

ORIGINAL

U.S. DISTRICT &
BANKRUPTCY COURTS

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FILED DEPARTMENT OF
CORRECTIONS, BOISE, IDAHO

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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,)

Case No. CIV 01-0244-S-BLW

Plaintiffs,)

vs.)

MICRON ELECTRONICS, INC., a)
Minnesota corporation,)

AFFIDAVIT OF
WILLIAM H. THOMAS

Defendant.)

STATE OF IDAHO)
)ss.
County of Ada)

AFFIDAVIT OF WILLIAM H. THOMAS, P. 1

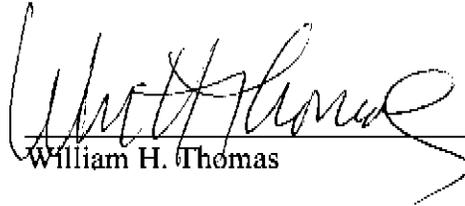
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I, WILLIAM H. THOMAS, being first duly sworn on oath, depose and say:

1. I am one of the attorneys for the Plaintiffs in this action and have personal knowledge of the facts herein.

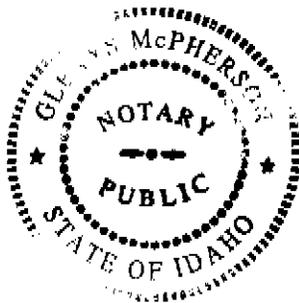
2. Attached hereto and designated as set forth below are true and correct copies of the following exhibits referred to in Plaintiffs' Statement of material Facts:

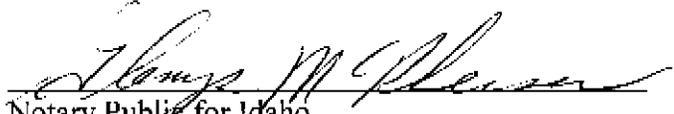
- A. Excerpts from the deposition of Isaac B. Moffett
- B. Excerpts from the deposition of Jeffrey R. Parrish
- C. Excerpts from the deposition of Carren Renee Mattson Seibert
- D. Excerpts from the deposition of Laurie A. McGeorge
- E. Excerpts from the deposition of Jeffrey Clevenger
- F. Excerpts from the deposition of Marilyn Craig
- G. Excerpts from the deposition of Tracy Scott Wells
- H. Excerpts from the deposition of Mathew Jarame Ell
- I. Excerpts from the deposition of Jacqueline Hladun
- J. Excerpts from the deposition of Kimberly Smith
- K. Excerpts from the deposition of David Thom
- L. Excerpts from the deposition of Timothy C. Kaufmann
- M. Excerpts from the deposition of Alan C. Garcia
- N. Excerpts from the deposition of Ryan L. Keen
- O. Excerpts from the deposition of James Wells
- P. Excerpts from the deposition of Michelle Saari
- Q. Excerpts from the deposition of Kevin Mark Henderson
- R. Excerpts from the deposition of Dale Hope



William H. Thomas

Subscribed and sworn to before me this 14th day of July, 2004.





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

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of July, 2004, 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

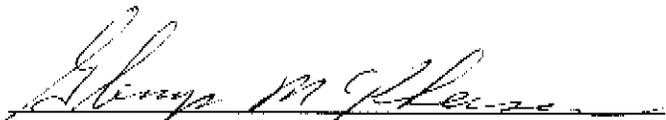

Glenys McPherson

Exhibit No. A

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[1] I can give you overall.
[2] Q: Overall for 2000 or overall —
[3] A: For the entire time.
[4] Q: Okay. What is that number?
[5] A: My best guesstimation in hours, about
[6] 500 hours.
[7] Q: Five hundred total overtime hours that
[8] you did not record?
[9] A: Yes.
[10] Q: Were there times in 1999 when you did
[11] not accurately record your time?
[12] A: Yes.
[13] Q: For the months of September through
[14] December?
[15] A: Yeah. I'm not sure about the September,
[16] but, yeah.
[17] Q: The 500 hours that you're estimating you
[18] did not record, those were all overtime hours?
[19] A: Yeah. Again, those are at this point a
[20] guesstimate on overtime hours.
[21] Q: Right. I understand. Did that 500
[22] hours, do you know did that occur mostly in the
[23] year 2000?
[24] A: Probably.
[25] Q: I'm just wondering because you were only

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[1] employed for two or three months in 2001. I'm just
[2] wondering if most of that time included the year
[3] 2000.
[4] A: Well, between the two.
[5] Q: Now, you said you're not sure whether
[6] you failed to record any overtime in 1999; is that
[7] right?
[8] A: Say the question again.
[9] Q: You told me you're not sure whether you
[10] failed to record any overtime in September of 1999?
[11] A: Right.
[12] Q: But are you sure that you didn't record
[13] some of the overtime that you worked in October of
[14] 1999?
[15] A: That I didn't or did?
[16] Q: That you did not.
[17] A: No, I'm sure I didn't. I'm sure there
[18] was overtime worked and that still was not claimed.
[19] Q: In October of 1999?
[20] A: Yes.
[21] Q: And who was your supervisor at that
[22] time?
[23] A: In October it's either Jay Church or
[24] Greg Goodman.
[25] Q: Was Jay Church your first supervisor you

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[1] had when you started?
[2] A: Yes.
[3] Q: Do you recall how long Mr. Church was
[4] your supervisor?
[5] A: I don't believe it was very long at all.
[6] Could be mistaken, but ...
[7] Q: Could Greg Goodman have become your
[8] supervisor even as early as some point in September
[9] of '99?
[10] A: No.
[11] Q: No. So October?
[12] A: Well, let me take that back. It could
[13] have been as early as the end of September. I had
[14] so many freaking supervisors. It very easily could
[15] have been the end of September when Greg became —
[16] it seems like I think — seems like they separated
[17] the team in half, and Greg got half because I
[18] recall him training us on the VAX. So that would
[19] make sense.
[20] Q: We didn't establish exactly when this
[21] occurred, but the first time in 1999 that you did
[22] not record all of the overtime hours that you
[23] worked, why did you not record those hours?
[24] A: Because warning came down that no
[25] overtime. If we claimed overtime, then one or

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[1] several things could happen.
[2] Q: Can you tell me what those things are?
[3] A: Termination. They could fire you on the
[4] spot for it. Secondly, they would say when the
[5] calls start slacking — and it gets to the point
[6] where there's hardly any calls coming in the spring
[7] and summer — they'll lay off people. And they
[8] will take a look at your performance versus your
[9] hours. The one who can perform the most with the
[10] least amount of hours will keep a job, and the
[11] other ones won't.
[12] Q: Do you recall if that was written or was
[13] that told to you by your supervisor?
[14] A: Told to me by a supervisor.
[15] Q: Was that Mr. Goodman or Mr. Church or do
[16] you recall?
[17] A: Jim Gibson told me that. Greg Goodman
[18] also told me that. Those were the two that I
[19] remember for sure that said that.
[20] Q: Did they also tell you that overtime was
[21] not authorized?
[22] A: I can't say they said that.
[23] Q: So after Mr. Gibson and/or Mr. Goodman
[24] told you these things about overtime, you continued
[25] to work some overtime hours?

[1] A: Yes.
[2] Q: And you didn't record those hours?
[3] A: That's correct.
[4] Q: And why did you continue to work
[5] overtime hours if you were told that they didn't
[6] want you to have any overtime?
[7] A: For several reasons. One is they --
[8] they said it here -- expect you to do something
[9] different on this hand. They'd set the goals so
[10] high you had no choice but to work the hours. The
[11] sales were coming in. They couldn't man the
[12] phones. There wasn't enough people to answer the
[13] phones. And as long as you were producing, they
[14] act like you weren't even there. As long as you
[15] were producing.
[16] And for us, the more computers we sell,
[17] the more services we sell, the bigger the
[18] commission. So just for myself, I just, well, I
[19] don't get the overtime, but I'm going to make a
[20] heck of a good commission check.
[21] Q: So is that one of the reasons why you
[22] worked overtime during this period is because of
[23] the potential for commissions earnings; is that
[24] correct?
[25] A: I needed to lever myself, not only with

[1] performance, but with the hours, and, again, needed
[2] a job. If I didn't perform -- if you didn't
[3] perform to their outrageous standards, you didn't
[4] have a job. That's the bottom line. You've got to
[5] keep working. Do whatever it takes.
[6] Q: Did Mr. Gibson or Mr. Goodman ever tell
[7] you not to record overtime that you'd worked?
[8] A: What they said was -- let me think about
[9] this for a minute. Okay. I need to split this up.
[10] Q: Sure.
[11] A: Jim said -- he said no overtime. And
[12] when I asked why no overtime when the company's
[13] making a killing with the extra 15 systems we sell
[14] by the end of the day, what difference does it
[15] make? And he goes, they don't want to -- they have
[16] to pay commission -- they have to pay overtime on
[17] the commission as well as the hours. So he said,
[18] actually, in a way they pay double on the overtime.
[19] They don't want to do that; therefore they don't
[20] want you working overtime. That's what he said.
[21] I brought it up to Greg. Greg says,
[22] "I'm not going to tell you to do anything. I want
[23] performance. You do what it takes." That's what
[24] he said.
[25] Q: Greg's Mr. Goodman?

[1] A: Yes.
[2] Q: So is it accurate to say neither of them
[3] ever told you not to write down all the overtime
[4] that you worked, in those words?
[5] A: There was times when Greg would come
[6] back from meetings and say, "Guys, no overtime.
[7] You can't be writing overtime. You can't work
[8] overtime." Of course, we'd be in an uproar, and
[9] I'd sit there like the rest of us and keep working
[10] past my time.
[11] He'd come by, "Aren't you supposed to be
[12] home by now?"
[13] I'd say, "Well, phone calls are ringing.
[14] You can't have" -- we'd just turn around and show
[15] him the benefit. He goes, "Don't get me in
[16] trouble."
[17] Q: And this was Mr. Goodman, still, we're
[18] talking about?
[19] A: Yes.
[20] Q: Did you ever tell him that you were
[21] working overtime that you weren't recording?
[22] A: Not necessarily in those words.
[23] Q: In some other words?
[24] A: Yeah. Essentially what I would say --
[25] one particular time I told him, "Let me know if

[1] it's getting a little hot for you, but I don't mind
[2] putting in the time not claiming it if I get the
[3] sales."
[4] Q: This was to Mr. Goodman?
[5] A: Yes.
[6] Q: What was his response?
[7] A: His response was typical Greg. It would
[8] be a chuckle, a smile, and say, "Don't get me in
[9] trouble."
[10] Q: What about Mr. Church? Did you ever
[11] have any sort of conversation like that with
[12] Mr. Church?
[13] A: No. Never worked long enough with him.
[14] Q: Do you know whether you ever worked any
[15] overtime when Mr. Church was your supervisor that
[16] you didn't record?
[17] A: I don't recall.
[18] Q: I'm handing you what has been previously
[19] marked as Defendant's *017.
[20] Have you seen that document before?
[21] A: I don't remember.
[22] Q: Do you have an understanding of what
[23] this document is?
[24] A: I believe I do.
[25] Q: What's that understanding?

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(1) Do you recall that?

(2) A: Yeah, we talked about that.

(3) Q: Yes. Am I correct in saying that — did
(4) you tell me that Mr. Goodman never in those
(5) specific words told you that you needed to work
(6) overtime without writing it down or recording it?

(7) A: Repeat the question, please.

(8) Q: Sure. I just want to make sure I got
(9) this correct that you told me — did you tell me
(10) that Mr. Goodman never specifically told you that
(11) you had to work overtime and you couldn't write it
(12) down?

(13) A: That I couldn't work overtime, and I
(14) couldn't write it down?

(15) Q: I'm sorry. That you had to work
(16) overtime and you could not write it down.

(17) A: Could not write it down. He did not say
(18) those words.

(19) Q: But you told me that, because of the job
(20) requirements, that you wanted to keep your job, and
(21) because of the commission, that you chose to work
(22) overtime; is that correct?

