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Attorneys for Defendant

UNITED STATES DISTRICT COURT
 DISTRICT OF IDAHO

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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

) **SECOND AFFIDAVIT OF ROBERT L.
 GRIFFARD**

STATE OF IDAHO)
) ss.
 County of Canyon)

SECOND AFFIDAVIT OF ROBERT L. GRIFFARD - 1

Boise-146588.3 0026493-00046

ORIGINAL 158

I, Robert L. Griffard, being duly sworn, state that the following facts are true and correct. The following facts are based upon my personal knowledge. If called to testify regarding these facts, I am competent to do so and would testify as follows:

1. I previously was employed by Micron Electronics, Inc. ("Micron Electronics") as the Sales Compensation Manager. For more information on my employment background with Micron Electronics, please refer to my first affidavit previously filed in this case. *See* Affidavit of Robert Griffard ("First Griffard Aff.") (Docket No. 128) (filed under seal).

2. The historical methodology used by Micron Electronics to calculate overtime premiums based on commissions is in compliance with the requirements imposed by the Fair Labor Standards Act (the "FLSA") and American Payroll Association standards. *See* First Griffard Aff. at ¶¶ 21-25.

3. The computation method used by Micron Electronics is merely one of several methodologies that is suggested by the Department of Labor in its regulations under the FLSA concerning the calculation of overtime premiums on commissions. As explained in my previous affidavit, it was not possible or practicable for Micron Electronics to allocate the commission among the weeks in proportion to the amount of commission actually earned or reasonably presumed to be earned each week. *See* First Griffard Aff. at ¶ 21.

4. However, according to the FLSA regulations, Micron Electronics could therefore use some other reasonable and equitable method of allocating commissions. The regulations provide several examples of acceptable allocation methods. As detailed below, even using the same number of overtime hours worked and commission paid, each of these methodologies provided under the regulations yields a different result.

5. I have calculated examples of the different methodologies provided under the FLSA regulations using the overtime hours and commission for Kimberly Smith in February 2001. Attached as Exhibit A is a true and correct copy of the Overtime Calculations Using Approved Allocation Methodologies.

6. The regulations first provide for a method of allocation that uses a commission computation period of one month. Under this method you multiply the commission payment by 12 and divide by 52 to get the amount of commission allocable to a single week. Using this allocation method, the total overtime premium due on commission for Ms. Smith in February 2001 would be \$77.02. *See Exhibit A, Example 1.*

7. Another allocation method example in the regulations uses a semimonthly computation period. Under this allocation method, you multiply the commission payment by 24 and divide by 52 to get each week's commission. Using this method, the total overtime premium due on commission for Ms. Smith for February 2001 would be \$77.02. *See Exhibit A, Example 5.*

8. Another allocation example provided in the regulations calculates the commission computation period based on a specific number of workweeks. This was the methodology used by Micron Electronics. *See Griffard Aff. at ¶¶ 21-25.* Under this calculation you divide the total amount of commission by the number of weeks to get the commission allocable to each week. Using this method, the overtime premium due on commission for Ms. Smith for February 2001 would be \$83.43. *See Exhibit A, Example 2.*

9. Another method of calculating overtime premium due on commission is to use the monthly commission allocation in example one (monthly commission x 12 months / 52 weeks) then, instead of using the formula (*Griffard Aff. at ¶¶ 21-25*), a coefficient table is used to locate

a factor by which the commission is multiplied to determine the overtime premium due. Using this method, the overtime premium due on commissions for Ms. Smith for February 2001 would be \$77.02. *See* Exhibit A, Example 3.

10. A fifth method is to allocate the commission to each hour by dividing the monthly commission by the total hours worked then multiplying one-half times the overtime hours worked in each week. Using this method, the overtime premium due on commission for Ms. Smith in February 2001 is \$97.81. *See* Exhibit A, Example 4.

11. A comparison of the various results yielded by these approved methodologies demonstrates that Micron Electronics' method of allocation was a reasonable and equitable method for determining overtime premiums based on commissions.

12. I have reviewed the arguments in Plaintiffs' Reply Brief (Docket No. 144) regarding the alleged miscalculation of inside sales representatives' overtime premium rates. I also have reviewed the Affidavit of Jason A. Shaw ("Shaw Aff.") (Docket No. 147), and the documents referenced by Mr. Shaw, regarding the calculations he conducted for Ms. Smith for the months of February, March and April 2001.

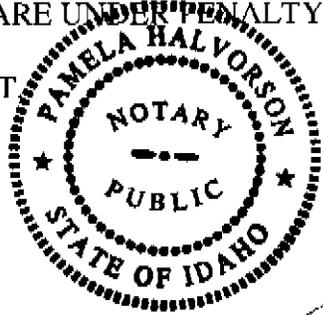
13. Plaintiffs do not question the calculation methodology selected by Micron Electronics. Plaintiffs instead argue that their subsequent application of Micron Electronics' calculation method for Ms. Smith in February 2001 allegedly results in an underpayment of the overtime premium. *See* Plaintiffs' Reply Brief at 12. *See also*, Shaw Aff. This argument incorrectly assumes there is only one calculation methodology. As explained above, there is more than one possible calculation methodology, each of which yields a different result.

