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Attorneys for Defendant Micron Electronics, Inc.

U.S. DISTRICT COURT  
U.S. DISTRICT COURT  
BOISE, IDAHO

AUG 24 2001

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M. P. Y. J.  
LORDED \_\_\_\_\_

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

**STATEMENT OF UNDISPUTED FACTS  
IN SUPPORT OF MICRON  
ELECTRONICS, INC.'S CROSS-  
MOTION FOR PARTIAL SUMMARY  
JUDGMENT RE: WILLFULNESS**

**STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF MICRON ELECTRONICS,  
INC.'S CROSS-MOTION FOR PARTIAL SUMMARY JUDGMENT RE:  
WILLFULNESS - 1**

Boise-174777.1 0026493-00046

271  
**ORIGINAL**

Defendant Micron Electronics, Inc. ("MEI"), by and through its attorneys, Steel Rives LLP, and pursuant to Local Rule 7.1(c), respectfully submits this Statement of Undisputed Facts in Support of Micron Electronics, Inc.'s Cross-Motion for Partial Summary Judgment Re: Willfulness.

## I. INTRODUCTION

Plaintiffs have failed to meet their burden of establishing willfulness, because there are no facts in the record to demonstrate a willful violation of the federal Fair Labor Standards Act ("FLSA"). Thus the absence of fact is the key to MEI's argument in support of partial summary judgment regarding willfulness. Nonetheless, the following facts establish (1) what Plaintiffs have admitted MEI did not do and thereby did not violate the FLSA, and (2) what affirmative actions MEI took to ensure FLSA compliance. In addition, the facts address the testimony of Marvin Masteller, demonstrating that he was not told to work off the clock as stated by Plaintiffs.

## II. STATEMENT OF UNDISPUTED FACTS

### A. What MEI Did Not Do

1. MEI properly included Plaintiffs' commissions in its overtime calculations and did not err in computing overtime compensation. (*See* Plaintiffs' Non-Opposition to Motion for Partial Summary Judgment on Payment of Premium on Commission Statements (Docket No. 222)).

2. Plaintiffs' timecards were not altered. (*See* Plaintiffs' Statement of Non-Opposition to Motion for Partial Summary Judgment Re: Plaintiffs' Claims of Altering Employees' Timecards (Docket No. 237)).

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**STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF MICRON ELECTRONICS,  
INC.'S CROSS-MOTION FOR PARTIAL SUMMARY JUDGMENT RE:  
WILLFULNESS - 2**

**B. MEI Did All That It Could to Ensure FLSA Compliance**

3. MEI developed policies and procedures regarding timekeeping and overtime in compliance with the FLSA. (See First Affidavit of Gregory C. Tollefson filed August 21, 2002 (Docket No. 122.) ("First Tollefson Aff.")(Ex.s A-D); Plaintiffs' Brief in Support of Motion for Conditional Certification (Docket No. 76) at 12.)

4. MEI's policies on timekeeping and overtime demonstrate that all employees were expected to accurately record their time, employees were not permitted to work off the clock, overtime had to be preapproved by a supervisor, and, when an employee worked in excess of 40 hours a week, he or she was paid time and one-half. (*Id.*)

5. MEI's overtime policy included the following admonition regarding off-the-clock work: "No work should be performed off the clock. All time worked must be recorded. Failure to record all time worked will subject the employee to disciplinary action up to and including termination." (First Tollefson Aff., Ex. C.)

6. All employees received the timekeeping and overtime policies when they started working at MEI or one of its various subsidiaries. (Anderson Depo. 27:22-29:2<sup>1</sup>; Angus Depo. 22:7-20; Clevenger Depo. 36:22-37:23; Craig Depo. (Vol. I) 39:20-40:7; Ell Depo. 31:17-23; Fillmore Depo. 22:4-16; Garcia Depo. 48:2-49:2; Hagman Depo. 23:16-24:13; Hinckley Depo. (Vol. I) 93:2-8; Hladun Depo. (Vol. I) 26:15-22; Hodges Depo. 30:16-31:6; Kaufmann Depo.

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<sup>1</sup>To avoid overburdening the Court with lengthy citations, all citations to the depositions attached as exhibits to the Omnibus Affidavit of Gregory C. Tollefson in Support of Defendant Micron Electronics, Inc.'s (1) Memorandum in Response to Plaintiffs' Motion for Partial Summary Judgment, (2) Motion to Strike, and (3) Cross-Motion for Partial Summary Judgment Re: Willfulness (the "Omnibus Affidavit") will be cited as, "[Deponent] Depo. Page: Line." All of the depositions cited herein are attached to the Omnibus Affidavit in alphabetical order.

