

04 AUG 20 PM 9:11

FILED OFFICE OF CLERK  
COURT HOUSE, BOISE, IDAHO

Kim Dockstader, ISB No. 4207  
Gregory C. Tollefson, ISB No. 5643  
STOEL RIVES LLP  
101 South Capitol Boulevard, Suite 1900  
Boise, ID 83702-5958  
Telephone: (208) 389-9000  
Facsimile: (208) 389-9040  
kdockstader@stoel.com  
gctollefson@stoel.com

Attorneys for Defendant Micron Electronics, Inc.

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 MICRON ELECTRONICS,  
INC.'S MEMORANDUM IN RESPONSE  
TO PLAINTIFFS' MOTION FOR  
PARTIAL SUMMARY JUDGMENT**

**ORIGINAL**

Defendant Micron Electronics, Inc. ("MEI"), by and through its attorneys, Stoel Rives LLP, and pursuant to Local Rule 7.1(c), hereby submits its response to Plaintiffs' Motion for Partial Summary Judgment filed on July 16, 2004 (Docket No. 223) ("Plaintiffs' Motion").

**DEFENDANT MICRON ELECTRONICS, INC.'S MEMORANDUM IN RESPONSE TO  
PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT - 1**

264

## I. INTRODUCTION

The Court should deny Plaintiffs' Motion, because the motion is premature and ill-founded. Further, the purported "Statement of Undisputed Facts" (Docket No. 225) is actually rife with error, misleading characterizations, and disputed testimony.

## II. FACTUAL AND PROCEDURAL BACKGROUND

Plaintiffs initiated this suit as a collective action on behalf of themselves and other inside sales representatives employed by various MEI subsidiaries. The Court ordered a two-step Fair Labor Standards Act ("FLSA") class certification process. At the preliminary stage and under a lenient standard, the Court conditionally certified the class and allowed Plaintiffs to send notice of the suit to other potential class members. (September 27, 2002 Memorandum Decision and Order (Docket No.155).) In the second phase of certification, the Court will take a hard look at those Plaintiffs and claimants who have opted to join the lawsuit and determine whether they are, in fact, truly similarly situated. The hearing on the final determination of class certification will be held on November 16, 2004. (Second Amended Notice of Hearing on Final Class Certification (Docket No. 216).)<sup>1</sup>

The discovery deadline for class certification issues was May 3, 2004. (May 23, 2003 Scheduling Order and Referral to Magistrate Judge (Docket No. 166).) Since then, four motions for summary judgment have been filed: three by MEI and one by Plaintiffs.

---

<sup>1</sup> MEI will vigorously oppose final certification. Despite the comprehensive scope of discovery, Plaintiffs have failed to provide any support for their initial allegations that MEI followed a centralized policy of permitting off-the-clock work. Moreover, Plaintiffs have failed to support the serious allegations raised at commencement of this action, such as claims of timesheet alterations by management, errors in calculations of overtime pay in consideration of commissions, or widespread claims of involuntary off-the-clock work or suppression of wage claims, among other baseless allegations.

On May 4, 2004, MEI moved for partial summary judgment regarding payment of commission premiums for overtime (Docket No. 179), and on June 21, 2004, MEI moved for partial summary judgment regarding Plaintiffs' claims of altering employees' timecards (Docket No. 199). In belated and apparent acknowledgment of the weakness of their claims, Plaintiffs could not oppose these motions, thus plainly establishing that (1) MEI did include Plaintiffs' commissions in its overtime calculations in compliance with the FLSA and (2) Plaintiffs' time cards were not altered as originally alleged. (*See* Plaintiffs' Non-Opposition to Motion for Partial Summary Judgment on Payment of Premium on Commission Statements (Docket No. 222); Plaintiffs' Statement of Non-Opposition to Motion for Partial Summary Judgment Re: Plaintiffs' Claims of Altering Employees' Timecards (Docket No. 237).)

