

WILLIAM H. THOMAS (ISB 3154)
DANIEL E. WILLIAMS (ISB 3920)
CHRISTOPHER F. HUNTLEY (ISB 6056)
HUNTLEY PARK, LLP
250 S. Fifth St., Suite 660
P.O. Box 2188
Boise, ID 83701-2188
Telephone: (208) 345-7800
Fax: (208) 345-7894
wmthomas@idahoatty.com
danw@idahoatty.com
chuntley@idahoatty.com

FILED MAY 23 '03 PM 12:46 USCTID

Attorneys for Plaintiffs

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

**PLAINTIFF'S' MOTION FOR
APPROVAL OF SECOND
ROUND OF NOTICES**

Plaintiffs, by and through their counsel of record, hereby request the Court's approval for a second round of notices, in support of which Plaintiffs state:

MOTION FOR APPROVAL OF SECOND ROUND OF NOTICES, P. 1

167

1. In the first round of notices, there were 128 individuals who did not receive a notice and whose notice packages were returned as undeliverable. Plaintiffs now have new addresses for these individuals and are required to mail a new notice to each of them. Attached as Exhibit A is a proposed notice in exactly the same form approved by the Court and provided earlier, except for the substitution of a July 2, 2003, date as the deadline by which signed consent forms must be postmarked. Exhibits B, C and D reflect the other pertinent parts of the notice package, which are identical to the first package approved by the Court's Order Re: Provision of Notice (Docket No. 161).

2. Plaintiffs' counsel will arrange for the notices to be mailed out on June 2, 2003, to allow the same 30-day period as in the original mailing. Plaintiffs will maintain a list of those individuals in the June 2, 2003, mailing and a copy of the notice sent. As with the earlier mailing, Plaintiffs will keep a copy of each signed consent received and the original envelope bearing the postmark so that Defendant can confirm the date on which the consent was mailed.

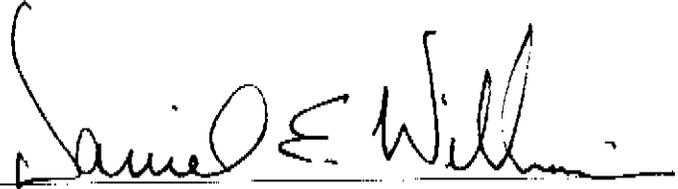
3. After the first mailing, Plaintiffs' counsel's staff erroneously remailed notices to 48 individuals to forwarding addresses within the first few days after the first notices had been sent (December 17, 2002 - December 23, 2002). When Plaintiffs' counsel discovered this error, they reminded their staff to stop sending any notices until this motion was approved. Of the 48 notices mistakenly sent, three people opted in, who are: David Blair, Carlisle Burnette and Kevin Henderson.

4. Plaintiffs propose that another notice not be sent to 45 of the individuals to whom notices were sent shortly after the first mailing to forwarding addresses. Plaintiffs submit that these 45 individuals had ample opportunity to opt in, but chose not to do so.

5. Plaintiffs propose that the Court consider the eligibility of the three additional opt-ins at a later date.

DATED this 23rd day of May, 2003.

HUNTLEY PARK, LLP



Daniel E. Williams
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of May, 2003, a true and correct copy of the foregoing 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

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

**NOTICE OF RIGHT TO JOIN
COLLECTIVE ACTION**

TO: Former employees of Micron Electronics, Inc. ("Micron Electronics") or its subsidiaries, including MicronPC, Inc., Micron Commercial Computer Systems, Inc., and Micron Government Computer Systems, Inc., who worked as inside sales representatives between June 1, 1998, and May 31, 2001.

FROM: William H. Thomas, Daniel E. Williams and Christopher F. Huntley of Huntley Park, LLP, P.O. Box 2188, Boise, ID 83701 (208-345-7800); (800-862-4879).

RE: Fair Labor Standards Act Lawsuit Filed Against Micron Electronics

(1) **INTRODUCTION.** The purpose of this Notice is to inform you of the existence of a lawsuit in which you may be a member of the potential class of plaintiffs and eligible to participate, to advise you of how your rights may be affected by this lawsuit, and to instruct you on procedures for participating in this lawsuit if you choose to do so.

