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U.S. DISTRICT &
BANKRUPTCY COURTS

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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

**DEFENDANT'S REPLY BRIEF IN
SUPPORT OF MICRON ELECTRONICS,
INC.'S MOTION FOR PARTIAL
SUMMARY JUDGMENT RE STATUTES
OF LIMITATION**

Defendant Micron Electronics, Inc. ("Defendant" or "MEI") respectfully submits this Reply Brief in support of its Motion for Summary Judgment Re Statutes of Limitation.

I. INTRODUCTION

On June 17, 2004, MEI filed a motion (Docket No. 193) with supporting documentation in support of partial summary judgment re: statutes of limitation. In the brief supporting the motion, MEI explained that a new cause of action arises each time an employee receives a paycheck in alleged violation of the law. Further, the statutes of limitation run on each of these claims until an action is "commenced." Therefore, claimants may assert wage claims only for those paychecks received within the statutory period prior to commencing action. Because these dates are not in dispute, the applicable statutes of limitation can be applied as a matter of law.

Plaintiffs' Opposition Brief (Docket No. 219) is as notable for what it concedes as for what it challenges. Plaintiffs do not dispute the basic formula for applying the statutes of limitation, conceding that the applicable statutes of limitation run on each paycheck until an action is commenced and that only those claims filed within the statutory period are timely. Nonetheless, Plaintiffs argue that summary judgment is inappropriate, because (1) equitable tolling applies; (2) the motion is premature as to FLSA claims; and (3) the action was "commenced" as to the state claims when the initial Complaint was filed with the Court. As described further below, each of these arguments is without merit and summary judgment should be applied as a matter of law.

II. ARGUMENT

The Court should grant partial summary judgment as to the timeliness of Plaintiffs' claims. The statutes of limitation can be applied as a matter of law; the applicable dates are not

and cannot be disputed; and Plaintiffs' arguments to the contrary are without merit.

First, equitable tolling does not apply to either the federal or the state wage claims. According to Plaintiffs' allegations, the facts underlying their claims were known to them virtually from the time of their employment. Therefore, there is no reason to seek equity to circumvent the applicable legal standard.

Second, the federal wage claims are subject to the two-year statute of limitations barring claims for all alleged wrongful acts that occurred over two years before each consent to sue was filed with the Court. Plaintiffs argue that the motion is premature, but, by failing to present any evidence of willfulness, Plaintiffs have failed to meet their summary judgment burden.

Third, the state wage claims are subject to a six-month statute of limitations barring claims for alleged wrongful acts that occurred over six months before the lawsuit was commenced. Contrary to Plaintiffs' arguments, a state lawsuit is commenced within the meaning of the statute of limitations when the individual claimant is either named on a pleading or files a consent with the court, whichever occurs first. The rules applicable to Rule 23 class action lawsuits do not apply here, because Plaintiffs do not have any Rule 23 claim and no class has been certified or requested.

Fourth, Plaintiffs cannot allege treble damages as well as federal damages for their alleged wrongs. To do so contravenes established case law and the basic legal principle prohibiting double recoveries for the same alleged wrongdoing.

A. Motion for Summary Judgment Standard

As described in MEI's initial brief, summary judgment is appropriate when "there is no genuine issue as to any material fact and ... the moving party is entitled to judgment as a matter

of law." Fed. R. Civ. P. 56(c). Once the moving party demonstrates the absence of a genuine issue of material fact, the nonmoving party must go beyond the pleadings and designate specific facts showing a genuine issue for trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986). If the nonmoving party fails to make a showing to establish the existence of an element that is essential to the nonmoving party's case and upon which the nonmoving party will bear the burden of proof at trial, summary judgment will be mandated. *Id.* at 322.

Plaintiffs argue that summary judgment on the FLSA claims is "premature," because "the issue of whether or not the FLSA's two or three-year statute of limitations applies has not yet been decided." (Opposition Brief at 4.) Further, "[t]o date, the issue has never been before the Court which is why the Plaintiffs have not put on any evidence of willfulness." (*Id.* at 4-5.)

There are two basic problems with this argument. First, the standard is wrong. Plaintiffs cannot simply allege that MEI's motion is "premature;" they must set forth some evidence in support of their allegation of willfulness and they have failed to do so. Second, Plaintiffs have had plenty of time to develop evidence in support of their willfulness allegation. The initial complaint was filed over three years ago; discovery has been underway since August of 2001; Plaintiffs have taken 16 depositions; Defendant has taken 42 depositions; and over 26,000 documents have been produced by the Parties. Plaintiffs have had ample opportunity and have failed to meet their burden under the summary judgment standard.

