



I, DANIEL E. WILLIAMS, being first duly sworn on oath, depose and say:

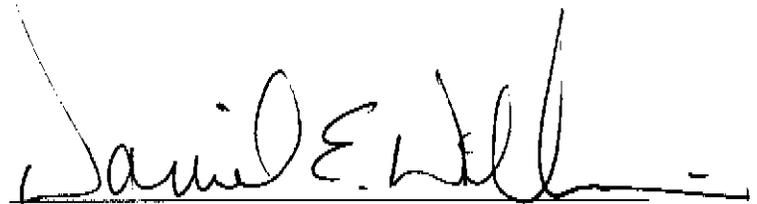
1. I am one of the attorneys for the plaintiffs in this action and have personal knowledge of the facts and matters set forth herein.

2. Attached hereto are true and correct copies of the Exhibits referred to in the Memorandum in Support of Plaintiffs' Motion for Protective Order:

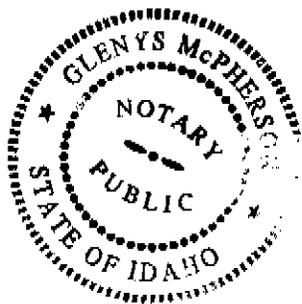
Exhibit A - Letter to Kim J. Dockstader dated June 29, 2004

Exhibit B - Letter from Deanna Brothers dated July 2, 2004.

3. Defendant just obtained the deposition testimony of three opt-in class members, Julie Gardner, Tom Robertson and Jeffery Clevenger. In order to take these three depositions of approximately 1 ½ hours each, Mr. Thomas spent five days on the road and incurred approximately \$3,000 in expenses. Plaintiffs' counsel have already advanced approximately \$65,000 in litigation expenses of behalf of the class in this action, most of which is associated with deposition expense. While counsel are prepared to incur legitimate expenses as part of their duties as class counsel, this case presents precisely the situation in which the Court must intervene to see that the financial advantage of corporate defendants is not misused to run up unnecessary costs of litigation. It is clear that the financial burden on both parties outweighs whatever very slight value that additional cookie-cutter depositions of class members would convey.

  
Daniel E. Williams

Subscribed and sworn to before me this 23<sup>rd</sup> day of July, 2004.



Glenys McPheerson  
Notary Public for Idaho  
Residing at Boise, Idaho  
My Commission Expires: 11/7/06

CERTIFICATE OF SERVICE

I hereby certify that on this 23<sup>rd</sup> day of July, 2004, a true and correct copy of the forgoing instrument was served upon opposing counsel as indicated below:

Kim J. Dockstader  
Gregory C. Tollefson  
STOEL RIVES LLP  
101 S. Capitol Blvd., Suite 1900  
Boise, ID 83702-5958

Via Hand Delivery  
 Via Facsimile 389-9040  
 Via U. S. Mail

Daniel E. Williams  
Daniel E. Williams

# Huntley Park<sup>™</sup>

Uncommon Law

June 29, 2004

**Via Facsimile: 389-9040  
& U.S. Mail**

Kim J. Dockstader  
Gregory C. Tollefson  
Stoel Rives LLP  
101 S. Capitol Blvd., Suite 1900  
Boise, ID 83702

RE: Smith, et al., v. Micron Electronics

Gentlemen:

As I indicated in my letter of June 23, 2004, I am writing to explain more fully our position regarding the 18 new class members whom you have indicated you now wish to depose.

You will recall that when we agreed to attempt the mediation on June 16, 2004, we filed a Stipulated Motion to Stay on May 21, 2004. The discovery deadline for class certification issues was May 3, 2004, as set forth in the Court's Scheduling Order of May 23, 2003. Even given our informal agreement to extend that deadline, the deadline for filing motions regarding final certification was May 28, 2004. Despite the language of your letter of June 23, 2004, claiming an unspecified right to name additional deponents, it was clear that you had listed all of the individuals whom you were seeking to depose before final class certification was considered.

Now that our mediation was unsuccessful, we find you not only wanting to reschedule the depositions we had stayed in order to mediate, which is appropriate, but also attempting to add an additional eighteen (18) individuals whom you had not identified before. These eighteen are:

Michael Browning  
Alan Clafin  
Shelly Dyer  
Kevin Engle  
Michael Hazen  
John Paul Kurtin  
Anthony Limani  
Jay Madison  
Christopher McCullough  
Don McMurrian

Exhibit No.   A  

Robert C. Huntley  
William H. Thomas  
F. Michael Burkett  
Steven L. Olsen  
Daniel E. Williams  
Christopher F. Huntley  
Timothy D. Neville  
Barbara Beehner-Kane

Of Counsel:  
W. Anthony Park  
Larry L. Goins

June 29, 2004

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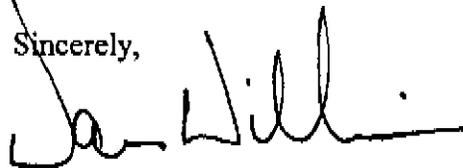
Janice Nitz  
Patrick Revels  
Colin Reynolds  
April Rinehart  
Cheryl L. Sanderson  
John Seale  
Steven Tom  
Nancy Uli

We believe this is entirely inappropriate. We did not stay proceedings and attempt mediation so that you could garner more time to obtain deposition testimony. After deposing thirty (30) class members, including all six named plaintiffs, we do not believe that additional depositions are necessary for your client's arguments at final certification. Instead, these belated requests merely cause harassment to plaintiffs and drive up costs. If you are attempting to ascertain damages information, we suggest that these depositions (or some other means of obtaining the desired information) can wait until after final certification.

