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U.S. DISTRICT &
COMMERCIAL COURTS

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FILED BY: JERRY BAIRD
Clerk of Court, Clark

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

MEMORANDUM IN SUPPORT
OF PLAINTIFFS' MOTION
FOR PARTIAL SUMMARY
JUDGMENT

PLAINTIFFS' MEMORANDUM IN SUPPORT OF MOTION
FOR PARTIAL SUMMARY JUDGMENT, P. 1

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Plaintiffs, have asked this Court to grant their Motion for Partial Summary Judgment under Fed. R. Civ. P. 56 on the issue of Defendant, Micron Electronics, Inc.'s ("MEI") liability for violations of the Fair Labor Standards Act (FLSA), 29 U.S.C. § 201, *et seq.* Specifically, Plaintiffs present undisputed material facts proving that MEI: (1) is liable for liquidated damages under 29 U.S.C. § 216(b) in an amount doubling Plaintiffs' total damages, and (2) that its FLSA violations were "willful" under 29 U.S.C. §255(a) and, as a consequence, MEI is liable for unpaid overtime wages for the three (3) years preceding the filing of Plaintiffs' lawsuit.

SUMMARY JUDGMENT STANDARD

Federal Rule of Civil Procedure 56(c) authorizes summary judgment if no genuine issue exists regarding any material fact and the moving party is entitled to judgment as a matter of law. The moving party must show an absence of an issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 91 L. Ed. 2d 265, 106 S. Ct. 2548 (1986). Once the moving party does so, the nonmoving party must go beyond the pleadings and designate specific facts showing a genuine issue for trial. *Id* at 324. The court must "not weigh the evidence or determine the truth of the matter, but only determines whether there is a genuine issue for trial." *Balint v. Carson City*, 180 F3d 1047, 1054 (9th Cir 1999) (citation omitted). A "'scintilla of evidence,' or evidence that is 'merely colorable' or 'not significantly probative,'" does not present a genuine issue of material fact. *United Steelworkers of Am. v. Phelps Dodge Corp.*, 865 F2d 1539, 1542 (9th Cir), *cert. denied*, 493 U.S. 809, 107 L. Ed. 2d 20, 110 S. Ct. 51 (1989) (emphasis in original) (citation omitted).

The substantive law governing a claim or defense determines whether a fact is material. *T.W. Elec. Serv., Inc. v. Pacific Elec. Contractors Ass'n*, 809 F.2d 626, 631-32 (9th Cir. 1987). The court must view the inferences drawn from the facts "in the light most favorable to the nonmoving party." *Id.* at 631 (citation omitted). Thus, reasonable doubts about the existence of a factual issue should be resolved against the moving party. *Id.* at 630-31. "However, in construing the FLSA, [a court] must be mindful of the directive that it is to be liberally construed to apply to the furthest reaches consistent with Congressional direction. *Mitchell v. Lublin, McGaughy & Assoc.*, 358 U.S. 207, 211, 3 L. Ed. 2d 243, 79 S. Ct. 260 (1959)." *Biggs v. Wilson*, 1 F.3d 1537, 1539 (9th Cir. 1993).

PLAINTIFFS ARE ENTITLED TO LIQUIDATED DAMAGES

Section 16(b) of the FLSA, 29 U.S.C. § 216(b), provides that "any employer who violates the provisions of section 206 or section 207 of this title **shall** be liable to the employee or employees affected in the amount of their unpaid minimum wages . . . and in an additional equal amount as liquidated damages." (Emphasis added). The language of the statute is mandatory. The Ninth Circuit has said that "[t]hese liquidated damages represent compensation, and not a penalty. Double damages are the norm, single damages the exception." *Local 246 Util. Workers Union v. s. Cal. Edison Co.*, 83 F.3d 292, 297 (9th Cir. 1996) (citations and internal quotation marks omitted). There is one narrow circumstance, under 29 U.S.C. § 260, where courts are given the discretion to deny an award of liquidated damages if the employer shows that it acted in subjective good faith and had objectively reasonable grounds for believing its conduct did not violate the FLSA. *Bratt v. County of Los Angeles*, 912 F.2d 1066, 1071 (9th Cir. 1990). "An

employer has the burden of showing that the violation of the [FLSA] was in good faith *and* that the employer had reasonable grounds for believing that no violation took place. Absent such a showing, liquidated damages are mandatory.” *Bratt* at 1071, citing *Equal Employment Opportunity Comm'n v. First Citizens Bank*, 758 f.2d 397, 403 (9th Cir.) (emphasis added and citation omitted), *cert. denied*, 474 U.S. 902, 88 L Ed. 2d 228, 106 s. Ct. 228 (1985).