(2) **DESCRIPTION OF THE LAWSUIT.** The named Plaintiffs have brought this lawsuit against Micron Electronics in the United States District Court for the District of Idaho, Case No. CIV 01-0244. Plaintiffs allege that Micron Electronics violated the federal Fair Labor Standards Act ("FLSA") by failing to pay the Plaintiffs, as well as other former inside sales representatives of Micron Electronics' personal computer ("PC") business, for uncompensated work performed before and after shifts, or during lunch and other breaks ("off-the-clock work"). Plaintiffs also allege that Micron Electronics violated applicable wage and hour laws by altering time records and miscalculating the premium rate applicable to overtime hours. Plaintiffs seek

NOTICE OF RIGHT TO JOIN COLLECTIVE ACTION - 1

Boise-148600.10 0026493-00046

EXHIBIT A

an award for unpaid wages and overtime, liquidated damages, attorney fees and costs.

Micron Electronics denies any liability with respect to the Plaintiffs' claims in this lawsuit, and further denies that it violated the FLSA or any applicable wage and hour laws. Micron Electronics seeks a judgment dismissing the lawsuit, other relief as may be appropriate under the circumstances, and an award of its attorney fees and costs.

(3) **STATUS OF THE CASE AND COMPOSITION OF THE CLASS.** The six named-Plaintiffs seek to sue on behalf of themselves and also on behalf of other employees whom they allege are similarly situated. By an order dated September 27, 2002, the Court granted class certification on a conditional basis, and directed that written notice be sent to all employees who, at any time between June 1, 1998 to May 31, 2001:

- (a) Were inside sales representatives paid compensation based on hourly wages (plus commissions) while working in the PC business for Micron Electronics, Inc., MicronPC, Inc., Micron Commercial Computer Systems, Inc. or Micron Government Computer Systems, Inc.; and
- (b) Performed off-the-clock work, or were subjected to an inaccurate calculation of overtime pay.

The Court's order granting conditional certification is preliminary and subject to a determination of "final" certification at a later date.

This Notice is solely for the purpose of advising you that this lawsuit is pending and giving you the opportunity to join in the lawsuit if you so choose. There has not yet been any trial on the merits of Plaintiffs' claims, nor has there been any determination that Micron Electronics violated the law or that Plaintiffs or the putative class are entitled to any damages.

(4) **YOUR RIGHT TO CHOOSE TO PARTICIPATE.** If you are within the putative class as defined above, you may choose to join this lawsuit (that is, you may "opt-in") by mailing a "Consent to Join" to Plaintiffs' counsel in the immediate future. The form of a "Consent to Join" is enclosed. If you choose to opt-in this lawsuit, you must complete, sign and mail the enclosed form to the Plaintiffs' attorneys' address shown below **so that it is postmarked no later than July 2, 2003.** If you fail to return a complete and signed "Consent to Join" form by this deadline, you will not be able to participate in this lawsuit. You may use the enclosed business reply envelope to return your "Consent to Join" form.

You may file a consent to join in this lawsuit whether or not you have signed any waiver of rights under the FLSA. Ultimately, the Court will determine whether you may actually join in the lawsuit. It is entirely your own decision whether or not to file a consent to join in this lawsuit. You are not required to take any action to join in this lawsuit, unless you choose to do so. It is completely voluntary.

NOTICE OF RIGHT TO JOIN COLLECTIVE ACTION - 2

Boise-148600.10 0026493-00046

(5) EFFECT OF JOINING THIS LAWSUIT. If you choose to join or opt-in this lawsuit, you will be bound by any judgment, whether it is favorable or unfavorable. While the lawsuit is proceeding, you may be required to provide information or otherwise be involved.

If you choose not to join this lawsuit, you will not be affected by any judgment, whether it is favorable or unfavorable. If you choose not to join this lawsuit, you may file your own lawsuit, if you so desire.