As you know, D.Id.L.Civ.R. 30.1 sets forth a presumption that no more than ten (10) depositions per party will be taken. While we agreed to exceed this limitation in our litigation plan, never did we suggest that the Court's power to impose other reasonable limitations pursuant to Rule 26(b)(2), F.R.C.P. *See also, Andrews v. Fowler*, 98 F.3d 1069, 1080 (8<sup>th</sup> Cir. 1996) (court did not abuse its discretion in denying leave for additional depositions). According to Rule 26(b)(2), the court may limit the frequency or extent of use of discovery methods based on certain findings, including (i) the discovery sought is unreasonably cumulative or duplicative or (iii) the burden or expense of the proposed discovery outweighs its likely benefit. We firmly believe that both of these alternative criteria are met with your request for eighteen additional depositions.

You indicated in your letter of June 23, 2004, that my proposal to reserve these eighteen to the end of your proposed deposition schedule, so that Judge Williams might rule without an emergency hearing, was "unworkable and unrealistic." You gave no reasons, however, for this blanket assertion. Once again, if you insist on deposing these eighteen individuals prior to the hearing on final class certification, we propose postponing them to the end of your timeline, so that Judge Williams may consider the issue in the normal course of motion practice.

Sincerely,



Daniel E. Williams

DEW:g



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DEANNA K. BROTHERS  
Direct (208) 387-4270  
dkbrothers@stoel.com

July 2, 2004

**VIA FACSIMILE AND MAIL (208) 345-7894**

Glenys McPherson  
Huntley Park LLP  
250 South 5th, Suite 660  
P.O. Box 2188  
Boise, Idaho 83701

**Re: *Smith, et al. v. Micron Electronics, Inc.***

Dear Glenys:

I am in receipt of your five letters to Kim Dockstader and Greg Tollefson (three dated June 30, 2004, one dated July 1, 2004 and the most recent dated today, July 2, 2004) concerning deposition scheduling and will address your correspondence in the order of receipt.

At the outset, please be advised that we will not be taking any telephonic depositions in this case. All depositions will be in person, although we are willing to allow the attorneys from your firm to defend and participate by telephone or videoconference, if they so choose.

With regard to your June 30, 2004 letter concerning William Brinckerhoff, Julie Gardner, Tom Robertson, Michael Hazen, Jeff Clevenger and Robert McCarter, thank you for confirming the availability of Ms. Gardner and Mr. Clevenger on the dates these claimants were noticed.

Pursuant to your request to switch the times for the depositions of Mr. Hazen and Mr. Robertson on July 21, 2004, we will agree to move Mr. Hazen to 9:00 a.m. and Mr. Robertson to 2:00 p.m. (Central Standard Time) on July 21, 2004.

Concerning William Brinckerhoff, we will agree to move his deposition, as you suggested, to 9:00 a.m. (CST) on July 20, 2004 in Minneapolis. Unfortunately, we had already made arrangements regarding your request for this change prior to receiving your July 2, 2004 letter indicating Mr. Brinckerhoff will be on vacation during this time. We are unable to once again move Mr. Brinckerhoff's deposition and therefore, he will need to make himself available on July 20, 2004 at 9:00 a.m.

Exhibit No. 

Oregon  
Washington  
California  
Utah  
Idaho



Glenys McPherson  
July 2, 2004  
Page 2

With regard to Robert McCarter, please recheck and inform us of the exact time and duration of his absence, the location where he will be "out of town on business" and any other available times and locations near the date of his current deposition setting. Because we are taking his deposition in person, it makes sense to fit him in during the deposition trip back East. Until you get back to us with the requested information, we cannot consider whether to withdraw the deposition notice as to Mr. McCarter.

The second letter we received on June 30, 2004 related to Tim Hedding. Since Mr. Hedding has moved to Wenatchee, Washington, we will notice his deposition for July 30, 2004 at 10:00 a.m. (Pacific Standard Time) at our Seattle office. If Mr. Hedding wishes to switch times with Hector Dimas (who is also scheduled for deposition on June 30, 2004 at our Seattle office at 2:00 p.m.), we will agree to switch the times as long as we are provided with advance and prompt notice. If you are unable to promptly confirm the attendance of Mr. Hedding, please notify us immediately and we will proceed with issuing a subpoena for his deposition. Likewise for Mr. Dimas, if switching the times is the option plaintiffs' elect.

The third letter we received on June 30, 2004 pertained to Charles McGuire. We agree to move Mr. McGuire's deposition to August 5, 2004 at 9:00 a.m. This will not affect the deposition of Nanette Westenhaver, which is also scheduled for August 5, 2004 at 9:00 a.m.

On July 1, 2004, you sent a letter asking that Stefanie Bistline's deposition be moved to the morning of July 26 or 27, 2004. We agree to move Ms. Bistline's deposition to July 27, 2004 at 9:00 a.m. This will not affect the deposition of Janice Nitz, which is also scheduled for July 27, 2004 at 9:00 a.m.

As a result of the many changes we have agreed to make to the deposition schedule as a professional courtesy to your office, we are sending you amended deposition notices for the depositions of William Brinckerhoff, Tom Robertson, Michael Hazen, Tim Hedding, Charles McGuire and Stefanie Bistline. However, unless we hear from you immediately to the contrary, we will plan to proceed with the depositions as previously noticed, subject to the above agreed to changes.

Very truly yours,

Deanna K. Brothers  
Paralegal