B. Equitable Tolling Does Not Apply to Either the Federal or State Wage Claims

Plaintiffs cannot seek equitable tolling to circumvent the applicable legal standards. As the term implies, it is an equitable remedy that permits a plaintiff to toll the running of the applicable statutes of limitation to account for some type of excusable neglect. *Supermail*

**DEFENDANT'S REPLY BRIEF IN SUPPORT OF MICRON ELECTRONICS, INC.'S
MOTION FOR PARTIAL SUMMARY JUDGMENT RE STATUTES OF
LIMITATION - 3**

Cargo, Inc. v. United States, 68 F.3d 1204, 1207 (9th Cir. 1995). The doctrine is not available to those who know all the facts necessary to support their claim but fail to act. See *Baldwin County Welcome Center v. Brown*, 466 U.S. 147 (1984) (“One who fails to act diligently cannot invoke equitable principles to excuse that lack of diligence.”)

Plaintiffs’ argument that equitable tolling should be applied to the federal and state wage claims is without merit. As a preliminary matter, Plaintiffs focus on case law from the Third Circuit, which has a slightly different analysis of the doctrine. As a result, Plaintiffs focus their argument on MEI’s alleged conduct rather than Plaintiffs’ own failure to timely file. Further, even if the Court applied the Third Circuit analysis, equitable tolling does not apply, because, according to Plaintiffs’ allegations, MEI openly flaunted the FLSA and supported an unwritten policy of forced overtime without pay. Thus, the MEI inside sales representatives knew (or are legally deemed to be aware) of the facts underlying their claims when they worked at MEI.

In the Ninth Circuit, the doctrine of equitable tolling focuses primarily on the plaintiff’s failure to act, while the doctrine of equitable estoppel focuses on the defendant’s actions: “Equitable estoppel focuses on the defendant’s wrongful actions preventing the plaintiff from asserting his claim.” *Leong v. Potter*, 347 F.3d 1117, 1123 (9th Cir. 2003). In contrast, “[e]quitable tolling focuses on a plaintiff’s excusable ignorance and lack of prejudice to the defendant.” *Id.* In addition, equitable tolling is subject to a reasonableness rule. Thus, “[i]f a reasonable plaintiff would not have known of the existence of a possible claim within the limitations period, then equitable tolling will serve to extend the statute of limitations ... until the plaintiff can gather what information he needs.” *Id.*

Other circuits define the doctrine of equitable tolling somewhat differently. The Third

Circuit analyzes the conduct of both the plaintiff and the defendant, describing three situations in which equitable tolling applies: (1) if the defendant has actively misled the plaintiff; (2) if the plaintiff has been prevented from asserting his rights; and (3) if the plaintiff has timely asserted his rights in the wrong forum. The Sixth Circuit considers the following factors: (1) whether the plaintiffs lacked actual notice of their rights and obligations; (2) whether they lacked constructive notice; (3) the diligence with which they pursued their rights; (4) whether the defendant would be prejudiced if the statute was tolled; and (5) the reasonableness of the plaintiffs' remaining ignorant of their rights. *EEOC v. Ky State Police Dep't*, 80 F.3d 1086, 1094 (6th Cir. 1996). No matter how the doctrine is articulated, it is clearly not available to avoid the consequences of one's own negligence. *See Lehman v. United States*, 154 F.3d 1010, 1016 (9th Cir. 1998) (quoting *Scholar v. Pacific Bell*, 963 F.2d 264, 267-68 (9th Cir. 1992)).

In support of their equitable tolling claim, plaintiffs allege: (1) claimants worked off the clock; (2) claimants were limited in the number of hours they could record, but encouraged to work beyond those hours; (3) several employees testified that they did not know how their wages were calculated; (4) supervisors ignored the off-the-clock work or did nothing to stop it; (5) the decision to allow the off-the-clock work was based on budget considerations; (6) the commission system and the opportunity to earn more than \$7 to \$9 per hour motivated employees to ignore the rules and work off the clock; and (7) employees lived in fear of retaliation. Assuming, *arguendo*,¹ that such statements are true, they fail to explain Plaintiffs' failure to act within the statutory time period and, thus, cannot support a claim of equitable tolling. Because the doctrine of equitable tolling does not apply, the statutes of limitation should be applied as a matter of law.

¹ MEI does not admit that such statements are, in fact, true.

C. Analysis of the FLSA Claims

This Court should apply the two-year statute of limitations to Claimants' FLSA claims as a matter of law. In the Opposition Brief, Plaintiffs do not challenge the way in which MEI proposed to apply the FLSA statute of limitations; they simply challenge whether the two-year or three-year statute of limitation applies.