The remaining two motions for summary judgment are scheduled for hearing on September 7, 2004. (Amended Notice of Hearing and Re-Setting of Hearing on All Pending Dispositive and Related Motions (Docket No. 254).) The first is MEI's motion for partial summary judgment regarding statutes of limitation (Docket No. 193). The second is the instant motion by Plaintiffs for partial summary judgment regarding: (1) liquidated damages pursuant to 29 U.S.C.A. § 216(b); (2) the alleged willfulness of MEI's conduct pursuant to 29 U.S.C.A. § 255(a); and (3) treble damages under Idaho Code §§ 45-614 and 45-615. (Docket No. 223.)

This opposition brief addresses only the damages issues and highlights some of the serious problems with Plaintiffs' Statement of Undisputed Facts. MEI also plans to file a separate motion to strike Plaintiffs' Statement of Undisputed Facts that addresses certain evidentiary issues and a Cross-Motion for Partial Summary Judgment Re: Willfulness.

///

### III. ARGUMENT

#### A. Plaintiffs Are Not Entitled to Summary Judgment Regarding Liquidated Damages.

There are two central problems with Plaintiffs' Motion with regard to liquidated damages. First, the motion is untimely, because the Court cannot rule on liquidated damages until a violation is found. Second, even assuming there was a violation, and there was not, MEI will show at trial that it acted in good faith and did all that it could to ensure FLSA compliance by its subsidiaries.

##### 1. Any Discussion of Liquidated Damages Is Premature.

Fundamentally, any discussion of liquidated damages before finding a violation of the FLSA is premature.<sup>2</sup> Pursuant to 29 U.S.C.A. § 216(b), liquidated damages are implicated only when it is proven that an employer "violates the provisions of section 206 or section 207 of [the FLSA]." Moreover, the Court has discretion and may eliminate or lessen an award of liquidated damages when the employer demonstrates that its actions were in good faith and that it had reasonable grounds to believe its actions or inactions giving rise to liability were not in violation of the law. 29 U.S.C.A. § 260; *see also Local 246 Util. Workers Union of Am. v. S. Cal. Edison Co.*, 83 F.3d 292, 297 (9th Cir. 1996).

The two-part inquiry first requires a finding of liability and then considers whether the acts giving rise to liability can be excused on the basis of good faith. Both issues – whether MEI violated the FLSA and whether MEI acted in good faith – are issues properly reserved for trial.

---

<sup>2</sup> Plaintiffs are incapable of showing on summary judgment that any violation occurred as a matter of law. Therefore, any finding of a violation is an issue preserved for trial of this action scheduled for July 2005. In this regard, there will be overwhelming evidence that MEI did not violate the FLSA.

The "threshold question" in determining when liquidated damages are warranted is "whether the employer violated the FLSA's wage and overtime compensation provisions." *O'Brien v. Dekalb-Clinton Counties Ambulance Dist.*, No. 94-6121-CV-SJ-6, 1995 WL 694630 at 10 (W.D. Mo. Nov. 21, 1995) (holding discussion of liquidated damages before liability determination "premature"), *vacated in part on different grounds*, 1996 WL 565817 (June 24, 1996). "Only after a finding of liability has been reached does the Court reach the issue of liquidated damages." *Prickett v. Dekalb County*, 276 F. Supp. 2d 1265, 1271 (N.D. Ga.), *rev'd in part on different grounds*, 349 F.3d 1294 (11th Cir. 2003).

Because there has not been any finding of liability, the Court should deny Plaintiffs' Motion regarding liquidated damages. Furthermore, even if the Court should ever reach the issue of liquidated damages after trial and a finding of liability, the Court would have to consider the substantial evidence of good-faith compliance with the FLSA.<sup>3</sup>

**2. There is Ample Evidence in the Record Demonstrating MEI's Good Faith Compliance with the FLSA.**

Good faith is a defense to liquidated damages. "[T]he employer has the burden of establishing subjective and objective good faith in its violation of the FLSA." *Local 246 Util. Workers Union of Am.*, 83 F.3d at 297. To establish good faith, the employer must show that "it had an honest intention to ascertain and follow the dictates of the Act and that it had reasonable grounds for believing that [its] conduct complie[d] with the Act." *Id.* at 298 (brackets in original; internal quotation marks and citation omitted). The subjective and objective components of this test have been plainly demonstrated by testimony in the record.