Regarding the “good faith” component of the exemption, the Ninth Circuit in *Bratt* said at 1072-73: “[t]o satisfy the subjective ‘good faith’ component the [employer was] obligated to prove that [it] had an ‘honest intention to ascertain what [the FLSA] requires and to act in accordance with it.’” (Citations and internal quotations omitted). The Court went on to say that “[w]hether the [employer] had an honest intention to ascertain what the FLSA requires and to act in accordance with it involves an inquiry that is essentially factual. . . .” *Id.*

It is clear from the regulatory scheme adopted by the Department of Labor that the “good faith” defense was intended to require technical compliance. For instance, the regulation discussing the nature of the good faith defense, 29 C.F.R. § 790.13, states in pertinent part:

(a) Under the provisions of sections 9 and 10 of the Portal Act, an employer has a defense against liability or punishment in any action or proceeding brought against him for failure to comply with the minimum wage and overtime provisions of the Fair Labor Standards Act, where the employer pleads and proves that “the act or omission complained of was in good faith in conformity with and in reliance on any administrative regulation, order, ruling, approval, or interpretation” or “any administrative practice or enforcement policy *** with respect to the class of employers to which he belonged.” In order to provide a defense with respect to acts or omissions occurring on or after May 14, 1947 (the effective date of the Portal Act), the regulation, order, ruling, approval must be that of the “Administrator of the Wage and Hour Division of the Department of Labor,” and a regulation, order, ruling, approval, or interpretation of the Administrator may be relied on only if it is in writing.

Likewise, other regulations precisely detail the requirements necessary in order for the defense to be applicable. In 29 C.F.R. § 790.14 the regulation mandates that “defense is not available to an employer unless the acts or omissions complained of were ‘in conformity with’ the regulation, order, ruling, approval, interpretation, administrative practice or enforcement policy upon which he relied.” That regulation requires “actual conformity.” In 29 C.F.R. § 790.15 the term “Good Faith” is explained to mean whether the employer “acted as a reasonably prudent man would have acted under the same or similar circumstances” and that he “have honesty of intention and no knowledge of circumstances which ought to put him upon inquiry.” Regulation 29, C.F.R. § 790.16 requires that an employer who is asserting the good faith defense “must also prove that he actually relied upon [an administrative regulation, order, ruling, approval, interpretation, enforcement policy or practice.]” Regulation 29 C.F.R. § 790.17 provides detailed definitions of “administrative regulation, order, ruling, approval, or interpretation” upon which an employer may rely and subsection (h) of 790.17 states:

An employer does not have a defense under [sections 9 and 10 of the Portal Act] unless the regulation, order, ruling, approval, or interpretation, upon which he relies, is in effect and operation at the time of his reliance. To the extent that it has been rescinded, modified, or determined by judicial authority to be invalid, it is no longer a “regulation, order ruling, approval, or interpretation,” and, consequently, an employer’s subsequent reliance upon it offers him no defense under section 9 and 10.

Finally, the Ninth Circuit in *Alvarez*, supra., said:

To satisfy § 260, a FLSA-liable employer bears the “difficult” burden of proving both subjective good faith and objective reasonableness, “with double damages being the norm and single damages the exception.” . . . Where the employer “fails to carry that burden,” we have noted, “liquidated damages are mandatory.”

Id. at 910 (Citations omitted).

Here, Defendant is completely unable to demonstrate any such basis for the “good faith” defense and an award of liquidated damages is mandatory.