Determining which statute of limitation to apply is a matter of law. *Sisseton-Wahpeton Sioux Tribe of Lake Traverse Indian Reservation N.D. & S.D. v. United States*, 895 F.2d 588, 591 (9th Cir. 1990). Under the FLSA, a two or three-year statute of limitations can be applied depending on whether the employer's action is deemed "willful." 29 U.S.C.A. § 255(a).

Because Plaintiffs fail to put forth facts sufficient to establish that any alleged violation by MEI was willful, the two-year statute of limitation applies to their FLSA claims. Nonetheless, even assuming *arguendo* that the three-year statute applies, the statute of limitations serves a complete defense to the claims of ten claimants: (1) David L. Blair, (2) Carlisle C. Burnette, (3) Jared Hodges, (4) Steven W. Tom, (5) Camille Woodworth, (6) Michael F. Hazen, (7) Robert McCarter, (8) Thomas Robertson, (9) Patrick Worthington, and (10) Robert S. Wood.² (Second Affidavit of Kira Dale Pfisterer in Support of Micron Electronics, Inc.'s Motion for Partial Summary Judgment Re Statutes of Limitation, ¶ 2.) In addition, the three-year statute of limitation limits the time period in which the remaining claimants may recover on their claims. (*Id.* at ¶ 3.)

² There are pending motions to strike and dismiss, which, if granted, will remove Burnette, Woodworth, Worthington, and Wood.

But, because Plaintiffs have failed to put forth any evidence necessary to demonstrate that MEI acted with the intent to circumvent the FLSA overtime requirements or recklessly disregarded the FLSA overtime requirements, Plaintiffs have failed to carry their burden in establishing willfulness, and thus the two-year statute of limitation period applies to Plaintiffs' FLSA claims.

D. Analysis of State Claims

The Idaho Wage Claim Act provides that any action for additional wages must be "commenced within six (6) months from the accrual of the cause of action." I.C. § 45-614. In contrast to their FLSA arguments, Plaintiffs do not challenge whether the six-month statute of limitation applies or when the statute of limitations begins to run. Plaintiffs only dispute when the statute of limitations is ultimately tolled or when an action is "commenced" within the meaning of the state statute.

Plaintiffs argue that the state wage claims are a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure. Therefore, the argument apparently goes, the statute of limitations is tolled as to all potential claimants when the lawsuit was first filed.

Plaintiffs' argument must fail, because, *Plaintiffs have no Rule 23 class action.*³ No Rule 23 class has ever been certified or even requested to be certified. Plaintiffs' "class" allegations reference only the collective action procedures of Section 16(b) of the FLSA. (Second Amended Complaint, Docket No. 94, at ¶¶ 49-50). Plaintiffs' "prayer" for relief also requests only that "consents" be sent to potential class members (Docket No. 94, at p. 21), which is clearly a

³ Notably, in Plaintiffs' Opposition Brief when it is claimed that Plaintiffs have "asserted a Rule 23 class action" there is no citation to the record. (Docket No. 219, at p.8).

collective action procedure (i.e., to opt-in, rather than be given an opportunity to opt-out as is the procedure for a Rule 23 class action).

Plaintiffs have consistently pushed their FLSA collective action and have never urged or requested the Court to certify a Rule 23 class action. (Docket Nos. 33, 34 (requesting scheduling conference as “[t]his case arises under the Fair Labor Standards Act . . .”); No. 53 (Joint Litigation Plan); Nos. 75, 76, 144 (Plaintiffs’ briefing urging conditional certification as a collective action under the FLSA only). In fact, Plaintiffs have expressly disclaimed the applicability of Rule 23. (Docket No. 76, at p. 6; Docket No. 144, at p. 7).

Moreover, Plaintiffs have waived any opportunity to proceed with a Rule 23 class action. The rule requires that “[w]hen a person sues . . . as a representative of a class, the court must – *at an early practicable time* – determine by order whether to certify the action as a class action.” Fed.R.Civ.P. 23(c)(1)(A) (emphasis added); *see also*, Idaho Rule of Civil Procedure 23(c)(1). Plaintiffs commenced this action on June 1, 2001 and now, more than three years later, have still never requested any Rule 23 class certification from the Court. All of the Court’s orders and scheduling of the case have been framed around resolving the FLSA conditional certification process and proceeding to trial, if necessary. Plaintiffs are further precluded from seeking Rule 23 class certification at this late date (the deadline for amendment of pleadings was August 21, 2003 (Docket No. 166, p.2, ¶ 3)).

Plaintiffs, who have no Rule 23 class certified, nor even a pending request to certify such a class, clearly cannot rely upon Rule 23 to help define when any of the respective causes of action (whether for a Plaintiff or for a claimant) was commenced.

