occurred?

20 A I don't recall.

21 Q More than two?

22 A Yes.

23 Q More than five?

24 A Yes.

25 Q More than 10?

## Tim Kaufmann

---

From: tkaufmann@micronpc.com  
Sent: Wednesday, August 09, 2000 8:17 AM  
To: tk@micron.net; DRMINK@micronpc.com  
Subject: FW: Overtime

> -----Original Message-----

> From: Mark Cox  
> Sent: Wednesday, August 09, 2000 8:09 AM  
> To: Timothy Kaufmann  
> Subject: RE: Overtime

>  
> This is certainly your choice but let me make a quick comment. This job  
> should be salary plus commission like almost all other Sales jobs that I  
> am aware of. This allows the achievers to work as much time as they feel  
> necessary to bring in the Sales that ultimately pays them the big money.  
> It is unfortunate that because of the laws in Minnesota Micron had to  
> change over to hourly pay rate for sales reps. Don't get me wrong, if  
> you need to be here then I/Micron will certainly pay you for your efforts.  
> I just need to keep an eye on this because then it starts to become a way  
> of subsidizing ones paycheck which in turns drives up our budgets.

> -----Original Message-----

> From: Timothy Kaufmann  
> Sent: Wednesday, August 09, 2000 7:56 AM  
> To: Mark Cox  
> Subject: RE: Overtime  
> Importance: Low

>  
> Mark, yesterday I really wanted to send the server quote to McBride so I  
> came in early. However, I had to work later than I intended due to VA  
> Business. So I would say it is a combination of both. Unfortunately, I  
> won't work any more overtime because I don't feel right if Micron chooses  
> not to pay me for that time. There have been several historic cases out  
> at main Micron where this was a problem for the company and the employees.  
> I understand the constraints of our budget and have no problem adjusting  
> my work day.

> -----Original Message-----

> From: Mark Cox  
> Sent: Wednesday, August 09, 2000 7:48 AM  
> To: Timothy Kaufmann  
> Subject: RE: Overtime

>  
> Not necessarily what I am saying. What I was trying to pass on is  
> that I am not in a position to approve much for overtime right now because  
> of OPEX budgets. So, if you are required to stay here to get something  
> done or because you are backing someone up then I can get it approved. If  
> YOU are choosing to work additional time because you are trying to get  
> your sales numbers up then it is up to you and we don't have to log  
> overtime. Does that make sense?

> -----Original Message-----

> From: Timothy Kaufmann  
> Sent: Wednesday, August 09, 2000 7:03 AM  
> To: Mark Cox  
> Subject: RE: Overtime  
> Importance: Low

>  
> Mark, Can you clarify the statement "inclusion on your time  
> sheet". Sounds like you don't want me to put the extra work on my  
> timesheet.

