

ORIGINAL

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Attorneys for Defendant Micron Electronics, Inc.

IN THE UNITED STATES DISTRICT COURT  
IN AND 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,

v.

MICRON ELECTRONICS, INC., a  
Minnesota corporation,

Defendant.

Case No. CIV 01-0244-S-BLW

**MEMORANDUM IN SUPPORT OF  
DEFENDANT'S MOTION TO STRIKE  
CONSENTS AND DISMISS CLAIMANTS**

**(Re: Kevin Aubert, Ryan Ball, Heidi M.  
Brady, Carlisle Burnette, John Caprai,  
Dennis Christensen, Heather Elliott, Julie  
Gardner, Beverly J. Hilliard, Kurt  
Kluessendorf, Erick Little, Carren  
Mattson, Mark McKenzie, Ginger North,  
Jeff Parrish, Michael Schoonveld, Carly D.  
Seader, Matthew Severson, Kurt Swanson,  
Robert S. Wood and Patrick Worthington)**

**MEMORANDUM IN SUPPORT OF DEFENDANT'S MOTION TO STRIKE  
CONSENTS AND DISMISS CLAIMANTS - 1**

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Defendant Micron Electronics, Inc. ("MEI" or "Defendant"), by and through its counsel, Stoel Rives LLP, hereby files this Memorandum in support of its Motion for an Order striking the consents and dismissing claimants Kevin Aubert, Ryan Ball, Heidi M. Brady, Carlisle Burnette, John Caprai, Dennis Christensen, Heather Elliott, Julie Gardner, Beverly J. Hilliard, Kurt Kluessendorf, Erick Little, Carren Mattson, Mark McKenzic, Ginger North, Jeff Parrish, Michael Schoonveld, Carly D. Seader, Matthew Severson, Kurt Swanson, Robert S. Wood and Patrick Worthington.

This Memorandum is supported by the concurrently-filed affidavit of Gregory C. Tollefson ("Tollefson Aff.").

### **I. ARGUMENT**

MEI seeks to dismiss the specified individuals from this lawsuit on four separate bases. First, certain individuals have stated their desire to opt out of the lawsuit and not proceed with their claims. These individuals should be dismissed as a general housekeeping matter with respect to the conditionally certified class. Second, certain individuals have failed to appear for depositions, and they should be dismissed from this lawsuit for such failures. Third, and similarly, other individuals have failed to cooperate in this litigation and should likewise be dismissed. Fourth, certain individuals erroneously filed "opt in" notices, although it is clear they are not properly members of the conditionally certified class as approved by the Court. The relief herein is sought pursuant to Rules 37(b)(2), 37(d) and 41(b) of the Federal Rules of Civil Procedure, and the Court's inherent power.

**A. Individuals Opting Out**

Defendant requests that claimants Kevin Aubert, Carlisle Burnette, Kurt Kluessendorf, Erick Little, Ginger North, Jeff Parish, Michael Schoonveld, Matthew Severson and Patrick Worthington, be dismissed because Plaintiffs' counsel has advised that these claimants are opting out of the lawsuit. (Tollefson Aff. ¶¶ 12-14.)

**B. Individuals Who Failed to Appear for Scheduled Depositions**

Defendant requests that claimants Dennis Christensen and Mark McKenzie be dismissed pursuant to Rules 37(b)(2), 37(d)(1) and 41(b) of the Federal Rules of Civil Procedure, and the Court's inherent power, because these claimants have not pursued this action and have failed to appear at their depositions. (Tollefson Aff. ¶¶ 8, 11.) Therefore, they are subject to involuntary dismissal from this action.

**C. Individuals Who Have Not Cooperated in the Litigation**

Defendant requests that claimants Julie Gardner and Kurt Swanson be dismissed pursuant to Rules 37(b)(2), and 41(b) of the Federal Rules of Civil Procedure, and the Court's inherent power, because these claimants have not pursued this action and have refused to reschedule a time to be deposed. (Tollefson Aff. ¶¶ 9, 10, 13, 14.) Therefore, they are subject to involuntary dismissal from this action.