(6) YOUR OPTIONS AS TO LEGAL REPRESENTATION. If you choose to join this lawsuit, unless you decide otherwise, your interest will be represented by the named Plaintiffs through their attorneys, as counsel for the class. The attorneys and firm are:

William H. Thomas
Daniel E. Williams
Christopher F. Huntley
HUNTLEY PARK, LLP
P.O. Box 2188
Boise, ID 83701
(208-345-7800) (800-862-4879)

If you elect to participate in this case through the named-Plaintiffs and be represented by their attorneys, you will be bound by the terms of the contingent fee agreement with the attorneys signed by each of the named-Plaintiffs. More information, including a copy of the contingent fee agreement, is available on request from the Plaintiffs' attorneys.

It is entirely your own decision as to whether you prefer to be represented by the Plaintiffs' attorneys or by an attorney of your own choosing. If you elect to hire your own attorney, you are responsible for making your own arrangements to engage that attorney.

(7) FURTHER INFORMATION. You may obtain further information regarding the deadline for filing a Consent to Join and the availability of Consent to Join forms by contacting the Plaintiffs' attorneys.

(8) COUNSEL FOR MICRON ELECTRONICS, INC. The firm representing Micron Electronics in this lawsuit is:

Kim J Dockstader
Gregory C. Tollefson
Teresa A. Hill
STOEL RIVES, LLP
101 S. Capitol Boulevard, Suite 1900
Boise, ID 83702

NOTICE OF RIGHT TO JOIN COLLECTIVE ACTION - 3

Boise-148600.10 0026493-00046

(9) **NO RETALIATION.** The FLSA prohibits any persons from discriminating against you or retaliating against you in any way based on your participation in this lawsuit, including the filing of a Consent to Join.

THIS NOTICE AND ITS CONTENTS HAVE BEEN AUTHORIZED BY THE UNITED STATES DISTRICT JUDGE, HONORABLE B. LYNN WINMILL, DISTRICT JUDGE. THE COURT HAS TAKEN NO POSITION REGARDING THE MERITS OF THE PLAINTIFFS' CLAIMS OR MICRON ELECTRONICS, INC.'S DEFENSES.

**OFFICIAL COURT-APPROVED NOTICE ENCLOSED
PLEASE READ CAREFULLY**

Dear former employee of Micron Electronics, Inc., or its subsidiaries:

RE: Your employment with Micron Electronics, Inc., or its subsidiaries

You are receiving the enclosed document called "Notice of Right to Join Collective Action" because you worked for Micron Electronics or one of its subsidiaries as an inside sales representative in its PC business between June 1, 1998, and May 31, 2001. The enclosed Notice tells you about your right to join a lawsuit against Micron Electronics.

It is important that you read and understand the entire Notice. It provides important details about the case and your legal rights. If necessary, you should seek help from other so that you understand the Notice. If you have questions about the Notice, please call 1-800-862-4879.

Sincerely,

Dan Williams
Huntley Park, LLP
Attorneys for Plaintiffs

EXHIBIT B

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO

KIMBERLEY SMITH, et al.)
)
 Plaintiff,)
 vs.)
)
 MICRON ELECTRONICS, INC., a)
 Minnesota corporation,)
)
 Defendant.)
 _____)

Case No. CIV 01-0244-S-BLW

CONSENT TO JOIN
COLLECTIVE ACTION

By my signature below, I represent to the Court that I was employed by Micron Electronics, Inc., or one of its subsidiaries, as an inside sales representative between June 1, 1998 and May 31, 2001, and I hereby give my consent to the filing and prosecution of an action under the Fair Labor Standards Act in my name and on my behalf by the above-named Plaintiffs and designate the named Plaintiffs as my agents to make decisions on my behalf concerning the litigation, the method and manner of conducting this litigation, the entering of an agreement with counsel for the named Plaintiffs concerning attorney fees and costs, and all other matters pertaining to this lawsuit.

YOU MUST SIGN YOUR NAME HERE

Date

Print your name

Location where you worked

Street address

Job Title(s) after June 1, 1998

City, State, Zip

Dates of Employment with Micron

Telephone number

Alternate telephone contact number

CONSENT TO JOIN COLLECTIVE ACTION

EXHIBIT C

Bank of America
Uncomm. Law

250 S. Fifth Street, Suite 600
P.O. Box 2188
Birmingham, Alabama 35201

Important. Court-Approved Notice Enclosed.

EXHIBIT D