

U.S. COURTS

2003 MAY 23 A 9:39

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CAMERON S. BURKE,  
CLERK, IDAHO

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO

KIMBERLY SMITH and MICHAEL )  
B. HINKLEY, Individually and on Behalf )  
of those Similarly Situated, )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
MICRON ELECTRONICS, INC., )  
a Minnesota Corporation, )  
 )  
Defendant. )  
\_\_\_\_\_ )

Case No. CV-01-244-S-BLW

SCHEDULING ORDER  
AND REFERRAL TO  
MAGISTRATE JUDGE  
(Track: Complex)

In accordance with the agreements reached in the telephone status conference held between counsel and the Court on May 21, 2003, and to further the efficient administration of this matter,

NOW THEREFORE IT IS HEREBY ORDERED, that the following recitation of deadlines and procedures shall govern this litigation:

1. Trial Date: A **15 day jury trial** shall be held on **July 11, 2005**, at **1:30 p.m.** in the Federal Courthouse in **Boise, Idaho**. Because a substantial time for discovery and pre-trial preparation has been given to counsel in this case, a continuance will be granted only upon a showing of extraordinary circumstances. The Court will make every effort to avoid setting criminal cases for this date, and to not set this case with an excessive number of other civil cases.
2. Pre-Trial Conference: A pre-trial conference shall be held on **June 28, 2005**, at **8:00**

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**a.m. in Boise, Idaho.** The purpose of this conference is to discuss and resolve (1) the legal issues remaining in the case; (2) evidentiary issues; (3) trial logistics; and (4) any other matter pertaining to the trial. Not less than twenty (20) days prior to the date of the Pre-Trial Conference, the parties shall communicate and reach agreement upon as many items as possible. The parties should also be prepared to discuss with the Court those items over which counsel disagreed.

3. Amendment of Pleadings and Joinder of Parties: All motions to amend pleadings and join parties, except for allegations of punitive damages, shall be filed on or before **August 21, 2003.** This deadline shall only be extended for good cause shown.<sup>1</sup> All parties are entitled to know the claims and parties well-before trial rather than be forced to pursue or defend against a moving target. Although this deadline precedes the general discovery deadline, the parties are directed to send out all discovery requests that might relate to amendment or joinder enough in advance of this amendment and joinder deadline to obtain the responses needed to make an informed decision on amendment and joinder.
4. Second Notice: Plaintiffs' counsel is drafting a second notice, once the Court approves that notice, the parties agree that the second group mailing be done on **June 2, 2003,** and that potential claimants will then have until **July 2, 2003,** to postmark and return the executed consent forms. The Court approves this agreement.
5. Dispositive Motion Deadline: All dispositive motions shall be filed by **February 20,**

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<sup>1</sup> The Ninth Circuit has held that motions to amend filed after the Scheduling Order deadline are not governed by the liberal provisions of Fed. R. Civ. P. 15(a) but instead by the more restrictive provisions of Fed. R. Civ. P. 16(b) requiring a showing of "good cause." *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604 (9th Cir. 1992).

**2005.**

6. **Completion of Discovery:** All fact discovery, and all expert discovery concerning the class certification issues only, shall be completed on or before **May 3, 2004**. The expert discovery deadline for all non-class certification issues shall be **January 16, 2005**. These deadlines are for the **completion** of all discovery; they are not a deadline for discovery **requests**. Discovery requests must be made far enough in advance of these deadlines to allow completion of the discovery by the deadline dates.
7. **Briefing Schedule Concerning Final Class Certification:** All motions and supporting briefs concerning the final class certification issue shall be filed on or before **May 28, 2004**. All response briefs shall be filed on or before **June 17, 2004**. All reply briefs shall be filed on or before **June 28, 2004**.
8. **Hearing on Class Certification:** A hearing on final class certification shall be held on **July 13, 2004, at 8:00 a.m. in the Federal Courthouse in Boise, Idaho**.
9. **Disclosure of Experts :** The Plaintiff shall disclose the experts intended to be called at trial regarding non-class certification issues on or before **September 1, 2004**. The Defendants shall disclose the experts they intend to call at trial regarding non-class certification issues on or before **October 1, 2004**. All rebuttal experts shall be identified on or before **November 3, 2004**.
10. **Rules Governing Disclosure of Expert Witnesses:** Within the deadlines for the disclosure of expert witnesses set out above, the parties shall also provide -- for each expert disclosed -- the report described in Fed. R. Civ. P. 26(a)(2)(B), as modified by Local Rule 26.2(b). Supplementation to the expert witness report shall be done in accordance with

Fed. R. Civ. P. 26(c)(1). Pursuant to Local Rule 26.2(b), expert witnesses will not be allowed to offer any opinion not disclosed in the mandatory Rule 26 disclosures, supplementation, or deposition. This includes rebuttal experts. No undisclosed expert rebuttal opinion testimony will be allowed at trial.