(23) A: Because we wanted to keep our job, we
(24) had to meet the goals, we had to show performance
(25) with the least amount of time for the future

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(1) selection, and we — "we" as in the few of us that
(2) talked about it — essentially justified us turning
(3) our backs on the overtime because the potential for
(4) commission.

(5) Q: That was your choice to do that?

(6) A: No. Keeping a job isn't my choice.

(7) Q: You chose to work — you chose to work
(8) the overtime?

(9) A: I chose to keep my job.

(10) Q: But did anyone ever tell you, "Isaac,
(11) you have to work overtime tonight, and you can't
(12) write it down"?

(13) A: Not in those words.

(14) Q: And I understand what you're saying
(15) about wanting to keep your job, but I'm trying to
(16) find out if anyone ever told you you had to work
(17) overtime. You're saying you needed to do it to
(18) keep your job, but did anyone ever tell you you had
(19) to work overtime and you couldn't write it down?

(20) A: Like I said, in those words, no.

(21) Q: Are you the one that decided to work the
(22) overtime, or did someone else tell you to work the
(23) overtime that you didn't write down?

(24) A: Ask that again, please.

(25) Q: Sure. Are you the one that decided to

(1) work the overtime that you didn't record, or did
(2) someone else tell you to work that overtime?

(3) A: I don't think that's very accurate. I
(4) think what's accurate is, we were expected to work
(5) the overtime.

(6) Q: When you say "expected," you're
(7) referring to needing to meet the requirements of
(8) your job?

(9) A: That's correct.

(10) Q: You didn't have a shift that was like a
(11) nine- or ten-hour shift. When you're saying
(12) "expected to work the overtime," you're referring
(13) to what needed time that you felt to get your job
(14) done; is that correct?

(15) A: Most of the time the only way to meet
(16) the goals was to work the overtime for those extra
(17) phone calls.

(18) Q: After Mr. Goodman, do you remember
(19) approximately when Mark Auchempach, if he was your
(20) next supervisor, when he became your supervisor?

(21) A: I believe it was February. Had to have
(22) been February 2000.

(23) Q: Did Mr. Auchempach tell you you needed
(24) to work overtime that you couldn't record?

(25) A: No.

(1) Q: Did you ever tell Mr. Auchempach — did
(2) you, when Mr. Auchempach was your supervisor, did
(3) you work overtime that you did not record?

(4) A: I'm sure there was some.

(5) Q: When you worked for Mr. Auchempach, were
(6) you still a small business rep?

(7) A: Yes, I was a small business account
(8) manager.

(9) Q: You said you're sure there was some
(10) overtime you worked when Mr. Auchempach was your
(11) supervisor that you did not record. Why are you
(12) sure of that?

(13) A: Because I never wanted to go over 60
(14) hours even when I could work overtime. So I would
(15) make sure it stayed there.

(16) Q: Over 60 hours per week?

(17) A: That was some cases.

(18) Q: So you never wanted to have more than 20
(19) hours of overtime in a given week; is that
(20) accurate?

(21) A: Um-hmm.

(22) Q: Why is that?

(23) A: Didn't want to make it look like I was
(24) trying to milk everything Mark was allowing me to
(25) do.

Exhibit No. B

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(1) Excel spreadsheet. I don't know that it was
(2) adhered to.

(3) Q: But do you know when that implementation
(4) occurred?

(5) A: Not specifically.

(6) Q: When you say an Excel spreadsheet, what
(7) do you mean?

(8) A: Microsoft Excel. A document created in
(9) Microsoft Excel.

(10) Q: Was this a document that you had in hard
(11) copy that was made available showing the shifts
(12) that were assigned?

(13) A: No, I would have to keep asking people
(14) for it because I'd end up deleting it and not have
(15) access to it and would be asked to be responsible
(16) to that at certain times and would not have a copy
(17) of it, so . . .

(18) Q: Who would you get it from when you
(19) needed it?

(20) A: An admin.

(21) Q: Your supervisor?

(22) A: Possibly.

(23) Q: Who was your supervisor the entire —
(24) well, when you started it was Jaime Nava. But did
(25) you change supervisors?

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(1) A: Yes, to Tawni Weaver became my
(2) supervisor when Jaime Nava was promoted to
(3) corporate sales.

(4) Q: When did Tawni become your supervisor?

(5) A: I do not recall the exact date.

(6) Q: Was it in 2000 or 2001?

(7) A: 2001.

(8) Q: Was it in the early part of 2001 or
(9) towards the latter part of the time you were at the
(10) company?

(11) A: Possibly a month to two prior to me
(12) leaving.

(13) Q: Not very long before you left, then?

(14) A: No, not very long at all.

(15) Q: Are there any other areas of the
(16) time-keeping policy, Exhibit No. *012, that you
(17) failed to comply with?

(18) A: Not to my recollection.

(19) Q: As you recall, part of that policy
(20) requires that employees are responsible for
(21) reviewing their time sheets to verify the accuracy;
(22) isn't that right?

(23) A: Correct.

(24) Q: When you chose not to comply by not
(25) putting your time down for meals or recording the

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(1) time worked, was that your choice to do so?

(2) A: Yes, it was.

(3) Q: And that was your responsibility for
(4) failing to put down the accurate time?

(5) A: It was stated to me in so many words
(6) that I needed to build my business. In order to
(7) build my business, I needed to be able to cater to
(8) multiple time zones. In order to cater to multiple
(9) time zones, I needed to work outside the parameters
(10) that were given to me in my eight-hour shift.

(11) Q: Whose responsibility was it for failing
(12) to accurately keep your time?

(13) A: Mine.

(14) Q: Did you tell anyone that you were not
(15) complying with the time-keeping policy?

(16) A: It was discussed.

(17) Q: Who did you tell?

(18) A: It was discussed with Jaime Nava.

(19) Q: Anyone else?

(20) A: Fellow employees on my team.

(21) Q: Who?

(22) A: Nobody in particular. In conversation,
(23) in casual conversation with colleagues.

(24) Q: Anyone else?

(25) A: Not to my recollection.

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(1) Q: When you say it was discussed with
(2) Jaime Nava, what are you referring to?

(3) A: The state of my business with my
(4) customers, attention needed to be paid to my
(5) customers, and the effort I needed to put forth in
(6) order to build my business.

(7) Q: My question originally was, did you tell
(8) anyone that you were not complying with the
(9) time-keeping policy. Did you tell Jaime Nava that?

(10) A: I had discussed with Jaime Nava that I
(11) was not supposed to be getting overtime on my time
(12) card, but I was to build my business and put in the
(13) time necessary to do so; hence the discussion
(14) concerning my time card and the time that was put
(15) on my time card.

(16) Q: Did you tell Jaime Nava you weren't
(17) putting down all of your time?

(18) A: Yes, I did.

(19) Q: When did you tell him that?

(20) A: Multiple times.

(21) Q: When's the first time?

(22) A: When I initially started working there,
(23) overtime was not a problem, getting overtime.
(24) There was a directive handed down from higher up
(25) than Jaime. He had informed me that — and I don't

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(1) remember the exact setting -- but I was told that
(2) we were not to get any more overtime. His budget
(3) would not allow any more overtime. And also
(4) discussions concerning the state of our business
(5) and effort and time needed to put into building our
(6) business and maintaining our business.

(7) Q: Was this a conversation in which anyone
(8) else was present?

(9) A: I do not recall.

(10) Q: It was just you and Mr. Nava?

(11) A: There would have been multiple
(12) conversations concerning this.

(13) Q: I'm talking about the first one.

(14) A: To the best of my recollection, the
(15) discussion concerning no more overtime being
(16) allowed would have been in the presence of other
(17) people on my team. In regards to discussion
(18) concerning building business, effort required, so
(19) on and so forth, was probably done around his desk.
(20) I sat very close to him. There were a few other
(21) people that sat close, which possibly would have
(22) allowed them to be witness to those conversations.
(23) And I recall other conversations with other people
(24) on our team or group, conversations concerning
(25) that.

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(1) Q: I understand. What I'm trying to
(2) understand is when the conversation and where the
(3) conversation took place between you and Mr. Nava
(4) regarding your telling him that you weren't
(5) recording all of your time.

(6) Did you say it in those specific words?

(7) A: No, I do not think it was said in those
(8) specific terms.

(9) Q: What did you say?

(10) A: After being told that we were not
(11) allowed to get any more overtime, the discussion
(12) was, on my end, to Jaime Nava there are times that
(13) I need to work over -- outside the parameters of
(14) the eight hours in order to get business done. And
(15) his reply, not in so many words -- I cannot
(16) remember exactly what he said -- was, "Do what you
(17) have to do to build your business."

(18) Q: Did he tell you to work overtime and not
(19) record it?

(20) A: In those terms, no.

(21) Q: In any terms?

(22) A: In any terms, yes.

Q: How so?

(24) A: I was responsible for metrics on my team
(25) concerning call time, concerning number of dials,

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(1) concerning a monthly goal of revenue, a monthly
(2) goal of margin. In discussing those goals and
(3) those metrics, I was told to do what I needed to do
(4) to meet those.

(5) Q: Had you requested overtime in order to
(6) be able to do those things? Is that what you're
(7) telling me?

(8) A: At the time I did not request overtime.
(9) I was willing to put in that time because
(10) commission was more important to me than my hourly
(11) base salary. And in my mind the ends justified the
(12) means.

(13) Q: Prior to the time you had this first
(14) conversation with Mr. Nava, did you have any
(15) problem working and recording overtime?

(16) A: No. Prior to the directive being handed
(17) down, I had no problem working overtime, letting
(18) Jaime know that I was working overtime. I was in
(19) before anybody else on our team, usually, and I
(20) would schedule my time accordingly.

(21) Q: And you would record that time?

(22) A: Yes, I would.

(23) Q: And you got paid for all of that time?

(24) A: Yes, I did.

(25) Q: When you say the directive coming down,

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(1) what are you talking about?

(2) A: When I say "directive," there was a
(3) policy that I would assume was handed down by
(4) Jaime's superiors. And Jaime had told the team
(5) that we did not have any more overtime in the
(6) budget, available in the budget.

(7) Q: So by "directive" you're referring to
(8) Jaime Nava saying that there was no more room for
(9) overtime in the budget?

(10) A: Correct.

(11) Q: Is that the only conversation with any
(12) supervisor that you ever had about overtime in the
(13) budget?

(14) A: I recall casual conversations with
(15) Dominic Casey concerning overtime.

(16) Q: Tell me about those conversations.

(17) A: Very casual. In passing, I have a good
(18) relationship with Dominic Casey; therefore, we
(19) would converse. And there were times when that
(20) would be discussed.

(21) Q: What would be discussed?

(22) A: During that time period, there were -- I
(23) was not happy about not being able to get overtime
(24) because it was nice. It was nice because I was
(25) willing to work those hours anyways, and it was

Exhibit No. C

[1] change it on your time card to where it showed no
[2] overtime.

[3] Q: Were you ever specifically told that you
[4] could not record your time accurately or were you
[5] told you can only work a certain amount of hours
[6] per week? Do you understand the difference?

[7] A: Yes, I believe I understand the
[8] difference. We were told that we could only work
[9] 40 hours a week.

[10] Q: I'm sorry. Go ahead.

[11] A: And that was all, just 40 hours a week.
[12] I'll rephrase that. We were told that we were only
[13] allowed to submit 40 hours a week.

[14] Q: When were you first told that?

[15] A: I can't remember when that was.

[16] Q: You told me that you did record overtime
[17] and you got paid for the overtime that you did
[18] record.

[19] A: Right.

[20] Q: Correct?

[21] A: Right.

[22] Q: So on some occasions, did it change? It
[23] was okay to work more than 40 hours a week?

[24] A: Well, if I could look at my pay stubs, I
[25] could tell you when it stopped, but.

[1] Q: We have it looks like here — I'll give
[2] you your pay stubs.

[3] A: It looks like it probably —

[4] Q: Here's one more.

[5] A: Well, that's a different — that was
[6] after May 31st, I believe.

[7] Q: It's actually starting May 20th, but.

[8] A: So, yeah, I believe, well, the last
[9] time that I got paid for overtime was in March.

[10] That was for three hours. Then beyond that, after
[11] that we weren't allowed to work overtime.