A cause of action is "commenced" within the meaning of the state statute of limitations, when a lawsuit is initiated either by filing a claim with a state agency or the court. Because filing a consent is equivalent to filing a claim with the court, the action is "commenced" with regard to each individual when either a named Plaintiff appears on a complaint or, for one of the conditionally-certified claimants, when their consent is filed with the court. (MEI's Opening Brief, Docket No. 195 at p.10). Because these filing dates cannot be disputed, summary judgment on this issue is appropriate as a matter of law as set forth in MEI's opening brief.

E. Analysis of Damages

Plaintiffs have elected to define their state wage claims in the context of their opposition to summary judgment. First, this is procedurally inappropriate. If the Plaintiffs want to allege treble damages under Idaho Code Sections 45-614 and 615, the Complaint would need to be amended to so reflect (which they cannot do, as the amendment date passed almost a year ago (Docket No. 166, p.2, ¶ 3)). Second, to the extent they seek to receive monetary remedies under both the FLSA as well as the state treble damages provision, Plaintiffs are mistaken and to do so would be substantively inappropriate. The law will not allow such double recovery.

Under Idaho law, failure to pay wages, if proven, will trigger the ability for plaintiffs to recover treble damages. *See* I.C. § 45-615(2) (a "plaintiff shall be entitled to recover from the defendant either the unpaid wages plus the penalties provided for in section 45-607, Idaho Code, or damages in the amount of three (3) times the unpaid wages found due and owing, whichever is greater."). Pursuant to 29 U.S.C. § 218(a), the FLSA expressly provides that more protective state wage and hour laws are not preempted. However, this does not mean that Plaintiffs may seek damages under both state and federal law for the same behavior. Recovery of the same

**DEFENDANT'S REPLY BRIEF IN SUPPORT OF MICRON ELECTRONICS, INC.'S
MOTION FOR PARTIAL SUMMARY JUDGMENT RE STATUTES OF
LIMITATION - 9**

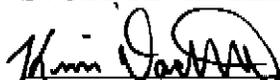
compensatory damages under both the FLSA and the state scheme is impermissible. *See, e.g., Webster v. Bechtel, Inc.*, 621 P.2d 890, 897 (Alaska 1980) (compensatory damage award under state statute allowing for higher minimum wage and overtime offset by amount of compensatory damages awarded under the FLSA.).

III. CONCLUSION

In conclusion, Plaintiffs' Opposition Brief does not raise any material issues of fact that would preclude summary judgment as a matter of law. Therefore, the Court should apply the applicable statutes of limitation and dismiss from the lawsuit forty-four⁴ state claims and thirteen⁵ federal claims. As a result, thirteen claimants should be dismissed from the lawsuit altogether and the remaining claims should be limited in scope to include only claims relating only to those paychecks issued in the statutory period.

DATED this 2nd day of August, 2004.

STOEL RIVES LLP



Kim Dockstader

⁴ Since the filing of Defendant's Opening Brief, this number should be reduced number from sixty-six to forty-four due to the pending motions to strike and dismiss (Docket Nos. 189, 229) (dismissing Ryan Ball, Destiny Baxter, Heidi Brady, Carlisle Burnette, Heather Elliot, Beverly Hilliard, Carly Seader, Camille Woodworth, Kevin Aubert, Dennis Christensen, Kurt Kluessendorf, Erick Little, Mark McKenzie, Ginger North, Matthew Severson, Patrick Worthington and Robert Wood), the offers of judgment accepted by Kevin Henderson, Stephen Miller and Timothy C. Kaufmann (Docket Nos. 213, 214, 215) and Plaintiffs' representation that certain claimants are opting out of the lawsuit (Stefanie Bistline and Susan Pierce).

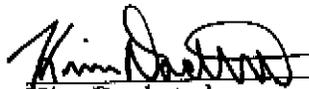
⁵ Since the filing of Defendant's Opening Brief, this number will be reduced from 20 to 13 due to the pending motions to strike and dismiss (docket nos. 189, 229) (Carlisle Burnette, Camille Woodworth, Kevin Aubert, Ginger North, Patrick Worthington and Robert Wood) and Plaintiffs' representation that certain claimants are opting out of the lawsuit (Stefanie Bistline).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of August, 2004, I caused to be served a true and correct copy of the foregoing **DEFENDANT'S REPLY BRIEF IN SUPPORT OF MICRON ELECTRONICS, INC.'S MOTION FOR PARTIAL SUMMARY JUDGMENT RE STATUTES OF LIMITATION** by the method indicated below, addressed to the following:

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**DEFENDANT'S REPLY BRIEF IN SUPPORT OF MICRON ELECTRONICS, INC.'S
MOTION FOR PARTIAL SUMMARY JUDGMENT RE STATUTES OF
LIMITATION - 11**