---

<sup>3</sup> This issue raises the fundamental problem arising from the collective approach to Plaintiffs and the other opt-in claimants' alleged claims: there is no factual nexus that binds the putative class together and the only policies common to all individuals are in compliance with the FLSA.

Evidence of MEI's "honest intention to ascertain and follow the dictates of the [FLSA]" is evident in MEI's various policies and procedures with regard to timekeeping and overtime. These policies and procedures were first provided to the Court as Exhibits to the First Affidavit of Gregory C. Tollefson in Support of Defendant's Response to Plaintiffs' Motion for Conditional Certification. (Docket No. 122.) Specifically, attached to the Affidavit are excerpts from the Team Member Handbook concerning overtime (Exhibit A) and three separate timekeeping policies from MEI's Employment Policy Manual (Timekeeping - Non-Exempt Policy No. 3.15 (Exhibit B), Timekeeping - Non-Exempt Policy No. 3.15 Revised (Exhibit C), and Overtime Pay - Non-Exempt Policy No. 3.20 (Exhibit D)).

The requirements of these policies were clear: all inside sales representatives must accurately record all time worked and off-the-clock work was strictly prohibited. (Defendant Micron Electronics, Inc.'s Statement of Disputed Facts in Response to Plaintiffs' Motion for Partial Summary Judgment ("Statement of Disputed Facts") ¶¶ 1-4 at p.6.)

The inside sales representatives were responsible for accurately reporting their time and verifying the accuracy of their timesheets before submitting them to a supervisor. (Statement of Disputed Facts ¶ 6 at p.7.) In addition, the inside sales representatives were routinely trained on how to accurately report their time. (Statement of Disputed Facts ¶ 7 at p.7.)

The supervisors were made aware of the timekeeping and overtime policies and their responsibility for enforcing them. (Statement of Disputed Facts ¶ 8 at p.7.) To enforce the policies, the supervisors checked their employees' timecards to ensure they were reporting their time and made certain the inside sales representatives were paid for all time reported, whether or not any reported overtime was pre-authorized. (*Id.* ¶ 2 at p.6; ¶ 8 at p.7.) When supervisors

were made aware that an inside sales representative was not accurately reporting his time, the inside sales representative was reprimanded. (*Id.* ¶ 3 at p.6; ¶ 9 at p.7.)

The above evidence not only demonstrates MEI's good faith, but also shows that it was doing all that it could to ensure FLSA compliance by employees of its sales subsidiaries. To the extent Plaintiffs are ultimately successful in demonstrating that a particular inside sales representative failed to accurately record some of his or her work hours, the evidence shows that such failure was voluntary and deliberate for individual reasons and without disclosure to or knowledge of MEI or the various supervisors. (Statement of Disputed Facts ¶ 11.) Such isolated instances do not take away from the good faith of MEI, do not support the collective nature of the actions, and do not give rise to liability under the FLSA.<sup>4</sup> Fundamentally, this is because there were no willful violations of the FLSA by MEI.

**B. Plaintiffs Have Failed to Demonstrate Willfulness.**

Plaintiffs have the burden of establishing willfulness and have failed to do so. For this reason, MEI will be submitting a separate cross-motion for partial summary judgment on the willfulness issue. In addition, MEI will be filing a separate motion to strike Plaintiffs' Statement of Undisputed Facts, because it is based on unauthenticated, misleading, and inadmissible evidence. As will be shown to the Court, MEI (and not the Plaintiffs) is entitled to summary judgment on this issue.