[12] Q: After March of 2001?

[13] A: Right. Or we weren't allowed to submit
[14] overtime to our supervisors.

[15] Q: After March of 2001?

[16] A: Right. I mean, that's what it looks
[17] like if you look at pay stubs.

[18] Q: Do you recall any specific conversation
[19] with Jaime or Tawni or anyone?

[20] A: Judy.

[21] Q: Or Judy?

[22] A: Yeah.

[23] Q: About the fact that you weren't allowed
[24] to submit overtime?

[25] A: I don't remember specific words or

[1] anything like that, but they did tell — Jaime told
[2] us and Judy. I don't remember if I ever had the
[3] conversation with Tawni that we weren't allowed to
[4] work — we weren't allowed to submit a time card
[5] for over 40 hours. Even if it was submitted, that
[6] it would be changed to reflect 40 hours.

[7] Q: But before March of 2001, you were
[8] allowed to submit time over 40 hours a week?

[9] A: Right.

[10] Q: You said earlier that Jaime told us.

[11] When you say us, who are you referring to?

[12] A: I was referring to at that time small
[13] business team four, sales reps, myself, and
[14] Brenda Carpenter.

[15] Q: Is it your testimony that you recall
[16] Jaime saying that you weren't allowed to submit a
[17] time card for over 40 hours and that if you did it
[18] would be changed to reflect only 40 hours?

[19] A: Yes.

[20] Q: Did you ever have any time cards that
[21] you believe were changed or altered by Jaime Nava,
[22] Tawni Weaver, or Judy Harris?

[23] A: No.

[24] Q: But you don't recall whether

[25] Tawni Weaver told you you couldn't record more than

[1] 40 hours a week?

[2] A: I don't recall having a conversation
[3] with her.

[4] Q: Do you recall whether you ever worked
[5] and submitted any overtime when Tawni Weaver was
[6] your supervisor?

[7] A: I did not submit overtime. I did work
[8] overtime, but I did not submit the overtime to my
[9] supervisor.

[10] Q: I'm trying to understand why you didn't
[11] submit that overtime?

[12] A: Because that was after we were told by
[13] Jaime and by Judy and by David and by Dominic and
[14] everybody else that no overtime was allowed.

[15] Q: Isn't saying that no overtime allowed,
[16] isn't that different than saying what you said
[17] before that Jaime said that you couldn't record
[18] more than 40 hours and your time would be reduced
[19] if you did?

[20] A: I don't understand your question.

[21] Q: Sure. You just said you were told by
[22] Jaime, by Judy, by David, by Dominic that no
[23] overtime was allowed. I was trying to ask you,
[24] isn't that different than someone saying that you
[25] couldn't record more than 40 hours and your time

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[1] all the time.
[2] Q: You're talking about —
[3] A: Jaime knew.
[4] Q: — everybody on your small business
[5] sales team?
[6] A: Yes.
[7] Q: Everybody joked about —
[8] A: He would just joke, "Get back to work,
[9] Mattson," and I would say, "You know, well, I'm
[10] probably past 40 hours now." And he'd say, "Don't
[11] you have something to do?" that kind of thing. I
[12] don't remember exact words, but that's what —
[13] Q: And it's your understanding that even
[14] though you just said you were joking, that your
[15] understanding is that you think he knew that you
[16] were —
[17] A: He had to have known. If someone sits
[18] there from 7 o'clock or 7:30 in the morning to
[19] 5 o'clock in the evening or 5:30 in the evening and
[20] doesn't ever leave, you have to know that that
[21] person is working more than 40 hours a week. It
[22] would be hard for him not to know.
[23] Q: But you also told me earlier that you
[24] don't know whether he reviewed your time sheets
[25] every week?

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[1] A: Right. I don't know. I don't know what
[2] Jaime did.
[3] Q: So if he didn't review your time sheets,
[4] I don't understand, how would he know whether or
[5] not you're recording your overtime?
[6] A: I don't know if he reviewed my time
[7] sheets. Hopefully he did. That's his job.
[8] Q: Did Jaime ever leave the work area where
[9] your team was located at various points throughout
[10] the day?
[11] A: Rarely. Maybe once a week they did a
[12] big lunch, but most of the time he spent at his
[13] desk.
[14] Q: During the time when you were in the
[15] small business group, do you have an understanding
[16] of what time he typically came in in the morning?
[17] A: Yes.
[18] Q: What's that?
[19] A: He was usually there at 7:30.
[20] Q: Again, in the small business group, do
[21] you have an understanding what time he typically
[22] left in the evening?
[23] A: Typically he left at 5:00 or shortly
[24] thereafter 5:00.
[25] Q: Were his hours different when the two of

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[1] you were in the commercial group?
[2] A: I don't recall, but in commercial it
[3] varied because they had regions, and sometimes he'd
[4] come in a region — depending what region you're
[5] in, you can be there at 7:00. You can be there at
[6] 9:00. I don't remember when he was there. I can't
[7] remember what region we had.
[8] Q: Did you have an understanding at Micron
[9] whose responsibility it was to record the hours
[10] that you worked?
[11] A: Yes.
[12] Q: Whose responsibility was it?
[13] A: I'm the one that entered my time cards,
[14] time sheets.
[15] Q: I'm still having difficulty
[16] understanding if Jaime did review your time sheet,
[17] shouldn't he be able to assume that it was
[18] accurate?
[19] A: If he did, I don't know. I don't know
[20] what Jaime's thinking or if he reviewed it, if he
[21] even thought about it.
[22] Q: Did you know where the human resources
[23] department was located at Micron?
[24] A: Yes.
[25] Q: Did you ever go to talk to somebody in

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[1] human resources about the fact that after March of
[2] 2001 you weren't getting paid for all the overtime
[3] that you were working?
[4] A: No.
[5] Q: And why didn't you go talk to somebody
[6] in human resources?
[7] A: Because I didn't want to lose my job.
[8] Q: And you were afraid that you were going
[9] to lose your job because?
[10] A: Because I was at the bottom of the food
[11] chain. If somebody starts complaining about
[12] something, I'm sure they're going to cut the people
[13] at the bottom of the food chain first, and that
[14] would be me.
[15] Q: Are you aware of any other sales
[16] assistants who lost their job because they
[17] complained about issues to human resources?
[18] A: No.
[19] Q: The period after March of 2001 when you
[20] said that overtime was cut off, did you ever
[21] attempt to get permission to work additional
[22] overtime hours?
[23] A: No.
[24] Q: You were talking earlier about instances
[25] where Tawni and Jaime might ask you to do something

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[1] Q: Do you know whether on some occasions
[2] you did record the time that you worked through
[3] your lunch hour?
[4] A: I imagine I probably did sometimes.
[5] Q: I was just trying to find out. You said
[6] at least a half hour extra per day.
[7] A: On average.
[8] Q: On average. I was just trying to find
[9] out whether that half hour typically occurred
[10] either in the morning, lunch, or in the evening?
[11] A: It's just whenever someone needed me.
[12] It didn't matter.
[13] Q: So on some occasions did you come in
[14] before 8 o'clock?
[15] A: Yes.
[16] Q: Was there a typical time that you
[17] arrived at work from the end of November through
[18] the end of May 2001?
[19] A: Somewhere between 7:30 and 8:00.
[20] (Exhibit *-180 marked.)
[21] Q: BY MR. TOLLEFSON: You've been handed
[22] Exhibit *-180.
[23] Have you seen this before?
[24] A: Yes.
[25] Q: Could you tell me what this is, please.

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[1] A: Looks like it's a consent to join
[2] collective action against Micron.
[3] Q: At the time you signed this, you weren't
[4] yet married; is that correct?
[5] A: That's correct.
[6] Q: And that is your signature?
[7] A: Yes.
[8] Q: And did you sign this on or about
[9] September 17th of 2001?
[10] A: Yes.
[11] Q: How did you hear about the lawsuit?
[12] A: Kim Smith told me.
[13] Q: Do you see in the first paragraph it
[14] says that you represent to the court that you were
[15] employed by Micron Electronics as an inside sales
[16] representative?
[17] A: Yes.
[18] Q: Were you in fact employed as an inside
[19] sales representative?
[20] A: I don't have that exact title, no. I
[21] don't believe there was that title. I can't
[22] remember. Maybe there was.
[23] Q: I believe your testimony earlier in the
[24] deposition was that you did not work as an inside
[25] sales representative?

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[1] A: Right.
[2] Q: On your W-2 for the year 2000, are you
[3] aware who it lists as your employer?
[4] A: For the year 2000? Oh, well, I have
[5] two, one for Key Employment, one for Micron PC.
[6] Q: Have you ever seen or read a document in
[7] this case that's entitled complaint or amended
[8] complaint or second amended complaint?
[9] A: I don't know.
[10] Q: Do you have an understanding of the
[11] nature of the allegations in the complaint?
[12] A: Yes.
[13] Q: What's your understanding?
[14] A: My understanding is that the complaint
[15] is that people worked overtime and weren't paid for
[16] it and that they also weren't paid — even if we
[17] would have gotten paid for the overtime and those
[18] who were paid for the overtime weren't paid
[19] correctly.
[20] MR. TOLLEFSON: Let's go ahead and mark this
[21] as Exhibit *-181. You agree that *-181 are the
[22] documents she brought with her in response to the
[23] deposition notice?
[24] MR. HUNTLEY: That's fine.
[25] (Exhibit *-181 marked.)

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[1] Q: BY MR. TOLLEFSON: Are you aware of
[2] anyone at Micron being verbally reprimanded for
[3] recording too much overtime?
[4] A: What do you mean by aware? Did I hear
[5] stories?
[6] Q: Let's start with personal knowledge.
[7] Have you ever personally observed, seen, or heard
[8] someone being —
[9] A: No.
[10] Q: Okay. What are the stories that you're
[11] aware of?
[12] A: A lot of people. Well, not a lot of
[13] people. Several sales reps got, I don't know,
[14] yelled at or talked to about recording their or
[15] submitting overtime.
[16] Q: Any names that you can recall?
[17] A: Kim Smith, David Thom, Jason Childers.
[18] Pretty much Clint Pulsipher, Don Tibbets.
[19] Q: You said that these are stories that you
[20] heard from — are these from other sales
[21] representatives?
[22] A: Or from sometimes the sales rep
[23] themselves.
[24] Q: Which sales reps have you personally
[25] spoken to who said that they personally were

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[1] reprimanded for recording too much overtime?
[2] **A:** David Thom.
[3] **Q:** Anyone else?
[4] **A:** Kim Smith. The other ones were just
[5] rumors.
[6] **Q:** Could you just tell me a little bit
[7] about your conversation with David Thom.
[8] **A:** I don't remember word for word. He just
[9] came back from a conference room Monday and he sat
[10] next to me. I asked him what it was about. He
[11] said somewhere along the lines something about him
[12] getting in trouble for — well, for working
[13] overtime and then not being able to make up his
[14] talk time and stuff like that. I don't remember
[15] what the exact words were.
[16] **Q:** Do you recall generally your
[17] conversation with Kim Smith?
[18] **A:** Same kind of thing. Along the lines of
[19] don't work overtime, don't submit overtime over 40
[20] hours, but you better have your talk time on-line.
[21] **Q:** Were you ever threatened with being
[22] terminated if you made a wage — were you ever told
[23] that you might be terminated if you made a claim
[24] against Micron for unrecorded overtime?
[25] **A:** No.