**MEI’S VIOLATION OF THE FLSA WAS WILLFUL AND
THE STATUTE OF LIMITATIONS IS EXTENDED TO THREE YEARS**

The statute of limitations under the FLSA, 29 U.S.C. § 255(a) is two years on actions to enforce the act, but that statute provides, in addition, a three-year limitations period for a cause of action arising out of a willful violation. In the Ninth Circuit “[a] violation is willful if the employer knew or showed reckless disregard for the matter of whether its conduct was prohibited by the [FLSA].” *Chao v. A-One Medical Services, Inc.*, 346 F.3d 908 (9th Cir. 2003) citing, *McLaughlin v. Richland Shoe Co.*, 486 U.S. 128, 133, 100 L. Ed 2d 115, 108 S. Ct. 1677 (1988); *SEIU, Local 102 v. County of San Diego*, 60 F.3d 1346, 1356 (9th Cir. 1994) (quoting *Richland Shoe*). Also, the Ninth Circuit in *Alvarez*, supra, permitted a finding of willfulness where the evidence demonstrated that the “employer disregarded the very ‘possibility’ that it was violating the statute . . .” *Alvarez* at 908-09 (quoting *Herman v. RSR Sec. Servs. Ltd.*, 172 F.3d 132, 141 (2d Cir. 1999).

Based on the lack of facts discovered to date which in any way would demonstrate that MEI did anything but flagrantly ignore the FLSA’s requirement to pay its sales representatives overtime, Plaintiffs contend that the Court should find that MEI willfully violated the FLSA. With that finding, the statute of limitations should be extended to three years.

**PORTIONS OF PLAINTIFFS' UNPAID OVERTIME WAGES ARE SUBJECT TO
THE TREBLING PROVISION OF IDAHO CODE §§ 45-614 AND 45-615**

Under the regulatory framework of the FLSA, individual states may enact wage and hour laws that provide for remedies that are more generous than those provided by the FLSA.

Regulation 29 C.F.R. § 778.5 expresses that rule in pertinent part as follows:

§ 778.5 Relation to other laws generally. Various Federal, State and local laws require the payment of minimum hourly, daily or weekly wages different from the minimum set forth in the Fair Labor Standards Act, and the payment of overtime compensation computed on bases different from those set forth in the Fair Labor Standards Act. Where such legislation is applicable and does not contravene the requirements of the Fair Labor Standards Act, nothing in the act, the regulations or the interpretations announced by the Administrator should be taken to override or nullify the provisions of these laws. . . .

Under Idaho's wage claim statute, I.C. § 45-615(2), a "plaintiff shall be entitled to recover from the defendant either the unpaid wages plus the penalties provided for in section 45-607, Idaho Code; or damages in the amount of three (3) times the unpaid wages found due and owing, whichever is greater." In the event an employee has been paid wages and is claiming additional wages Idaho Code, § 45-614 limits the recovery to "six (6) months from the accrual of the cause of action."

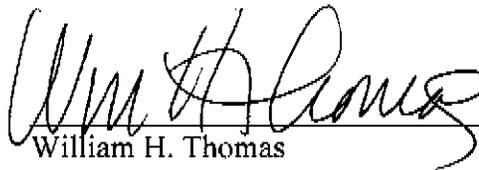
Here, some of the time claimed by the Plaintiffs will fall within the six month time period. For those wages that satisfy these provisions of the Idaho Code, Plaintiffs request that the Court treble those damages in accordance with Idaho law.

CONCLUSION

In summary, MEI, in a most egregious manner, failed to follow the most elementary requirements of the FLSA and enforce its own policies – record keeping and the payment overtime wages. It recklessly violated statutes by cavalierly assuming that its employees not only knew of the overtime requirements of the Fair Labor Standards Act but that they self-policed enforcement of the law. For these violations, it should be required to pay Plaintiffs for all overtime hours they are able to prove they worked during the three years preceding the filing of their Complaint. Plaintiffs should also be awarded liquidated damages and the Court should apply Idaho's wage claim statute trebling wages for the appropriate time period preceding the filing of Plaintiffs' Complaint.

DATED this 16th day of July, 2004.

HUNTLEY PARK, LLP



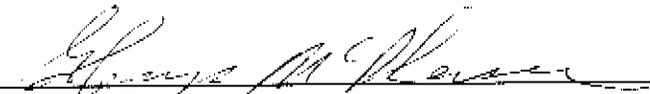
William H. Thomas
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of July, 2004, a true and correct copy of the foregoing instrument was served upon opposing counsel as indicated below:

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