---

<sup>4</sup>"An employer must have an opportunity to comply with the provisions of the FLSA... [W]here the acts of an employee prevent an employer from acquiring knowledge ... the employer cannot be said to have suffered or permitted the employee to work in violation of § 207(a). *Forrester v. Roth's I.G.A. Foodliner*, 646 F.2d 413, 414-15 (9th Cir. 1981) (holding where the employer had no knowledge that the employee was engaging in unauthorized overtime work, there was no indication that the employer should have had such knowledge, and the employee failed to notify the employer or deliberately prevented the employer from acquiring knowledge of the overtime work, the employer's failure to pay for the overtime hours was not a violation of the FLSA.)

**C. Plaintiffs Are Not Entitled to Treble Damages Pursuant to Idaho Code §§ 45-614 and 45-615.**

Plaintiffs argue that portions of Plaintiffs' unpaid overtime wages are subject to the trebling provision of Idaho Code § 45-615. Again, because a violation has not been found, discussion of damages is premature. However, to the extent Plaintiffs' state wage claims exist, they are strictly limited in temporal scope and treble damages will be permitted only if they are offset by any FLSA damages award to prevent a double recovery.

The statute of limitations period applicable to an action for additional wages under the Idaho Wage Claim Act is six months. I.C. § 45-614. Applying this temporal limit to Plaintiffs' claims, there are few claimants with viable claims remaining. (See MEJ's Memorandum in Support of Motion for Partial Summary Judgment Re Statutes of Limitation (Docket No. 195).)

For any remaining claims and to the extent liability were found at trial, any future damages award must account for the separate FLSA and state remedies to avoid double recovery. When a violation of state wage laws is found, Idaho Code § 45-615, the state treble damages provision, allows a plaintiff "to recover from the defendant ... damages in the amount of three (3) times the unpaid wages found due and owing." Similarly, the liquidated damages provision of the FLSA allows for two times the amount of unpaid wages, unless good faith is shown. 29 U.S.C.A. § 216(b). Plaintiffs cannot recover under both state and federal provisions.

For example, because FLSA liquidated damages are considered compensatory, when liquidated damages are awarded under the FLSA, then prejudgment interest must be offset from the award to avoid double recovery. *Brooklyn Sav. Bank v. O'Neil*, 324 U.S. 697, 715 (1945); *see also Ford v. Alfaro*, 785 F.2d 835, 842 (9th Cir. 1986) (if plaintiff is entitled to full award of

liquidated damages, plaintiff cannot also recover prejudgment interest). Similarly, when Plaintiffs seek treble damages under state law, the award must be offset to account for the compensation already received under the FLSA. To do otherwise would allow the claimant to be compensated up to five times the amount of the alleged damages.

If liability were established (which it has not), then employees would be compensated under the state treble damages statute.<sup>5</sup> Therefore, rather than compensating Plaintiffs twice and providing liquidated or non-liquidated damages under the FLSA, the treble damages award (if any) under state law must be offset by the FLSA damages award (if any).

#### IV. CONCLUSION

Plaintiffs have failed to demonstrate they are entitled to summary judgment on any of the three bases set forth. Therefore, the Court should deny Plaintiffs' Motion in its entirety.

DATED this 20<sup>th</sup> day of August, 2004.

STOEL RIVES LLP

  
\_\_\_\_\_  
Kim Dockstader

---

<sup>5</sup> It is not clear from Idaho Code § 45-615 whether the treble damages are designed to be punitive or compensatory; however, the distinction is not important to the present analysis. Some part of the award is compensatory and based on the amount of wages owing.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 20<sup>th</sup> day of August, 2004, I caused to be served a true copy of the foregoing **DEFENDANT MICRON ELECTRONICS, INC.'S MEMORANDUM IN RESPONSE TO PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT** by the method indicated below, addressed to the following:

William H. Thomas  
Daniel E. Williams  
Christopher F. Huntley  
HUNTLEY PARK LLP  
250 South Fifth Street  
PO Box 2188  
Boise, Idaho 83701-2188  
Fax: 208 345 7894

- Via U. S. Mail
- Via Hand-Delivery
- Via Overnight Delivery
- Via Facsimile

  
\_\_\_\_\_  
Kim Dockstader