[1] **Q:** Aside from any meetings or conversations
[2] that took place in the presence of your counsel,
[3] have you ever had any telephone conversations with
[4] anyone else that's been involved in the lawsuit?
[5] **A:** No.
[6] **Q:** Have you ever had any E-mail
[7] communications with anyone else who's been involved
[8] in the lawsuit?
[9] **A:** No.
[10] **Q:** Have you spoken with anyone else who's
[11] had their deposition taken in this case?
[12] **A:** No.
[13] **Q:** Why don't we go off the record.
[14] (Discussion held off the record.)
[15] **MR. TOLLEFSON:** I actually don't have any
[16] more questions.
[17] **MR. HUNTLEY:** I'm not going to ask any.
[18] **MR. TOLLEFSON:** We'll adjourn the deposition
[19] at this time.
[20] (Deposition concluded at 4:32 p.m.)
[21]
[22]
[23]
[24]
[25]

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[1] **Q:** You said earlier that you had — correct
[2] me if I misquote you — that you spoke to Kim Smith
[3] about this lawsuit?
[4] **A:** I didn't speak with — well, she handed
[5] me a business card with their number on the other
[6] side and said call. That's about the length of the
[7] conversation.
[8] **Q:** Did this conversation, did this occur at
[9] Micron?
[10] **A:** Yes.
[11] **Q:** Was this before June of 2001?
[12] **A:** This was on May 31st while I'm walking
[13] out the door.
[14] **Q:** Oh, okay. How come you waited until
[15] September to sign up for the lawsuit?
[16] **A:** I left that piece of paper in my desk.
[17] Someone found it and brought it to me.
[18] **Q:** Who found it and brought it to you?
[19] **A:** I think it was Jason Childers because I
[20] left some other stuff there, too. I can't
[21] remember.
[22] **Q:** Okay. Have you ever met with anyone
[23] else who's involved in the lawsuit aside from your
[24] attorneys?
[25] **A:** No.

Exhibit No. D

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(1) more than 40 hours, I believe management was aware
(2) that they could get in trouble if we did work more
(3) than 40 and were not inputting it because they did
(4) not want us to input more than 40. And to -- I
(5) can't remember the second part of the statement.

(6) Q: I'm getting confused too. You were
(7) talking about being told not to work more than 40
(8) hours and being told not to input more than 40
(9) hours?

(10) A: Right.

(11) Q: Do you remember those specific words
(12) being used, not to work more or not to input more?

(13) A: My memory is not of specific statements,
(14) but that was the general theme of what they were
(15) saying.

(16) Q: Do you remember Mr. Robinson talking on
(17) some occasions about needing to get prior approval
(18) to work overtime?

(19) A: Yes, I can recall that from
(20) Tony Robinson.

(21) Q: Did he ever say, "You're not to work
(22) more than 40 hours a week unless you get prior
(23) approval," or words to that effect?

(24) A: I believe he did.

(25) Q: Did he ever say, "You're not to work

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(1) more than 45 hours a week unless you get prior
(2) approval," or words to that effect?

(3) A: I don't recall that, regarding the
(4) 45-hour statement.

(5) Q: Now, do you recall him telling you not
(6) to input more than 40 hours a week?

(7) A: Words to that effect, yes.

(8) Q: Did Mr. Robinson ever tell you not to
(9) input more than 40 hours a week unless you had
(10) prior approval, or words to that effect?

(11) A: Could you repeat the question?

(12) Q: Sure. Did Mr. Robinson ever tell you
(13) not to input more than 40 hours a week unless you
(14) had prior approval, or words to that general
(15) effect?

(16) A: I believe so. It could have been again
(17) from him or any one of my immediate supervisors.

(18) Q: Now, you said, I believe correctly,
(19) before that you were fairly certain that he told
(20) you not to, on some occasions, input more than 45
(21) hours a week. Is that correct?

(22) A: Yes.

(23) Q: What was your understanding of what he
(24) meant by that?

(25) A: My understanding was that if we worked

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(1) more than 45 hours, we were not allowed to input it
(2) into the time-sheet system, because it would not be
(3) approved.

(4) Q: Did he say that?

(5) MR. THOMAS: Object to the form of the
(6) question.

(7) THE WITNESS: I can't say if those were his
(8) exact words.

(9) Q: BY MR. TOLLEFSON: Did he ever use any
(10) words to the effect of, "If you work more than 45
(11) hours, you are not allowed to input it because I
(12) won't approve it"?

(13) A: I can't say if he used words to that
(14) effect or if that was the implied meaning.

(15) Q: What causes you to believe that he
(16) didn't mean, "Don't input more than 45 hours a week
(17) unless you get prior approval"?

(18) MR. THOMAS: Object to the form of the
(19) question.

(20) THE WITNESS: Can you repeat the question?

(21) Q: BY MR. TOLLEFSON: Sure. When
(22) Mr. Robinson told you not to input more than 45
(23) hours a week, what causes you to believe that he
(24) didn't mean, "Don't input that time, anything over
(25) 45, unless you get prior approval"?

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(1) MR. THOMAS: Object to the form of the
(2) question.

(3) Answer if you can.

(4) THE WITNESS: I'm having a hard time with
(5) that question. Could you break it down into two
(6) questions, maybe?

(7) Q: BY MR. TOLLEFSON: Yes. You told me
(8) that you're fairly certain that Mr. Robinson on
(9) some occasions told you not to input more than 45
(10) hours a week. Is that correct?

(11) A: Yes.

(12) Q: What causes you to believe that when he
(13) told you that, he didn't mean that you were not to
(14) input that time, anything over 45, unless you got
(15) prior approval?

(16) MR. THOMAS: Object to the form of the
(17) question.

(18) THE WITNESS: Because the words he was using
(19) basically were that higher management than himself
(20) would not allow more than 45 hours a week. So it
(21) wasn't an issue of getting approval to work more
(22) than 45; it's just that you weren't supposed to
(23) input it.

(24) Q: BY MR. TOLLEFSON: Is it correct, did
(25) you tell me that you weren't certain of what exact

Exhibit No. E

1 the very first sentence where it says non-exempt hourly
 2 employees, do you see that?
 3 A Under A?
 4 Q No, I'm sorry. The very first sentence.
 5 A "To ensure accurate recording of time worked."
 6 Q "For all non-exempt (hourly) employees."
 7 A Right.
 8 Q So on -- I'm sorry. Back on paragraph B,
 9 talking about reviewing the timesheets to verify it's
 10 accurate for all times recorded. Do you see that?
 11 A I see that.
 12 Q And paragraph C talks about if there's an error
 13 in the amount of pay, that you should bring it to the
 14 attention of your supervisor. Do you see that?
 15 A I see that.
 16 Q Did you ever have an error in the amount of
 17 your pay that you brought to the attention of your
 18 supervisor?
 19 A Not specifically to my supervisor.
 20 Q And when it says pay, let's split up -- how
 21 about with regards to commissions. Do you recall if
 22 there was an error in the amount of commissions? Did
 23 you ever --
 24 A I recall really not knowing how my commissions
 25 worked.

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1 Q And did you -- so, if I understood you, you
 2 felt that there might have been an error because -- I
 3 the amount of your pay because why?
 4 A Why do I think?
 5 I don't think that we were being paid our
 6 overtime.
 7 Q When you say "we," are you talking about the
 8 other people on your team?
 9 A Yes.
 10 Q And that was the consumer small business team?
 11 A Yes, that and my small business team. Are you
 12 trying to separate the two right now?
 13 Q I'm sorry. That's okay. Did you have a
 14 specific team number, do you remember, when you started
 15 with Mr. Church as your supervisor?
 16 A I don't remember my team number. I just
 17 remember working a lot -- a lot but just not ever being
 18 compensated for it all.
 19 Q When you say not being compensated for it all,
 20 were you recording all of the overtime that you were
 21 working? We're talking about Mr. Church now.
 22 A I was recording what I was -- what the -- how
 23 do I say this? I was recording what was expected of me
 24 to record.
 25 Q I'm confused, because you've told me earlier

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1 Q What about an error in the amount of pay you
 2 received for your hourly work, do you ever recall an
 3 error happening?
 4 A Yes.
 5 Q And do you recall when that was, approximately?
 6 A No, I couldn't give you the exact date, no.
 7 Q Do you recall who your supervisor was at that
 8 time?
 9 A Well, I only had two supervisors.
 10 Q Okay.
 11 A And it happened with both of them.
 12 Q Okay. Tell me about what happened with the
 13 first supervisor.
 14 A Nothing really happened. It was -- it's hard
 15 to explain to you. It was the mentality of the group I
 16 was with. It was like we were working as much as we
 17 were supposed to, but it was -- it was, you know, the
 18 policy to -- well, I can't say policy. It was the
 19 feeling there that you -- we needed to work until
 20 everything was completed; the job was done, the sales
 21 were made. So, in that aspect, time was off a little
 22 bit.
 23 Q And was your first supervisor -- are we talking
 24 about Jay Church?
 25 A Jay Church was my first supervisor.

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1 that you thought you reviewed your timesheets before you
 2 submitted them to make sure they were accurate; is
 3 that --
 4 A Correct.
 5 Q But now are you telling me something different?
 6 A Nope.
 7 Q Okay. Tell me what I'm missing.
 8 A I'm saying that there was an unwritten law -- I
 9 don't know how you term the thing -- that you were to
 10 finish a full day's work as much as possible, even if
 11 that meant staying late and doing whatever it took to
 12 get the job done. Now, I worked all those hours and I
 13 wasn't ever compensated for all of them.
 14 Q When you say you worked all those hours, did
 15 you write down or record the hours that you worked?
 16 A I did.
 17 Q And you submitted those hours to someone, your
 18 supervisor or someone in the company?
 19 A The ones I wrote down?
 20 Q Yeah.
 21 A On my notebook?
 22 Q The ones -- the hours that you submitted to the
 23 company to get paid.
 24 A I just submitted them through whatever the
 25 system was that I was using, yes.

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1 Q Right. When you submitted --
 2 A But we weren't -- we weren't supposed to submit
 3 all of them. We couldn't go over a certain amount of
 4 time.
 5 Q And are you talking about when you -- Mr.
 6 Church was your supervisor or are you talking about the
 7 whole term --
 8 A Just in general. The whole time. It would
 9 fluctuate, I remember. Sometimes they would be
 10 approving overtime and then sometimes they wouldn't be
 11 approving overtime, but everyone was working overtime
 12 regardless of the fact.
 13 Q When you say "everyone," are you talking about
 14 your team?
 15 A I'm talking about the people -- yeah, most of
 16 my time -- the ones that were there that were
 17 competitive that were -- that were there to make money
 18 and keep their job.
 19 Q When you're talking about the policies would
 20 change, sometimes it was okay and sometimes it wasn't,
 21 are you talking again about your team?
 22 A I remember them -- yeah. I don't know if it
 23 was just my team. It could have been everybody. I
 24 remember them saying that certain -- a certain amount of
 25 time would be tolerated and up to this amount -- I think

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1 paid.
 2 A Oh. I never -- maybe I misunderstood your
 3 question. No, it did not correspond.
 4 (Defendant's Exhibit 27 was previously
 5 marked for identification by the court
 6 reporter.)
 7 BY MR. TOLLEFSON:
 8 Q Let me hand you what's been previously marked
 9 in this case as Exhibit 27.
 10 A Okay.
 11 Q Have you had a chance to review Exhibit 27?
 12 A Yes, I've reviewed it.
 13 Q Do you have an understanding of what that
 14 document is?
 15 A Yes.
 16 Q What's your understanding?
 17 A It appears to me to be their recording of time
 18 for non-exempt hourly employees and the policies
 19 therein.
 20 Q And do you see that the purpose is to ensure
 21 accurate recording of time for all non-exempt hourly
 22 employees?
 23 A Yes.
 24 Q So did this policy apply to you?
 25 A It applied to anyone that was hourly.