(Vol. I) 83:1-10; Keen Depo. 84:15-86:4; Kestner Depo. 22:21-24:25; Larscheid Depo. 27:14-28:5; Lee Depo. 25:16-23; Mattson Depo. 43:20-44:5; McGeorge Depo. 66:7-18; Monahan Depo. 23:18-25:2; Moser Depo. 36:10-37:23; Papero Depo. 18:22-19:16; Parrish Depo. 41:8-23; Smith Depo. (Vol. I) 137:5-24; J. Wells Depo. 55:9-19; T. Wells Depo. 73:1-7; Wing Depo. 51:16-18.)

7. Pursuant to MEI's policy, and as confirmed by individual admissions, the inside sales representatives were responsible for accurately reporting their time. (Angus Depo. 43:15-17; Auchambach Depo. 29:25-30:12; Blair Depo. 93:4-8; Cox Depo. 44:24-45:7; DeRouen 61:6-8, Ell Depo. 54:19-21; Keen Depo. 114:14-16; Kestner Depo. 27:2-13; Mattson Depo. 50:3-8; Monahan Depo. 40:24-41:4; Moser Depo. 49:14-17; Papero 56: 7-11; T. Wells Depo. 165:1-6.) (See also Affidavit of Marcus J. Auchampach (Docket No. 109) ("Auchampach Aff.") ¶ 5; Affidavit of Kimberly Boschee (Docket No.110) ("Boschee Aff.") ¶ 7; Declaration of William C. Brakeman (Docket No. 120) ("Brakeman Decl.") ¶ 4; Affidavit of Dominic Casey (Docket No. 111) ("Casey Aff.") ¶ 8; Affidavit of Larry R.Chase (Docket No. 113) ("Chase Aff.") ¶ 6; Affidavit of Jay Church (Docket No. 114) ("Church Aff.") ¶ 9; Affidavit of Mark A. Cox (Docket No. 115) ("Cox Aff.") ¶9; Declaration of Jay W. Ellis (Docket No. 108) ("Ellis Decl.") ¶ 10; Affidavit of David J. Groeger (Docket No. 116) ("Groeger Aff.") ¶ 11; Affidavit of Jaime Nava (Docket No. 117) ("Nava Aff.") ¶ 13; Affidavit of Anthony Robinson (Docket No. 112) ("Robinson Aff.") ¶ 6.)

8. Inside sales representatives were trained on how to accurately report their time. (See e.g. Angus Depo. 17:22-18:11; Ellis Depo. 48:13-49:1, 53:18-54:7, 79:10-16; Ferrara Depo. 17:2-5; Fillmore 22:25-23:9; Keen Depo. 100:14-16; Lee Depo. 32:12-15; McGeorge 79:11-14;

**STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF MICRON ELECTRONICS, INC.'S CROSS-MOTION FOR PARTIAL SUMMARY JUDGMENT RE: WILLFULNESS - 4**

Parrish 35:24-36:2.) (*See also* Auchampach Aff. ¶ 10, Chase Aff. ¶ 11, Groeger Aff. ¶ 11.) (*See also* Affidavit of Kim J Dockstader (Filed Under Seal) ("Dockstader Aff.") (Docket No. 125), Exs. A-N at ¶ 7 of each affidavit.)<sup>2</sup>

9. As part of their employment responsibilities, supervisors were expected to make sure timekeeping and overtime policies were observed by inside sales representatives. (Boschec Aff. ¶ 3, Brakeman Decl. ¶ 2, Casey Aff. ¶ 4, Church Aff. ¶ 4, Cox Aff. ¶ 4, Ellis Decl. ¶ 4, Groeger Aff. ¶ 4, Affidavit of David R. McCauley (Docket No. 118) ("McCauley Aff.") ¶ 3, Nava Aff. ¶ 4, Robinson Aff. ¶ 3.)

10. When supervisors discovered their employees were working off the clock, the employees were reprimanded for it. (Masteller Depo. 48:22-51:4; Robinson Aff. ¶ 8.)

11. All the supervisors who were deposed testified that they never told the inside sales representatives under their supervision to work off the clock. (Auchampach Aff. ¶ 7; Affidavit of Kimberly Boschee ¶ 8; Declaration of William C. Brakeman ¶ 7; Affidavit of Dominic Casey ¶¶ 4, 10; Affidavit of Larry R. Chase ("Chase Aff.") ¶ 5-6,8; Church Aff. ¶¶ 4, 11; Cox Aff. ¶¶ 4, 11; Declaration of Jay W. Ellis ("Ellis Decl.") ¶¶ 4, 9-12; Groeger Aff. ¶¶ 4, 8, 9; McCauley Aff. ¶¶ 7-8; Affidavit of Jaime Nava ("Nava Aff.") ¶¶ 4, 7, 8, 10; Robinson Aff. ¶¶ 4, 7-9.)