**D. Individuals Who Are Not Properly in the Conditionally Certified Class**

Defendant requests that claimants John Caprai and Carren Mattson be dismissed pursuant to the Court's Memorandum Decision and Order of September 27, 2002 (Docket No. 155) in which the Court defines the class as: "All hourly-wage *inside sales representatives* who worked for MPC, MCCA, or MGCS . . ." Memorandum Decision and Order, p. 5 (emphasis added). By

his own admission, John Caprai, for the duration of his employment with MEI, was an Engineer. (Tollefson Aff. ¶ 15, Ex. H.) By her own admission, Carren Mattson, for the duration of her employment, was a Sales Assistant. (Tollefson Aff. ¶ 16, Ex. I.)

Defendant requests that claimants Heather Elliott and Carly D. Seader be dismissed pursuant to the Court's Memorandum Decision and Order, Rule 36(b) of the Federal Rules of Civil Procedure, and the Court's inherent power, because Plaintiffs admitted, in Plaintiffs' Responses to Defendant Micron Electronics, Inc.'s Third Set of Requests for Admission, served on Defendant on May 20, 2004, that claimants Heather Elliott and Carly D. Seader are not inside sales representatives. (Tollefson Aff. ¶ 17, Ex. J.)

Defendant requests that claimant Beverly J. Hilliard be dismissed pursuant to the Court's Memorandum Decision and Order because claimant Beverly J. Hilliard is not an inside sales representative. (Tollefson Aff. ¶¶ 17-18, Ex. J-K.) Ms. Hilliard, along with claimants Heather Elliott and Carly D. Seader, was a customer service representative. Plaintiffs admitted that Ms. Elliott and Ms. Seader were not inside sales representatives, but because they were unable to contact Ms. Hilliard, "despite reasonable inquiry," they were unable to admit or deny the requests for admission with regard to Ms. Hilliard. (*Id.*)

Defendant requests that claimant Robert S. Wood be dismissed because Mr. Wood did not work as an inside sales representative for an MPC, MCCA, or MGCS call center in Idaho or Minnesota. (Tollefson Aff. ¶ 19, Ex. L.) Plaintiffs' Second Amended Complaint, filed on April 23, 2002 (Docket No. 94), alleges causes of action against MEI, doing business in Idaho and Minnesota. (Second Amended Complaint ¶ 1.) Mr. Wood worked as a sales clerk at a retail store in Salt Lake City, Utah. (Tollefson Aff. ¶ 19, Ex. L.)

Defendant requests that claimants Ryan Ball and Heidi M. Brady be dismissed pursuant to the Court's Memorandum Decision and Order because Mr. Ball and Ms. Brady did not work for an MPC, MCCS, or MGCS call center as inside sales representatives. (Tollefson Aff. ¶¶ 20-21, Ex. M-N.) Mr. Ball worked as a sales clerk at a retail store (not a call center). (Tollefson Aff. ¶ 20, Ex. M.) Ms. Brady worked at a retail store (not a call center) as a customer service representative. (Tollefson Aff. ¶ 21, Ex. N.)

**E. Fees and Costs Incurred**

The failure of certain claimants to cooperate with discovery or to submit a proper consent has needlessly increased the costs associated with this litigation. Defendant, therefore reserves its right to seek costs and attorney fees, and any other sanctions as the Court may deem appropriate.

Dated this 14<sup>th</sup> day of June, 2004.

STOEL RIVES LLP

  
Kim J Dockstader

**CERTIFICATE OF SERVICE**

I hereby certify that on this 14<sup>th</sup> day of June, 2004, a true and correct copy of the foregoing **MEMORANDUM IN SUPPORT OF DEFENDANT'S MOTION TO STRIKE CONSENTS AND DISMISS CLAIMANTS (Re: Kevin Aubert, Ryan Ball, Heidi M. Brady, Carlisle Burnette, John Caprai, Dennis Christensen, Heather Elliott, Julie Gardner, Beverly J. Hilliard, Kurt Kluessendorf, Erick Little, Carren Mattson, Mark McKenzie, Ginger North, Jeff Parrish, Michael Schoonveld, Carly D. Seader, Matthew Severson, Kurt Swanson, Robert S. Wood and Patrick Worthington)** was served on the following individuals by the manner indicated:

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