11. Alternative Dispute Resolution: An ADR Conference will be held on **February 12, 2004, at 1:30 p.m.** in the Federal Courthouse in **Boise, Idaho**. The ADR Conference will be held in person, and will be conducted either by the Court or by the Court's Senior Law Clerk David L. Metcalf. The purpose of the ADR Conference is to consider which form of ADR is most appropriate for this case and to schedule the agreed-upon form of ADR. Lead trial counsel must be present and accompanied by their client or, in the case of a corporate party, a corporate representative who is authorized to negotiate and approve a settlement of the case. The ADR Conference will be cancelled if counsel jointly file with the Court, at least ten days before the date of the Conference, an ADR Plan which (1) sets forth the form of ADR which the parties have agreed upon, (2) the date on which the ADR session will occur, and (3) what further action of the Court is necessary to facilitate the parties efforts to pursue Alternative Dispute Resolution.
12. Witness List: The parties shall exchange Witness Lists one week before the Pretrial Conference. These Witness Lists shall contain the material listed in F.R.C.P. 26(a)(3)(A)&(B), and shall also include a full summary – not just the subject – of the witnesses' expected testimony.
13. Exhibit Lists, Exhibits, Proposed Jury Instructions, Trial Briefs and Motions: All exhibit lists, proposed jury instructions, trial briefs, and motions in limine shall be filed with the

Court one week before the Pretrial Conference. On the same date the parties shall exchange all trial exhibits, but shall not provide them to the Court until the day of trial. For jury trials, counsel shall provide the Court with an original and one copy of pre-marked exhibits; for a court trial, the original and two copies are required. The exhibit lists shall follow the guidelines set out in Local Rule 16.1 (d)(5). The exhibit lists shall be prepared on form provided by the Deputy Clerk, with sufficient copies for the Judge, the Deputy Clerk, and the Law Clerk. Exhibit numbers 1 through 999 shall be reserved for joint exhibits; exhibit numbers 1000 through 1999 shall be reserved for plaintiff's exhibits; exhibit numbers 2000 through 2999 shall be reserved for the first defendant listed on the caption; exhibit numbers 3000 through 3999 shall be reserved for the second defendant listed on the caption; and so on. Counsel shall review their exhibits, determine any duplication, and jointly mark and stipulate to the admission of those exhibits that both sides intend to offer and rely upon. The Proposed Jury Instructions shall follow the guidelines set out in Local Rule 51.1.

14. Trial Procedures:

- a. The Court will generally control voir dire, and counsel will be limited to 10-15 minutes.
- b. The Court also requires that counsel exercise good faith in attempting to reach a stipulation on undisputed facts and admission of exhibits.
- c. During the trial of this matter, the jury will be in the box hearing testimony during the entire trial day between 9 a.m. and 5 p.m., except for the standard fifteen minute morning and afternoon recesses, and the lunch break. During the time the

jury is in the box, no argument, beyond one-sentence evidentiary objections, shall be allowed to interrupt the flow of testimony. If counsel have matters that need to be resolved outside the presence of the jury, they are to advise the Court and counsel prior to the issue arising during trial so that it can be heard during a recess, the lunch hour, or in the evening after the jury has left. Where the need for such a hearing could not be anticipated, the Court will direct the examining counsel to avoid the objectionable subject and continue on a different line of questioning so that the objection can be argued and resolved at the next recess. To avoid late-night sessions, counsel are advised to bring up all anticipated evidentiary questions in their pre-trial briefs.

d. Counsel shall have enough witnesses to ensure a full day of testimony. If witnesses are unavoidably delayed, counsel shall promptly notify the Court and opposing counsel.

15. Referral to Magistrate Judge: This case is referred to United States Magistrate Judge Mikel H. Williams for resolution of all discovery disputes and all non-dispositive motions.

16. Law Clerk: If counsel need to contact the Court for any reason other than to resolve scheduling or calendaring issues, they should contact **Dave Metcalf**, the law clerk assigned to this case at (208) 334-9145.

17. Calendaring Clerk: With regard to any scheduling matters or calendaring issues, please contact my deputy clerk, LaDonna Garcia at (208) 334-9021.

Dated this 22<sup>nd</sup> day of May, 2003.

  
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B. LYNN WINMILL  
Chief Judge, United States District Court

United States District Court  
for the  
District of Idaho  
May 23, 2003

\* \* CLERK'S CERTIFICATE OF MAILING \* \*

Re: 1:01-cv-00244

I certify that I caused a copy of the attached document to be mailed or faxed to the following named persons:

William H Thomas, Esq. 1-208-345-7894  
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Chief Judge B. Lynn Winmill  
 Judge Edward J. Lodge  
 Chief Magistrate Judge Larry M. Boyle  
 Magistrate Judge Mikel H. Williams

Visiting Judges:  
 Judge David O. Carter  
 Judge John C. Coughenour  
 Judge Thomas S. Zilly

Cameron S. Burke, Clerk

Date: 5-23-03

BY:   
(Deputy Clerk)