12. The overwhelming majority of the inside sales representatives testified that they were paid for all the time they actually reported, including overtime. (Angus Depo. 36:10-20;

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<sup>2</sup> These Exhibits are all affidavits of former inside sales representatives of various subsidiaries of MEI during the relevant time period, including: Rudeena E. Ballantyne, Douglas V. Eason, Miguel A. Flores, Brian A. Friel, Benjamin K. Jenkins, Niklas F. Kopp, Stephen E. Laats, James Ryan Miller, Jeremy Todd Points, Clint J. Pulsipher, Jason W. Salisbury, Brenton E. Schiefelbein, Sandra K. Wolfe, and Chaun J. Stone.

Blair Depo. 89: 9-19; Clevenger Depo. 70:25-71:16, 84:3-6; DeRouen Depo. 26: 7-12; Ell Depo. 40:11-13; Fillmore 27: 21-23; Garcia Depo. 65:22-66:7; Hagman Depo. 30:3-24; Henderson 81:3-10; Hodges 20:18-25, 21:11-13; Kaufmann Depo. at 86:12-17; Kestner 45:16-19, Larschied Depo. 40:4-11; Lee Depo. 42:24-43:2; Masteller Depo. 58:6-11; Mattson Depo. 39:17-19; Moffet Depo. 100:6-22, 222:8-12; Papero Depo. 24:18-22; Saari Depo. 44:25-45:3; Thom Depo. 53:11-16; T. Wells Depo. 141:13-17; Wing Depo. 56:10-13.) (*See also* Auchampach Aff. ¶ 9; Chase Aff. ¶ 10; Ellis Decl. ¶ 15; Nava Aff. ¶¶ 12-13.)

13. Moreover, several inside sales representatives during the time period have testified that they reported and were paid for all of the time that they worked, including overtime. (Auchampach II Depo. 26:7-9, Fillmore Depo. 25:5-10, 25:25-26:9, 28:22-29:2, 29:17-24; Hagman Depo. 30:3-24; Hodges Depo. 20:14-24, 25:1-11, 46:2-5; Moser Depo. 51:3-10.)

14. To the extent any inside sales representatives failed to accurately record some of their time worked in violation of MEI's policies, they did so voluntarily and deliberately without disclosure or the knowledge of MEI or their supervisors. (Angus Depo. 40:13-43:17; Blair Depo. 92:4-96:17; Brakeman Depo. 97:14-18; Clevenger Depo. 70:11-20, 197:6-198:20; Ell Depo. 52:7-55:9; Ellis Depo. 87:5-19; Ford Depo. 82:4-7, 81:22-85:10; Kaufmann Depo. 98:11-20; Keen Depo. 114:9-25; Kestner Depo. 59:11-60:14; Larschied 30: 15-21; Masteller Depo. 54:18-55:14, 56:13-57:10; Monahan Depo. 42:2-46:2; T. Wells Depo. 165:1-14; Wing Depo. 69:17-22.)

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**STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF MICRON ELECTRONICS, INC.'S CROSS-MOTION FOR PARTIAL SUMMARY JUDGMENT RE:**

**WILLFULNESS - 6**

Boise-174777.1 0026493-00046

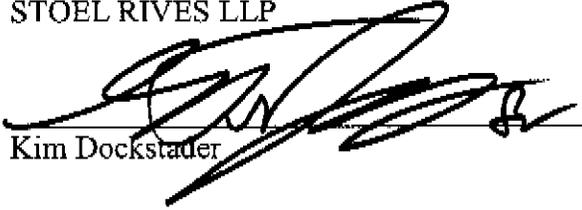
**C. Mr. Masteller's Testimony**

14. Mr. Masteller's supervisors never told him to work off the clock, and, when they discovered he was working overtime and not reporting it, he was reprimanded for doing so.

(Masteller Depo. 48:22-51: 4.)

DATED this 24<sup>th</sup> day of August, 2004.

STOEL RIVES LLP

  
Kim Dockstafer

**STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF MICRON ELECTRONICS,  
INC.'S CROSS-MOTION FOR PARTIAL SUMMARY JUDGMENT RE:  
WILLFULNESS - 7**

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 24<sup>th</sup> day of August, 2004, I caused to be served a true copy of the foregoing **STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF MICRON ELECTRONICS, INC.'S CROSS-MOTION FOR PARTIAL SUMMARY JUDGMENT RE: WILLFULNESS** 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  
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- Via U.S. Mail
- Via Hand-Delivery
- Via Overnight Delivery
- Via Facsimile

  
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Kim Dockstader

**STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF MICRON ELECTRONICS, INC.'S CROSS-MOTION FOR PARTIAL SUMMARY JUDGMENT RE: WILLFULNESS - 8**