

U.S. DISTRICT COURT
BOISE, IDAHO

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FILED BY: [REDACTED]
Clerk of Court

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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

**DEFENDANT'S MOTION FOR
ENLARGEMENT OF TIME RE:
STATEMENT OF DISPUTED FACTS
AND AFFIDAVITS IN SUPPORT OF
RESPONSE TO PLAINTIFFS' MOTION
FOR PARTIAL SUMMARY JUDGMENT**

ORIGINAL

Defendant Micron Electronics, Inc. ("MEI" or "Defendant"), by and through its attorneys,
Stoel Rives LLP, respectfully submits this Motion regarding its request for an enlargement of

**DEFENDANT'S MOTION FOR ENLARGEMENT OF TIME RE: STATEMENT OF
DISPUTED FACTS AND AFFIDAVITS IN SUPPORT OF RESPONSE TO PLAINTIFFS'
MOTION FOR PARTIAL SUMMARY JUDGMENT - 1**

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time to file a Statement of Disputed Facts, together with affidavits and documentary evidence, on which MEI intends to rely in support of its Response to Plaintiffs' Motion for Partial Summary Judgment filed on July 16, 2004 (Docket No. 223) ("Plaintiffs' Motion").

MEI's response brief to Plaintiffs' Motion is due today on August 20, 2004, and is timely filed contemporaneously with this Motion for Enlargement of Time. See Defendant Micron Electronics, Inc.'s Memorandum in Response to Plaintiffs' Motion for Partial Summary Judgment (Docket No. 264) ("Defendant's Response").¹

The hearing on Plaintiffs' Motion is set for September 7, 2004. (Docket No. 254) This Motion for Enlargement of Time will not result in delay of the hearing on Plaintiffs' Motion.

MEI anticipates filing its Statement of Disputed Facts, together with at least one affidavit that includes citation to and compilation of voluminous documentary evidence and deposition testimony, upon which it will rely in support of Defendant's Response. The affidavit in particular, together with the copying, production and final compilation of the voluminous documentary evidence and deposition testimony for orderly submission to the Court is on-going and nearly completed. Given the extent of such information, these efforts could not reasonably be completed for filing of this information contemporaneously with Defendant's Response.

In addition to Defendant's Response, MEI anticipates filing other pleadings and papers relating to its defense to Plaintiffs' Motion, including a Cross-Motion for Partial Summary Judgment (together with supporting materials) and a Motion to Strike Plaintiffs' Statement of Undisputed Facts filed in support of Plaintiffs' Motion (Docket No. 225). These additional pleadings and papers were being prepared simultaneously with Defendant's Response (which is timely filed herewith) and the aforementioned Statement of Disputed Facts, affidavit and

¹ It is anticipated that MEI's response brief will be designated as Docket Number 263.

DEFENDANT'S MOTION FOR ENLARGEMENT OF TIME RE: STATEMENT OF DISPUTED FACTS AND AFFIDAVITS IN SUPPORT OF RESPONSE TO PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT - 2

documentary evidence. This Motion for Enlargement of Time is intended to allow MEI the time necessary to complete all of the relevant pleadings and papers for orderly submission to the Court, as well as avoid as much as possible the filing of redundant or supplemental information and documentary evidence. It is not intended for purposes of any delay of these proceedings.

Rule 56(c) provides that an “adverse party prior to the day of hearing may serve opposing affidavits.” However, this rule apparently is modified by the requirements of local motion practice under Civil Rule 7.1(c)(1), which requires that “responding parties must serve and file with the response brief any affidavits . . . and documentary evidence on which the responding party intends to rely.” *See also* Civil Rule 7.1(c)(3) (“The response brief shall be accompanied by affidavits, photographs, or any documentary evidence relied upon by the responding party.”) MEI seeks only to enlarge the time period otherwise anticipated under local motion practice.

Although undersigned counsel is able to meet the timing requirements provided under Rule 56(c) for submission of affidavits (i.e., prior to the day of hearing), it is not feasible under the circumstances to finalize and file the anticipated Statement of Disputed Facts, affidavit and voluminous documentary evidence and deposition testimony within the timeframe ordinarily anticipated for local motion practice under Civil Rule 7.1(c)(1). In addition to drafting and responding to multiple motions filed in this action, counsel for the parties are engaged and will continue to be engaged over the coming days and weeks in numerous depositions in this case, while simultaneously preparing for the upcoming hearing in this matter and attending to other urgent and on-going matters.

The undersigned counsel represents and affirms that this Motion for Enlargement of Time is necessary and proper and that good cause exists within the meaning of Rule 6(b)(1) and Civil Rule 6.1(a). Although previous time extensions have been granted in this particular action, MEI

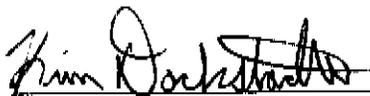
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MOTION FOR PARTIAL SUMMARY JUDGMENT - 3**

has not previously sought any enlargement of time regarding the filing of its Statement of Disputed Facts, affidavits, and documentary evidence in response to Plaintiffs' Motion.

Based on the foregoing, MEI respectfully seeks an enlargement of time until and including Tuesday, August 24, 2004 in which to file its Statement of Disputed Facts, affidavits and documentary evidence in support of its Response to Plaintiffs' Motion. A proposed Order in this regard is submitted with this Motion.

DATED this 20th day of August 2004.

STOEL RIVES LLP



Kim Dockstader

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DISPUTED FACTS AND AFFIDAVITS IN SUPPORT OF RESPONSE TO PLAINTIFFS'
MOTION FOR PARTIAL SUMMARY JUDGMENT - 4**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of August 2004, I caused to be served a true copy of the foregoing **DEFENDANT'S MOTION FOR ENLARGEMENT OF TIME RE: STATEMENT OF DISPUTED FACTS AND AFFIDAVITS IN SUPPORT OF RESPONSE TO PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT** by the method indicated below, addressed to the following:

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Kim Dockstader

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