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1 it was 45 hours, and then we couldn't go over that. And
 2 sometimes they would say, you know, no overtime this
 3 week. They would say that, but then we would still all
 4 be there for 10, 12 hours and they would be there, but
 5 no one was reprimanded.
 6 MR. TOLLEFSON: I'm sorry. would you read back
 7 that last answer?
 8 (Record read.)
 9 BY MR. TOLLEFSON:
 10 Q When you say, "no one was reprimanded," who are
 11 you referring to?
 12 A My team members, the people that were salesmen
 13 and women.
 14 Q And reprimanded, they weren't reprimanded for
 15 what?
 16 A Being at work still.
 17 Q And I thought you told me earlier that the time
 18 you entered in your personal notebook was roughly the
 19 same as the time that you entered on the computer in
 20 order to get paid.
 21 A I -- let me clarify. What I wrote down, I put
 22 down when I sat down at my desk; and then when I would
 23 walk to my car, I would write down right when I got out.
 24 Q And I asked you if that corresponded to the
 25 time that you entered on some system in order to get

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1 Q Do you see the last sentence at paragraph A
 2 where it says, "Time is recorded by accessing me at
 3 micronpc.com via the InforNet and confirming or modifying
 4 total daily hours worked on the timesheet?"
 5 A I see that.
 6 Q And do you remember doing that?
 7 A I remember entering hours.
 8 Q And you told me a few minutes ago that on some
 9 occasions the hours that you entered did not match up to
 10 the total hours that you worked; is that correct?
 11 A Correct..
 12 Q Do you see in paragraph A where it says, "No
 13 work should be performed off the clock?"
 14 A I see it written there, yes.
 15 Q Do you have an understanding of what off the
 16 clock means?
 17 A I'm assuming not clocked in.
 18 Q And the second -- I'm sorry. The next sentence
 19 after that says, "All time worked must be recorded."
 20 A I see that sentence.
 21 Q The next sentence, "Failure to record all time
 22 worked will subject the employee to disciplinary action
 23 up to and including termination."
 24 A Yes.
 25 Q And are you telling me that you did not comply

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Exhibit No. F

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1 Idaho, but I don't remember.

2 Q. But did you know how to use the system to
3 keep track of your time?

4 A. Yes.

5 Q. And can you tell me a little bit about how
6 you would use the me@micron system? Did you have to log
7 into it or how did you get this screen to come up on your
8 computer?

9 A. I believe we had a password. You would log
10 into it.

11 Q. And then what next?

12 A. And then your name would come up. And I
13 believe you had a choice of, you know, seeing how much -- if
14 you had any vacation time left, or you could log in and put
15 your hours in.

16 Q. And did you put your hours in every day or
17 once a week or what was your typical practice with the
18 me@micron system?

19 A. I usually put them in once a week, because as
20 I said before, my supervisor said no overtime, Lori
21 Chitwood.

22 Q. So you're telling me you didn't put in more
23 than 40 hours. Did you still go in and adjust the start or
24 stop times that were in there or how did that work?

25 A. I did at times go in and put in -- adjust the

1 different than this box we were referring to on page 1?

2 A. I think it did, but I don't remember what it
3 looked like.

4 Q. Do you remember on the VAX system did you
5 have to put in the time you started and the time you left?

6 A. I can't remember.

7 Q. But you do remember on the VAX system that
8 you did have to put something in as far as the hours that
9 you worked, or do you remember that?

10 A. I believe so.

11 Q. I'm going to hand you what's been previously
12 marked as Defendant's Exhibit No. 26. This is a one-page
13 document M2167. Have you seen this document before?

14 A. I don't think so.

15 Q. Do you have an understanding of what this
16 document is?

17 MR. THOMAS: Object to the form of the
18 question.

19 A. Yes.

20 BY MR. TOLLEFSON:

21 Q. What's your understanding?

22 A. It says it's to ensure accurate recording of
23 time worked by all hourly employees.

24 Q. You told me that you had accessed one of the
25 policy manuals on the InfoNet and looked at policies. Do

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1 times. But then once they were sent over to Donna Mertig,
2 you know, I would notice that I wasn't always paid properly.

3 Q. So your understanding was that the VAX and
4 the me@micron both -- after you entered your time, they both
5 went to Donna Mertig?

6 A. I'm not sure about VAX. I believe somebody
7 checked and approved that. But I know this went over to
8 Donna.

9 Q. And do you see on paragraph 5 underneath that
10 box there, do you see where it says, "Save the timesheet or
11 submit it for approval"?

12 A. Yes.

13 Q. And then there's two dots and the second dot
14 says, "If you want to submit the timesheet, click." And
15 it's bolded "submit for approval"?

16 A. Yes.

17 Q. And so is that what you're talking about,
18 when you click to submit for approval it would go to Donna?

19 A. Donna Mertig.

20 Q. And then back to the VAX, you don't remember,
21 did the VAX have a submit for approval or do you remember
22 how you got in and kept track of your time?

23 A. I believe -- you know, some way it would have
24 to be submitted for approval, but I don't remember.

25 Q. Do you remember did the VAX system look

1 you remember what the policies looked like on the screen,
2 the formatting and such?

3 A. No, I don't.

4 Q. I'm trying to find out if this document looks
5 like something in a similar format of the policies you were
6 reviewing.

7 MR. THOMAS: Object to the form of the
8 question.

9 A. It may, but I can't tell you for sure.

10 BY MR. TOLLEFSON:

11 Q. And it's just talking about the purpose line
12 on the top there of Exhibit No. 26. It says, "For all
13 nonexempt hourly employees." Were you an hourly employee?

14 A. Yes.

15 Q. And do you see that this policy in paragraph
16 A, that the last sentence, do you see where it says, "Time
17 is recorded by accessing timesheet at the VAX prompt and
18 entering total daily hours worked"?

19 MR. THOMAS: Object to the form of the
20 question.

21 BY MR. TOLLEFSON:

22 Q. Do you see that?

23 A. I see that.

24 Q. Does that refresh your memory about how you
25 used VAX to keep track of your time?

1 A. Well, here it says you put your total daily
2 hours worked in there, so evidently you don't put your stop
3 and start time. Even though it says this, my supervisor
4 Lori Chitwood would come around and say you have to get this
5 done. You know, she would not approve the overtime, yet she
6 would say you have to get this done. I also worked with an
7 outside rep, Jeff Holds who would come in around 4:00 every
8 day after visiting with customers and leave me with tons of
9 work to do, which I would have to stay and get done or come
10 in early the next day or work my lunch hour to get all this
11 work done. But we were never reprimanded, you know, for
12 working overtime. My supervisor Lori Chitwood -- another
13 hand would come around when -- you know, it would start to
14 bother her and say, "You guys know I'm going to be going to
15 jail for this if you work overtime and are not getting paid
16 for it." And she knew better because ZEOS -- by the time I
17 came to ZEOS they were sued for not paying wages, people
18 working overtime and not getting paid for it.

19 Q. And I'll come back to some of that. Do you
20 remember was Ms. Chitwood your supervisor when you used the
21 VAX system, do you remember?

22 A. I know when she was my supervisor, but I'm
23 not sure when VAX was in place.

24 Q. You see in paragraph A it's talking about the
25 VAX system?

1 A. Yes.

2 Q. And you must have already started reading
3 paragraph A. It says, "Nonexempt employees are expected to
4 accurately record the time they begin and end their work, as
5 well as the beginning and ending time of each meal period."
6 Do you know, did you comply with that before Ms. Chitwood
7 became your supervisor?

8 MR. THOMAS: Object to the form of the
9 question. Foundation.

10 A. I don't remember when Micron and me came
11 about.

12 BY MR. TOLLEFSON:

13 Q. Mc@micron?

14 A. Mc@micron. If it was required, I did put my
15 time in if I did take a lunch. But many times I did not. I
16 worked through my lunch hour.

17 Q. Is that work through your lunch hour, is that
18 after Ms. Chitwood became your supervisor?

19 A. Actually did before that.

20 Q. What I'm trying to find out is, don't worry
21 about the VAX or mc@micron, what system you used, but did
22 you accurately record the time you worked at Micron before
23 Ms. Chitwood became your supervisor?

24 MR. THOMAS: Object to the form of the
25 question.

1 A. Before she became my supervisor I still don't
2 think we were allowed to be putting all our time, because at
3 times they would be flying us to Boise on weekends, you
4 know, for seminars put on by management in Boise. So I
5 don't think we were putting it down back then -- or I
6 wasn't.

7 BY MR. TOLLEFSON:

8 Q. I'm going to hand you what's been previously
9 marked as Defendant's Exhibit No. 27. This is a one-page
10 document, Bates Number M2299. Have you seen this document
11 before?

12 A. I don't know if I have or not. Possibly when
13 I flipped through the InfoNet.

14 Q. And you told me you understood that policies
15 from the manual were available on the InfoNet?

16 A. They were available.

17 Q. Do you see the last sentence of paragraph A
18 on Exhibit No. 27 says, "Time is recorded by accessing
19 me@micronpc.com via the InfoNet and confirming or modifying
20 total daily hours worked on the timesheet"? Do you see
21 that?

22 A. Yes.

23 Q. And do you see paragraph B where it says,
24 "Prior to submission of timesheets for supervisor approval,
25 nonexempt employees are responsible for reviewing their

1 timesheets to verify the accuracy of all time recorded"? Do
2 you see that?

3 A. Yes.

4 Q. And paragraph C says, "In the event there's
5 an error in the amount of pay, nonexempt employees should
6 promptly bring the discrepancy to the attention of their
7 supervisor so corrections can be made as quickly as
8 possible." Do you see that?

9 A. Yes. But how can you make -- you know, state
10 that to her when she's telling you one day you need to get
11 this work done. The next day she's saying no overtime. You
12 know, you would lose your job because you wouldn't make your
13 goal.

14 Q. Do you see on the bottom of the document
15 where it says, "For additional information, contact the
16 payroll department or human resources department"?

17 A. Yes.

18 Q. Did you ever do that?

19 A. No. They were all out in Idaho. Basically
20 the HR we had here was real basic.

21 Q. What do you mean by real basic?

22 A. Like one person all the time, one person half
23 time or something.

24 Q. But there was an HR person on-site?

25 A. Not the whole time I worked there, I don't

1 this and I told them no, I had not. And she gave me
 2 Mr. Thomas' name and I gave him a call.
 3 Q. You don't recall what that person's name was?
 4 A. No, I don't.
 5 Q. But you remember it was a woman?
 6 A. I believe it was a woman.
 7 Q. Did she say how she got your phone number?
 8 A. There's some people that keep in contact with
 9 other people and they know how to get a hold of people from
 10 Micron.
 11 Q. Do you know was it someone from Minnesota or
 12 someone from Idaho?
 13 A. I don't recall because it was last fall.
 14 Q. But would you have known who it was if it had
 15 been someone who worked in Minnesota?
 16 MR. THOMAS: Object to the form of the
 17 question.
 18 A. If it was someone that worked in Minnesota I
 19 may have known them very well or not very well.
 20 BY MR. TOLLEFSON:
 21 Q. Do you remember if the woman's name was Tawni
 22 Weaver?
 23 A. What's the name?
 24 Q. Tawni Weaver.
 25 A. I don't know Tawni Weaver.

1 A. Yes.
 2 Q. And you remember that Exhibit A to this
 3 document was asking you to produce certain documents if you
 4 had them, do you remember that?
 5 A. Yes.
 6 Q. Take a look at request No. 9. Do you see
 7 that request No. 9 references an allegation in the complaint
 8 that Micron failed to calculate overtime pay correctly?
 9 A. Yes.
 10 Q. Do you have knowledge of any facts that would
 11 support this allegation?
 12 MR. THOMAS: Object to the form of the
 13 question.
 14 A. I don't know of any records or documents that
 15 support this.
 16 BY MR. TOLLEFSON:
 17 Q. Is it your belief that Micron failed to
 18 calculate overtime pay correctly?
 19 A. Yes.
 20 Q. And what is that belief based on?
 21 MR. THOMAS: Object to the form of the
 22 question.
 23 A. I believe they failed to calculate overtime
 24 pay correctly because we had supervisors telling us to go
 25 ahead and do whatever it takes to get the business working

1 Q. Do you know what a complaint is?
 2 A. I believe I do.
 3 Q. And what's your understanding of what a
 4 complaint is?
 5 A. A complaint is where somebody has said
 6 something, made a comment about someone that they don't feel
 7 is right.
 8 Q. How about a legal document called a
 9 complaint --
 10 MR. THOMAS: Object to the form of the
 11 question.
 12 BY MR. TOLLEFSON:
 13 Q. -- that's filed in court, do you know what
 14 that is?
 15 A. I believe that's just where someone is
 16 stating something isn't correct, that something has
 17 happened.
 18 Q. Have you ever seen a document in this case
 19 that's titled Complaint or Amended Complaint in this
 20 lawsuit?
 21 A. I don't believe I have.
 22 Q. Would you take a look back at Exhibit No. 87.
 23 It was the very first one we looked at when we first started
 24 this. It's the subpoena for your deposition. Do you
 25 remember we looked at this document before?