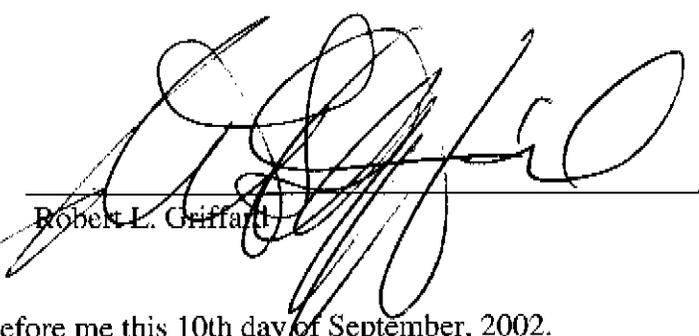
14. The assumptions underlying Mr. Shaw's calculations are flawed for several reasons. First, Mr. Shaw's calculations incorrectly take a snapshot of Ms. Smith's pay history

for February 2001 in isolation. The isolation of a one month pay history fails to take into account adjustments made regarding hours worked or commissions earned that may have been made subsequent or previous to the relevant pay period. For example, my department often made adjustments to commissions after the paychecks were received that would not be reflected until a subsequent commission paycheck. See Affidavit of Farrah Pippenger (Docket No. 126) (filed under seal) at ¶16 (“Sales representatives would come to my office, usually when the paychecks were distributed, and ask questions about their commissions. If an adjustment needed to be made on the commission amount, I would arrange to either add or subtract the commission amount on the next regular paycheck or on the following commission paycheck.”). By looking at only one month in isolation and with incomplete data, Mr. Shaw’s attempts to reconstruct the calculations are inaccurate and flawed.

15. Micron Electronics’ method for calculating overtime premiums based on commissions is reasonable and fairly and adequately compensated inside sales representatives for their overtime based on commissions using methods approved by the relevant regulations. To accurately recreate the overtime premium calculations actually paid to each inside sales representative likely would require recreating each paycheck over the relevant employment history, taking into account any adjustments made from previous and subsequent pay periods, and cannot be accurately recreated for every month in isolation. In other words, attempts to recreate the calculations in isolation and with incomplete data, as Mr. Shaw has attempted to do in this case, may well yield results indicating both overpayments and underpayments for certain time periods. However, over time the net effect in terms of actual compensation either overpaid or underpaid to a particular inside sales representative would be *de minimus*.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE
AND CORRECT





Robert L. Griffard

SUBSCRIBED AND SWORN to before me this 10th day of September, 2002.



Notary Public for Idaho

Residing at Meridian

My Commission Expires: 9-4-07

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of September, 2002, a true and correct copy of the foregoing **AFFIDAVIT OF ROBERT L. GRIFFARD** was served on the following individuals by the manner indicated:

William H. Thomas	<input checked="" type="checkbox"/>	By Hand Delivery
Daniel E. Williams	<input checked="" type="checkbox"/>	By Facsimile
HUNTLEY, PARK, THOMAS, BURKETT, OLSEN & WILLIAMS	<input type="checkbox"/>	By U.S. Mail
250 S. Fifth Street Suite 660 Boise, Idaho 83701-2188	<input type="checkbox"/>	By Overnight Delivery



Kim J Dockstader

EXHIBIT "A"

Overtime Calculation Using Approved Allocation Methodologies

example 1:

monthly commission = \$ 2,034.49
 X 12 \$24,413.88
 / 52 \$ 469.50 = commission allocated to 1 week

Week 1

hours worked in week = 46.75
 weekly commission / total hours \$ 10.04 = increase in hourly rate due to commission
 X .5 = \$ 5.02 1/2 of increase in hourly rate
 overtime hours = 6.8
 OT hours X 1/2 hourly rate increase = \$ 33.89 = overtime premium due on commission

Week 2

hours worked in week = 42.25
 weekly commission / total hours \$ 11.11 = increase in hourly rate due to commission
 X .5 = \$ 5.56 1/2 of increase in hourly rate
 overtime hours = 2.3
 OT hours X 1/2 hourly rate increase = \$ 12.50 = overtime premium due on commission

Week 3

hours worked in week = 21.00
 weekly commission / total hours \$ - = increase in hourly rate due to commission
 X .5 = \$ - 1/2 of increase in hourly rate
 overtime hours = -
 OT hours X 1/2 hourly rate increase = \$ - = overtime premium due on commission

Week 4

hours worked in week = 46.00
 weekly commission / total hours \$ 10.21 = increase in hourly rate due to commission
 X .5 = \$ 5.10 1/2 of increase in hourly rate
 overtime hours = 6.00
 OT hours X 1/2 hourly rate increase = \$ 30.62 = overtime premium due on commission

 \$ 77.02 = total overtime premium due on commission

example 2:

monthly commission = \$ 2,034.49
 / 4 weeks = \$ 508.62 = commission allocated to 1 week

Week 1

hours worked in week = 46.75
 weekly commission / total hours \$ 10.88 = increase in hourly rate due to commission
 X .5 = \$ 5.44 1/2 of increase in hourly rate
 overtime hours = 6.8
 OT hours X 1/2 hourly rate increase = \$ 36.72 = overtime premium due on commission

Week 2

hours worked in week = 42.25
 weekly commission / total hours \$ 12.04 = increase in hourly rate due to commission
 X .5 = \$ 6.02 1/2 of increase in hourly rate
 overtime hours = 2.25
 OT hours X 1/2 hourly rate increase = \$ 13.54 = overtime premium due on commission

Week 3

hours worked in week = 21.0
 weekly commission / total hours \$ - = increase in hourly rate due to commission
 X .5 = \$ - 1/2 of increase in hourly rate
 overtime hours = -
 OT hours X 1/2 hourly rate increase = \$ - = overtime premium due on commission

Week 4

Overtime Calculation Using Approved Allocation Methodologies

hours worked in week =	46.00	
weekly commission / total hours =	\$ 11.06	= increase in hourly rate due to commission
X .5 =	\$ 5.53	1/2 of increase in hourly rate
overtime hours =	6.00	
OT hours X 1/2 hourly rate increase =	\$ 33.17	= overtime premium due on commission
	\$ 83.43	= total overtime premium due on commission

example 3:

	monthly commission =	\$ 2,034.49	
	X 12 =	\$ 24,413.88	
	/ 52 =	\$ 469.50	= commission allocated to 1 week
Week 1	hours worked in week =	46.75	
	overtime hours =	6.75	
	decimal coefficient =	0.0721925	look up in coefficient table
	coefficient X \$weekly commission =	\$ 33.89	= overtime premium due on commission
Week 2	hours worked in week =	42.25	
	overtime hours =	2.25	
	decimal coefficient =	0.0266	look up in coefficient table
	coefficient X \$weekly commission =	\$ 12.50	= overtime premium due on commission
Week 3	hours worked in week =	21	
	overtime hours =	-	
	decimal coefficient =	-	look up in coefficient table
	coefficient X \$weekly commission =	\$ -	= overtime premium due on commission
Week 4	hours worked in week =	46.00	
	overtime hours =	6.00	
	decimal coefficient =	0.0652	look up in coefficient table
	coefficient X \$weekly commission =	\$ 30.62	= overtime premium due on commission
		\$ 77.02	= total overtime premium due on commission

example 4:

work period =	4	weeks
hours worked in period =	156	46.75 + 42.25 + 21 + 46
commission for period =	\$ 2,034.49	
commission / hours worked =	\$ 13.04	= commission allocated to 1 hour
X .5 =	\$ 6.52	1/2 of increase in hourly rate
overtime hours in week 1 =	6.75	(46.75 - 40)
X 1/2 of increase in hourly rate =	\$ 44.02	= overtime premium due on commission
overtime hours in week 2 =	2.25	(42.25 - 40)
X 1/2 of increase in hourly rate =	\$ 14.67	= overtime premium due on commission
overtime hours in week 3 =	-	(21 - 40)
X 1/2 of increase in hourly rate =	\$ -	= overtime premium due on commission
overtime hours in week 4 =	6.00	(46 - 40)

Overtime Calculation Using Approved Allocation Methodologies

X 1/2 of increase in hourly rate = \$ 39.12 = overtime premium due on commission
 \$ 97.81 = total overtime premium due on commissior

example 5:

semimonthly commission = \$ 1,017.25
 X 24 \$ 24,413.88
 / 52 \$ 469.50 = commission allocated to 1 week

Week 1

hours worked in week = 46.75
 weekly commission / total hours \$ 10.04 = increase in hourly rate due to commission
 X .5 = \$ 5.02 1/2 of increase in hourly rate
 overtime hours = 6.75
 OT hours X 1/2 hourly rate increase = \$ 33.89 = overtime premium due on commission

Week 2

hours worked in week = 42.25
 weekly commission / total hours \$ 11.11 = increase in hourly rate due to commission
 X .5 = \$ 5.56 1/2 of Increase in hourly rate
 overtime hours = 2.25
 OT hours X 1/2 hourly rate increase = \$ 12.50 = overtime premium due on commission

Week 3

hours worked in week = 21.0
 weekly commission / total hours \$ - = increase in hourly rate due to commission
 X .5 = \$ - 1/2 of increase in hourly rate
 overtime hours = -
 OT hours X 1/2 hourly rate increase = \$ - = overtime premium due on commission

Week 4

hours worked in week = 46.00
 weekly commission / total hours \$ 10.21 = increase in hourly rate due to commission
 X .5 = \$ 5.10 1/2 of increase in hourly rate
 overtime hours = 6.00
 OT hours X 1/2 hourly rate increase = \$ 30.62 = overtime premium due on commission
 \$ 77.02 = total overtime premium due on commissior