1 overtime. But yet when it came time to actually input
 2 these, you know, sometimes they were changed, we weren't --
 3 we didn't feel comfortable inputting all of our overtime
 4 hours. They knew we were working overtime and they knew we
 5 weren't getting paid for it.
 6 BY MR. TOLLEFSON:
 7 Q. Were you ever warned that you could not
 8 record more than 47 hours of work in a given work week?
 9 A. I was told that. I wasn't warned with any
 10 repercussion.
 11 Q. You were told not to work more than 47 hours?
 12 A. More than 40.
 13 Q. Did anyone ever tell you that you could not
 14 record more than 47 hours of work in a given work week?
 15 A. Not to my knowledge.
 16 Q. There's an allegation that Micron's policies
 17 lead to the improper calculation of overtime hours by
 18 failing to include sales representatives' commissions in the
 19 calculation of overtime wage rates. Do you have any
 20 knowledge of facts that would support this allegation?
 21 A. Not really.
 22 Q. Aside from Mr. Thomas or anyone else from his
 23 firm, have you ever met with anyone else about this lawsuit?
 24 A. No.
 25 Q. Do you know who Eric Little is?

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1 Q Would she be yelling these words that
2 you're stating, or --
3 A No. Talking loud.
4 Q What's your understanding of why telling
5 people not to record their overtime would keep
6 Ms. Chitwood from going to jail?
7 A Her understanding was, we had to work off
8 the clock. She would get in trouble if we put down
9 overtime, and she just assumed she'd go to jail for
10 us not being paid overtime, but yet she pushed us to
11 do that.
12 Q Pushed you to do what?
13 A Work overtime.
14 Q Can you specifically recall Ms. Chitwood
15 telling you that -- or directing you that you had to
16 work overtime but not record it?
17 A Yes.
18 Q And on how many instances do you believe
19 that occurred?
20 A I don't recall.
21 Q More than two?
22 A Yes.
23 Q More than five?
24 A Yes.
25 Q More than 10?

1 think over eight hours is overtime.
2 Q So it's your belief that anything over
3 eight hours in a day is overtime, as well as
4 anything over 40 hours in a week?
5 A Yes.
6 Q Okay. So now I'm going to go back on
7 those same questions I was just asking you. I'm
8 going to ask you to assume, for purposes of this
9 question, that when -- any time you work past eight
10 hours in a day does not constitute overtime, but
11 that you have to actually work more than 40 hours in
12 a given work week. Okay?
13 A What do you mean by that? Going to lunch?
14 Q Any time -- I'm trying to get a sense from
15 you of -- If Ms. Chitwood asked you to stay late on
16 a particular day, I'm going to ask you to assume
17 that that doesn't necessarily mean that she's asking
18 you to work overtime. What I'm trying to ask from
19 you is, do you recall on a particular occasion when
20 Ms. Chitwood directed you to work more than 40 hours
21 in a particular week? Does that make any sense?
22 MR. THOMAS: Object to the form.
23 A She would expect us to work many
24 occasions, and I know it's been five years, so I
25 don't specifically -- many occasions to work more

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1 A Yes.
2 Q More than 20?
3 A Yes.
4 Q More than 30?
5 A It was over such a long period of time
6 it's hard to put a number on it.
7 Q So on more than 20 occasions you believe
8 that Ms. Chitwood directly ordered you to work more
9 than 40 hours in a given work week?
10 A I don't know the amount of time, but it
11 was way up there, where we had to work overtime to
12 get the work done that she insisted we get done.
13 Q When you're telling me as we're talking
14 now about working overtime, what's your
15 understanding of the words work overtime? What do
16 you understand that to mean?
17 A Over 40 hours.
18 Q In a particular work week?
19 A Yes. In one week.
20 Q Is it your understanding that -- If you
21 worked more than eight hours in a particular day, do
22 you think that that constitutes working overtime?
23 A Yes.
24 Q And what's that belief based on?
25 A What's considered normal society today. I

1 than eight hours in one day and more than 40 hours
2 in a week.
3 Q (BY MR. TOLLEFSON) Are you aware that, in
4 the state of Minnesota, you actually have to work
5 more than 48 hours in a given work week to qualify
6 for overtime?
7 A Well, we did work more than 48 many weeks.
8 Q Did you ever ask Ms. Chitwood for
9 permission to go home early on a Friday?
10 A Not that I can recall.
11 Q What's your understanding -- If you'd
12 worked 40 hours in a week by, let's say, noon on
13 Friday, and let's say you left at noon and went home
14 for the day, is it your understanding that you would
15 still be owed overtime for that particular week?
16 MR. THOMAS: Object to the form of the
17 question.
18 A So if I only worked 40 hours and I left
19 after 40 hours on Friday?
20 Q (BY MR. TOLLEFSON) Yes.
21 A Well, then, no, you haven't worked more
22 than 40 hours then.
23 Q But you would have worked more than eight
24 hours on a particular day, let's say sometime Monday
25 through Thursday. Do you understand that?

Exhibit No. G

[1] Q: Correct.
[2] A: Not that I can think of.
[3] Q: Now, with respect to meal periods, you
[4] indicated there were times when you may not have
[5] accurately recorded the beginning and ending of a
[6] meal period. Is that right?
[7] A: Yeah. I thought we talked about that as
[8] it was similar to the beginning and ending of the
[9] day.
[10] Q: You did mention that, sir, and what I
[11] was wondering is what meal period. Is it the lunch
[12] we're talking about?
[13] A: Lunch.
[14] Q: Sometimes you would not record the
[15] beginning of your lunch and the ending of your
[16] lunch?
[17] A: No. Sometimes after recording the
[18] beginning of lunch I may have some things to do on
[19] the way out the door.
[20] Q: Similar to what you're talking about
[21] when you're leaving at the end of the day?
[22] A: Yes.
[23] Q: And then in terms of recording the end
[24] of your lunch period, did you ever have a problem
[25] doing that?

[1] A: Probably less, but, yes.
[2] Q: How often did you go to lunch during the
[3] '98/99 time frame. Did you have a regular
[4] practice?
[5] A: I lot of times I skipped lunch entirely,
[6] much of the time.
[7] Q: Why is that?
[8] A: Well, the more hours you're there, the
[9] more money you make, you make more sales. It was a
[10] sales driven thing. I worked a lot of hours.
[11] Q: When you did go to lunch, did you stay
[12] on site or go off site?
[13] A: Normally I would go off site when I was
[14] leaving for lunch. Sometimes I would go to the
[15] cafeteria and get things from the vending machines.
[16] Q: Those times when you did record the
[17] beginning of a lunch period and the end of a lunch
[18] periods, that's when you actually took a lunch.
[19] Right?
[20] A: Yes, that's right, whether it was in the
[21] cafeteria or off site.
[22] Q: During those times when you decided to
[23] work instead of take a lunch period, you didn't
[24] record a beginning and ending of a lunch period. Is
[25] that right?

[1] A: That's right.
[2] Q: Because you were working?
[3] A: Because I was working.
[4] Q: Did you ever tell anyone that you were
[5] not complying with the aspects of the policy that
[6] you identified?
[7] A: No. Most people worked through their
[8] lunch.
[9] Q: That wasn't my question.
[10] A: I misunderstood.
[11] Q: My question was you've identified
[12] several areas of the policy that you feel that you
[13] failed to comply with. Is that right?
[14] A: Yes.
[15] Q: I'm talking about Defendant's Exhibit
[16] *027.
[17] A: Yes.
[18] Q: You indicated you failed to comply with
[19] sentence A, and we've talked at length about that.
[20] Right?
[21] A: Yes.
[22] Q: Did you ever tell anyone that you were
[23] failing to comply with the first sentence of that
[24] policy?
[25] A: No.

[1] Q: And then I think the next thing you
[2] indicated in Defendant's Exhibit *027 that you
[3] failed to comply with was the sentence that says
[4] "no work should be performed off the clock." Do
[5] you see that?
[6] A: Yes.
[7] Q: Under what circumstances did you fail to
[8] comply with that aspect of the policy?
[9] A: Well, off site I worked a lot at home.
[10] Q: Anything else?
[11] A: Perhaps when I was in New York at the PC
[12] Expo. There may have been some time there. I
[13] don't really recall how the time was recorded for
[14] that. And when I was in Miami at the Micron PC
[15] Bowl, I don't recall how the time was recorded for
[16] that.
[17] Q: Anything else?
[18] A: Not that I can think of right now.
[19] Q: So when you say you failed to comply
[20] with the aspect of the policy for working off the
[21] clock, you're saying it's when you worked at home.
[22] Correct?
[23] A: Yes, primarily.
[24] Q: When you went to the PC Expo in New
[25] York?

[1] A: Possibly.
[2] Q: And the Micron PC Bowl. Correct?
[3] A: Possibly.
[4] Q: When was the PC Expo in New York that
[5] you went to?
[6] A: June or July of — what year was that?
[7] — I think that was '97.
[8] Q: Were you in sales at that time?
[9] A: Was I what?
[10] Q: In sales?
[11] A: No.
[12] Q: At the Micron PC Bowl, when was it that
[13] you attended that?
[14] A: That was — that would have been late
[15] December of '99. I believe it was '99.
[16] Q: What was your reason for attending the
[17] Micron PC Bowl?
[18] A: To represent small business sales and
[19] meet with clients.
[20] Q: Did you go to the game?
[21] A: Yes. That's where we met with clients.
[22] Q: How did you get selected to go to the
[23] game?
[24] A: I was the only one in small business
[25] sales that submitted a list of people that we would

[1] like to invite.
[2] Q: Did you get your expenses paid for that
[3] trip?
[4] A: Some.
[5] Q: Why did you not keep track of your time?
[6] A: I don't remember how I kept track of my
[7] time for that. I don't remember.
[8] Q: You don't know whether you did?
[9] A: I don't remember how much time or how —
[10] I think I may have recorded eight hours a day for
[11] it. I don't even whether I was required to.
[12] Nobody mentioned it.
[13] Q: Did you consider all of it work time?
[14] A: Well, there wasn't much else I could do.
[15] I mean, I didn't have a car. I did walk around one
[16] day.
[17] Q: Went to the game?
[18] A: Yeah, that was work. But I'm not a
[19] football fan.
[20] Q: If it had been a good game, was it work
[21] time or not work time?
[22] A: If it had been a good game, it might
[23] have been worthwhile. But I think the whole thing
[24] was — well, that's a matter of opinion. I guess
[25] about the only time that I wouldn't have considered

[1] strictly being there for the purpose of work was
[2] when I went down to the beach one day.
[3] Q: But it's possible you recorded some time
[4] for that, is that right, in terms of your
[5] attendance at the game or attendance at the event?
[6] A: I probably recorded eight hours a day
[7] while I was there. I don't know. I don't really
[8] remember.
[9] Q: Now, you indicated that you had done
[10] some work at home that you didn't record. Is that
[11] right?
[12] A: Yes, that's right.
[13] Q: What type of work were you doing at
[14] home?
[15] A: I was creating a contact manager
[16] database and maintaining it.
[17] Q: What is a contact manager database?
[18] A: Well, you need to know who to call and
[19] when to call them and why to call them and have
[20] information about why you're going to call them,
[21] and so that would all be recorded in my contact
[22] manager database.
[23] Q: At home?
[24] A: I created it at home so that it wouldn't
[25] take away from my productive time at work on the

[1] jobsite when I could be selling.
[2] Q: What software did you use to create it?
[3] A: Microsoft Access.
[4] Q: Did you purchase that software for use
[5] at home?
[6] A: Let me see here. I did purchase that
[7] software, and then also Micron provided software.
[8] Q: I remember seeing among all the
[9] documents you've produced lists of what appear to
[10] be contacts and customer-type information. Was
[11] that part of the stuff you printed out from the
[12] contact manager database?
[13] A: I don't know what you're referring to.
[14] Q: When you produced documents in this case
[15] — and we have three boxes sitting here on the
[16] table. I don't want to necessarily go through it,
[17] but was some of that information stuff you printed
[18] from the contact manager database?
[19] A: I don't know. I would have to see the
[20] material to tell you where it came from.
[21] Q: Do you remember when you were producing
[22] materials to Mr. Thomas or his office that you
[23] included any materials from the contact manager
[24] database?
[25] A: I included the copies of the database

[1] that I still had. I had lost some later copies
[2] with the hard drive crash.
[3] Q: I just wondering if we were talking
[4] about — I have hard copies of certain documents
[5] that sound like it's part of what the system is
[6] you're talking about.
[7] A: I don't know. I haven't seen the hard
[8] copies.
[9] Q: Maybe we'll take a look at that after a
[10] bit just to make sure. But you think you printed
[11] some of that or put it on a CD ROM to provide. Is
[12] that right?
[13] A: On a CD ROM.
[14] Q: Did anyone tell you to create that
[15] contact manager database?
[16] A: No, I don't think so.
[17] Q: That was your choice?
[18] A: I had to do something for contact
[19] manager, yes.
[20] Q: And you decided to create a contact
[21] manager database that you could use. Is that
[22] right?
[23] A: That's right. Some people used a
[24] spreadsheet; I used a database.
[25] Q: You didn't make that contact manager

[1] database available to others that you worked with?
[2] A: I did.
[3] Q: You did?
[4] A: Yes.
[5] Q: How did you do that?
[6] A: Well, I e-mailed it to my supervisor,
[7] and I e-mailed it to another representative. We
[8] were going to test it out.
[9] Q: What do you mean you were going to test
[10] it out?
[11] A: Well, my thought in creating it was that
[12] I'm going to create something extremely useful,
[13] extremely targeted for the purpose that I'm
[14] creating it for at Micron and share it with all the
[15] other representatives to help build the business.
[16] Q: Did you end up using it or sharing it in
[17] that way?
[18] A: I did share it.
[19] Q: But did you use it in the way that you
[20] intended?
[21] A: I used it extensively for a long time.
[22] Q: Was it your hope that what you had
[23] created at home would be adopted and used as a
[24] system more broadly?
[25] A: Yes.

[1] Q: But it was not done, was it?
[2] A: No. Okay. I'll stay with no.
[3] Q: You were hesitant. Why were you
[4] hesitating?
[5] A: Because I shared it with the other
[6] representative for testing, he was going to test it
[7] out, but I don't think he made use of it.
[8] Q: Who was the person you're talking about?
[9] A: Jim Wells, not a relative.
[10] Q: And you indicated you e-mailed it to a
[11] supervisor. Who were you talking about?
[12] A: Tony Robinson.
[13] Q: Did you ever talk with Mr. Robinson
[14] about the contact manager database that you had
[15] created?
[16] A: Oh, yes.
[17] Q: What did you talk to him about in that
[18] regard?
[19] A: The usefulness of it, the flexibility
[20] with which it works, and about rolling it out
[21] widely.
[22] Q: Do you remember what he told you about
[23] it?
[24] A: Not specifically, no.
[25] Q: Was he interested in taking a look at it

[1] to see if it was something that could be used by
[2] other representatives?
[3] A: Oh, yes.
[4] Q: Do you know why it wasn't?
[5] A: Well, they were also trying to develop
[6] something internally from another representative,
[7] Brooks Durfee. And towards the conclusion of my
[8] development of the program, then Brooks Durfee
[9] started working with ACT, which is a commercially
[10] available product, not nearly as well targeted, not
[11] as efficient. It was a much slower program, but it
[12] was something which they started to pursue that.
[13] Q: And that's what was adopted for
[14] everybody else to use. Correct?
[15] A: Yes, eventually it was.
[16] Q: Did you continue to use your own contact
[17] manager database even though there was the ACT
[18] database available?
[19] A: Yes, for about a year.
[20] Q: And did you convert to the ACT database?
[21] A: I used them both.
[22] Q: Simultaneously?
[23] A: Well, it was a transitional period
[24] because my system worked so much better, and ACT
[25] was so slow, and Act was not targeted very well for

[1] the task at hand. I just didn't like Act, and I
[2] understood my program much better, and so I
[3] preferred it.
[4] And as time went by, I converted records
[5] into ACT. And, eventually, once I had most of my
[6] records, or at least the important ones in ACT, I
[7] started to discontinue using my own program because
[8] it was too much to maintain four databases. There
[9] was my database, there was ACT, there was MIST, and
[10] there was MOE. So I cut it down to three.

[11] Q: MIST, what is MIST?

[12] A: Let's see here.

[13] Q: What does that stand for?

[14] A: Micron Integrated Sales Tools.

[15] Q: And MOE?

[16] A: Micron Order Entry.

[17] Q: Are those proprietary systems of Micron?

[18] A: Yes.

[19] Q: Was the ACT database proprietary?

[20] A: No, commercial software.

[21] Q: As was your Microsoft Access program?

[22] A: MOE was built on Access. My program was
[23] built on Access. It was an application.

[24] Q: But your particular contact management
[25] database is something you created?

[1] A: Yes.

[2] Q: Using Access as the software?

[3] A: That's right, as the database engine.

[4] Q: Was it part of your job responsibilities
[5] to create contact management database in Access and
[6] provide it to everyone in the sales group?

[7] MR. THOMAS: Object to the form of the
[8] question.

[9] THE WITNESS: I don't think it was defined
[10] that way, although everybody developed their own
[11] system.

[12] Q: BY MR. DOCKSTADER: Was it your choice
[13] to develop this particular system for you?

[14] A: Sure. If I hadn't decided to do it,
[15] then I probably would not have developed that same
[16] system. I might have tried keeping it on paper.

[17] Q: Was it also your choice to develop it at
[18] home on your computer?

[19] A: Yes.

[20] Q: Mr. Robinson didn't tell you to do that?

[21] A: No.

[22] Q: It wasn't part of your job description
[23] and responsibilities that you do that at home, was
[24] it?

[25] A: Not that I know of.

[1] Q: And you didn't tell Mr. Robinson that
[2] you were working at home to create that database?

[3] A: I don't remember if we discussed it or
[4] not. I would be surprised if he didn't know it
[5] because I never created — I never worked on it at
[6] my desk at the work site.

[7] Q: Other than to convert files. Correct?

[8] A: To convert files?

[9] Q: Didn't you say you converted files to
[10] the ACT database?

[11] A: I did that at home most of the time
[12] until, what was it, January or February I think of
[13] 2000 is when I completed the process on the
[14] jobsite.

[15] Q: The conversion process?

[16] A: Yeah, converting from my own database to
[17] ACT.

[18] Q: When did you start creating the contact
[19] management database on Access?

[20] A: October of '98.

[21] Q: When was it completed?

[22] A: I stopped revising it in I think it was
[23] December of '99.

[24] Q: I understand that you would create the
[25] database and you may add and delete data within the

[1] database over time. Correct?

[2] A: Yes, you had to do that too.

[3] Q: But in terms of creating the database
[4] file, the fields and everything that you needed to
[5] define, how long did that process take to set up?

[6] A: October '98 to December '99.

[7] Q: Because it was evolving the entire time?

[8] A: Yes, new revisions. Everything evolved.
[9] MOE evolved. MIST evolved. It all evolved.

[10] Q: And part of the evolution that you're
[11] talking about is keeping track of information that
[12] you're gathering on customers for that database.
[13] Right?

[14] A: The data gathering was while at the
[15] jobsite, at the phone, on the phones. And then
[16] working with the data, you know, some
[17] back-office-type stuff when I had that to do I did
[18] that at home.

[19] Q: How often did you work at home on the
[20] database?

[21] A: Well, it was generally every night.

[22] Q: For how long?

[23] A: Well, at least two hours, sometimes
[24] four, even more. My wife would get tired that she
[25] would be going to sleep, and I would come to bed.

(1) And then on weekends if we weren't out of town,
(2) then I would work on that generally.

(3) Q: Why didn't you record the time that you
(4) spent working on the database?

(5) A: Well, I'm sure there was a lot of
(6) motivations for that. One of them being I didn't
(7) think it was appropriate, I suppose.

(8) Another motivation must have been the
(9) amount of hours I put into it. I probably would
(10) have been looked at as being less productive. I
(11) mean, I was already recording almost all of my
(12) hours that I was at the work site. I don't want to
(13) record that many hours when I was off the work site
(14) and have that reflect badly on me. Because those
(15) who worked fewer hours and sold more, they tended
(16) to be favored. That was my impression.

(17) Q: With respect to the time that you spent
(18) creating and revising the contact management
(19) database, is it your position that Micron
(20) Electronics owes you for that time?

(21) A: I don't know how to judge that.

(22) Q: Do you believe you're owed money for
(23) that time?

(24) MR. THOMAS: Object to the form of the
(25) question.

(1) A: Oh, I had to go back to my pickup to get
(2) it anyway.

(3) Q: When we took a break, we were talking
(4) about your contact management database just to put
(5) you back where we were at before we took a lunch
(6) break. Do you recall that testimony?

(7) A: Yes.

(8) Q: The contact management database that you
(9) were working on at home, that's not something that
(10) the company asked you do. Isn't that right?

(11) A: Not specifically. No, they didn't.

(12) Q: It's nothing that your supervisor asked
(13) you to do?

(14) A: No.

(15) Q: You weren't required to do it as part of
(16) the services that you were performing to the
(17) company?

(18) A: Well, everybody had to provide a means
(19) of tracking their clients, and that was my means.

(20) Q: But nobody required you to use that
(21) means?

(22) A: No.

(23) Q: And nobody required you to prepare the
(24) database at home?

(25) A: No.

(1) THE WITNESS: I would think that's up for a
(2) court to decide. I really don't know.

(3) Q: BY MR. DOCKSTADER: Well, you never told
(4) anyone that you weren't recording that time. Isn't
(5) that correct?

(6) A: That's right.

(7) Q: And when you left the company, you
(8) didn't tell anybody you wanted to get paid for that
(9) time, did you?

(10) A: No.

(11) Q: In fact, you never told anyone —

(12) A: When I left company, it was under Gores
(13) Technology. I didn't do any of that under Gores.

(14) MR. DOCKSTADER: Let's go off the record.
(15) (Lunch recess taken.)

(16) Q: BY MR. DOCKSTADER: Good afternoon.

(17) A: Hello.

(18) Q: Were you able to take a lunch break?

(19) A: Briefly.

(20) Q: Did you go by yourself?

(21) A: I did, yes. My wife made my lunch for
(22) me.

(23) Q: If I had known that you, we could have
(24) had a place for you here. You didn't have to leave
(25) the building, but welcome back?

(1) Q: You could have prepared the database
(2) during the day at work. Correct?

(3) A: I don't know. I don't think so.

(4) Q: Why not?

(5) A: Well, a number of reasons. The first
(6) one being it would have taken away from selling
(7) time. And I was in the building, on the phones, at
(8) the computer to sell.

(9) Q: Did other sales representatives do their
(10) contact management systems during work, at work?

(11) A: I don't know.

(12) Q: When you were using your contact
(13) management database, what other systems were
(14) available for you to use? You are indicated a
(15) paper system. Correct?

(16) A: Paper system.

(17) Q: Was there an electronic system as well?

(18) A: Many people used spreadsheets. Those
(19) are the two other methods I'm aware of.

(20) Q: So you could have used those systems
(21) during the day. Correct?

(22) A: Sure.

(23) Q: I'm just trying to get a sense for when
(24) you said you don't think it would have been
(25) appropriate to record the time putting that

[1] understanding of why you indicated you felt you did
 [2] not comply with that section of the policy.
 [3] A: Well, I wasn't compensated at one and a
 [4] half times the regular rate of pay for all hours
 [5] actually worked in excess of 40 hours in a
 [6] scheduled work week.
 [7] Q: And we've talked about that in terms of
 [8] the hours that you say you worked off the clock and
 [9] not being compensated for the ones you didn't
 [10] record. Correct?
 [11] A: That's right. That seems to be covered
 [12] here in C.
 [13] Q: Just so we're clear, the overtime hours
 [14] that you did record, you were paid time and a half.
 [15] Correct?
 [16] A: On the wage, yes. On the commission, I
 [17] don't know.
 [18] Q: What do you mean on the commission?
 [19] A: Well, my understanding is that you were
 [20] to be paid overtime commission, and Micron never
 [21] broke that out as a separate number. Except
 [22] perhaps my first month or two in the sales
 [23] department I think they may have done that. I
 [24] haven't looked at those documents lately.
 [25] Q: Do you know whether or not you did

[1] don't recall exactly.
 [2] Q: Something like that?
 [3] A: Something like that.
 [4] Q: Why were you familiar with that
 [5] computation method?
 [6] A: Because at Video Concepts I kept a
 [7] spreadsheet and wanted to always verify that I was
 [8] paid correctly.
 [9] Q: Did you
 [10] left Video C
 [11] A: No, I c
 [12] Q: I thou
 [13] document?
 [14] A: I lost a
 [15] years.
 [16] Q: Did you
 [17] check your
 [18] if you were
 [19] commissior
 [20] A: I atten
 [21] Q: And w
 [22] A: I know
 [23] sales depart
 [24] on maybe a
 [25] specifically. It was just so difficult to figure

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[1] receive overtime compensation with respect to
 [2] commissions?
 [3] A: I don't know.
 [4] Q: Have you attempted to make any
 [5] determination in that regard?
 [6] A: I attempted to, yes.
 [7] Q: What did you do in that respect?
 [8] A: I attempted to take my commission
 [9] statements and calculate by the method overtime
 [10] commissions were paid at a previous employer and
 [11] see how it came out.
 [12] Q: What previous employer?
 [13] A: That was the Tandy Name Brand Retail
 [14] Group, Video Concepts.
 [15] Q: And what method are you talking about?
 [16] A: Now, let me think here. This is a
 [17] little calculation. I don't use it regularly.
 [18] Taking this from memory.
 [19] At Video Concepts the method, I believe,
 [20] was to take the total number of hours worked,
 [21] subtract 40 hours, then divide that number by 40
 [22] hours, and it tells how much percentage of your
 [23] time went in to making overtime commissions. And
 [24] then multiply that by -- what is it? -- .5 I
 [25] believe, and multiply that by your commissions. I

[1] out what your commissions were actually supposed to
 [2] be that it made it impossible for that calculation
 [3] to really work for me, to see whether I was being
 [4] paid accurately. So I had looked at it on I'm
 [5] certain at least two occasions and just frustrated
 [6] that it didn't come out.
 [7] Q: One time shortly after you joined the
 [8] sales organization. Is that right?
 [9] A: Yes.
 [10] Q: Did the calculation come out at that
 [11] time?
 [12] A: Now, that was a long time ago. I think
 [13] they were breaking out overtime commissions
 [14] separately, so I had a means of verifying it.
 [15] Q: And were you able to verify it?
 [16] A: I don't remember. I really don't
 [17] remember how that came out as a comparison. That
 [18] was over four years ago or approximately four years
 [19] ago.
 [20] Q: Fair enough. If it had not come out,
 [21] would you have brought it to the attention of your
 [22] supervisor?
 [23] A: I would think so, yes.
 [24] Q: Do you know if, in fact, you brought any
 [25] concern over the calculation to the attention of

[1] revenue amounts. For example, you at times would
[2] only get credit for booked sales, correct, net
[3] booked sales?

[4] A: I believe the entire time I was in the
[5] sales department it was all based on shipped sales.

[6] Q: And there were times when adjustments
[7] could be made for product returns. Correct?

[8] A: That came very late in my tenure with
[9] Micron.

[10] Q: But it did occur?

[11] A: Yes, in 2001.

[12] Q: And it wasn't unusual as you indicated
[13] for you or other sales representatives to bring
[14] discrepancies in the commission amounts to the
[15] attention of sales management. Right?

[16] A: Yeah, if they were significant and if
[17] you kept track of it.

[18] Q: Now, the computation method that you're
[19] talking about or we're were talking about earlier,
[20] doesn't have anything to do with totaling the
[21] commissions attributable to the gross revenue.

[22] Correct?

[23] A: My understanding — the way I looked at
[24] it at that point, and I believe the way others
[25] looked at it from conversation, was that if the

[1] you did it?

[2] A: I don't recall a specific instance.

[3] Q: Do you recall why you did it?

[4] A: I think it may have been because there
[5] was another pay plan change, and I wanted to see
[6] how different things would compare.

[7] Q: Do you recall doing the computation
[8] method when you discovered about this lawsuit?

[9] A: Okay. You mean after working for
[10] Micron?

[11] Q: Yes.

[12] A: After leaving Micron.

[13] Q: Yes.

[14] A: I did attempt to recreate a method of
[15] computation.

[16] Q: And that was the third time, then, at
[17] least that you can remember now that you tried to
[18] replicate it. Correct?

[19] A: Okay. Yes, if you are talking about
[20] after employment it would be that third time.

[21] Q: Other than the three times that we're
[22] talking about, did you try to replicate it any
[23] other time?

[24] A: No.

[25] Q: Let's talk about the third time. That

[1] total commission was at least what you had
[2] calculated yourself, then you didn't bother to
[3] pursue it.

[4] And that was without even considering
[5] any time and a half, any overtime consideration at
[6] all. So if it was — if just your raw commission
[7] dollars without considering overtime showed on your
[8] commission statement as being what you calculated
[9] it should be, you just left it at that.

[10] Q: And I understand what you're saying in
[11] that regard. My question is you went through a
[12] computation method that you were familiar with from
[13] a prior employer where you would determine an
[14] additional amount due for overtime with respect to
[15] commissions. Correct?

[16] A: I had looked at that before, yes.

[17] Q: And I want to keep you focused on that
[18] computation. Okay?

[19] A: All right.

[20] Q: And you indicated early in your tenure
[21] you tried to replicate that?

[22] A: That's right.

[23] Q: And you indicated you did it at least
[24] twice, and I was asking you about the second time
[25] that you did it. Do you recall a second time when

[1] would be the most recent. Correct?

[2] A: Yes, that would be.

[3] Q: Do you know when did you do that?

[4] A: Last summer.

[5] Q: And what was the result of that check on
[6] the computation method?

[7] A: It was inconclusive.

[8] Q: What do you mean by inclusive?

[9] A: Well, it was difficult to calculate
[10] because the days of the week that they start
[11] tracking it and then also the hours worked were not
[12] the same weeks and not the same pay periods, not
[13] the same months. It was just a daunting task to
[14] try to figure it out. So I gave it my best shot.
[15] I couldn't get the numbers to jive very well. So I
[16] don't know.

[17] Q: Did you keep any of the — any of the
[18] three times you did it, did you keep any notes or
[19] spreadsheets or —

[20] A: I had a spreadsheet sometime last
[21] summer. I don't know if I still have a copy of it
[22] or not. I haven't looked for it.

[23] Q: Did you produce a copy of that with the
[24] documents that you've produced in this case?

[25] A: I don't know.

[1] make money, difficult to make commissions. All of
[2] these things came together at once.

[3] Q: So when you said it would even be harder
[4] to make commission, that was in the context of all
[5] of those circumstances that you just mentioned?

[6] A: Yes.

[7] Q: Because you weren't going to be able to
[8] work overtime that was going to make it harder as
[9] well?

[10] A: Right. If I wasn't going to be working
[11] overtime, it would make it harder to make
[12] commissions.

[13] Q: Do you know whether, in fact, you worked
[14] overtime after Ms. Weaver sent you this e-mail
[15] December 21, 2000?

[16] A: Sure.

[17] Q: In fact, would you be surprised to learn
[18] that you reported quite a bit of overtime after
[19] this e-mail?

[20] A: I wouldn't be surprised.

[21] Q: So did it really mean anything when
[22] Ms. Weaver said to keep overtime and that you
[23] weren't allowed to work over time? I guess she
[24] didn't say you weren't allowed. Right? She was
[25] just saying the hours are getting excessive. You

[1] able to report my overtime, and so I'm not going to
[2] work overtime.

[3] It would depend on how driven you are.

[4] Are you driven to make those commissions anyway?

[5] Is that something that's going to be desirable in
[6] the company's eyes anyway for you to do that to

[7] continue working those hours? Well, yes, they

[8] wanted to make the money. They wanted the company
[9] to sell product.

[10] What this essentially was telling me was
[11] that the cost of the company paying overtime was
[12] getting excessive, and that they wanted us, by
[13] whatever means, to not be paid so much for overtime
[14] hours. Whether that meant simply don't work those
[15] hours, or whether you could take that as the
[16] salesman you are of I'm going to work it. I need
[17] the commissions. I'm not going to be able to
[18] manage all these accounts without working overtime.
[19] And for them to realistically expect me to produce,
[20] I'm going to have to do the time.

[21] Q: You could make less money, couldn't you?

[22] A: You could make less money.

[23] Q: Sales are down, industry is in a slump.

[24] Right?

[25] A: Yes.

[1] just had to get approval. Right?

[2] A: Yes.

[3] Q: She didn't tell you couldn't work it.
[4] Right?

[5] A: No.

[6] Q: The company didn't tell you you couldn't
[7] work it?

[8] A: No.

[9] Q: She didn't tell you not to record your
[10] overtime?

[11] A: Apparently not.

[12] Q: The company didn't tell you not to
[13] record your overtime?

[14] A: I don't know. I don't know. I think
[15] that as you continue to expand on that, I think it
[16] goes a little bit over the line of reality.

[17] Q: I don't understand what you just said.
[18] Tell me what you mean.

[19] A: Well, you continued to nail that down
[20] regarding the company policy on overtime and what
[21] this means, what this doesn't mean. And in the
[22] context of working through the situation, you could
[23] take it as, well, I want to continue to make my
[24] commissions, so I'm going to work off the clock.
[25] Or you could take it as, well, I'm not going to be

[1] Q: You could make less money. You don't
[2] have to keep working more hours to try to make more
[3] money, do you?

[4] A: But what you do today —

[5] Q: Please answer my question. You don't
[6] have to keep working more hours to make more money,
[7] do you?

[8] A: No, you don't. Excuse me. I'm sorry
[9] for interrupting, but the exact words of your
[10] question maybe I answered that wrong. Yes, you do
[11] need to work more hours to keep making the same
[12] money.

[13] Q: Are people able to work less hours and
[14] still make more money if they make the sales.
[15] Right?

[16] A: Say that again.

[17] Q: If somebody is working less hours and
[18] they're hitting it, if they're getting the sales,
[19] they could make more money. Right? There's not a
[20] direct correlation between hours worked and sales.

[21] A: There is.

[22] Q: Ms. Weaver was not telling you not to
[23] record your time in this e-mail, was she?

[24] A: She didn't say those words.

[25] Q: When she first sent the e-mail out at

[1] Q: BY MR. DOCKSTADER: Whose responsibility
[2] was it to record the hours that you worked?

[3] A: It would have been my job to enter my
[4] time in the timesheet system, whether that was on
[5] paper or whether that was on the VAX, or whether it
[6] was on me@micronpc.

[7] Q: By omitting the overtime that you worked
[8] from your timesheet, didn't that prevent your
[9] supervisor from acquiring knowledge of your
[10] unreported hours?

[11] MR. THOMAS: Object to the form of the
[12] question.

[13] THE WITNESS: The supervisor wouldn't have
[14] had knowledge of the specific amount of time, no.

[15] Q: BY MR. DOCKSTADER: If your supervisor
[16] reviews your timesheet, shouldn't he or she be able
[17] to assume that it was accurate?

[18] MR. THOMAS: Object to the form of the
[19] question.

[20] THE WITNESS: I would assume that they just
[21] look at that just as this is the amount of hours
[22] that are being claimed on the timesheet.

[23] Q: BY MR. DOCKSTADER: And shouldn't he or
[24] she be able to assume it was accurate?

[25] MR. THOMAS: Object to the form of the

[1] question.

[2] THE WITNESS: I suppose a supervisor would be
[3] fair in making an assumption that that's as many
[4] hours as the employee is reporting and that the
[5] employee is probably accurately reporting their
[6] hours.

[7] Q: BY MR. DOCKSTADER: Shouldn't a
[8] supervisor be able to assume that before you
[9] submitted your timesheet that you had reviewed it
[10] to ensure that it was accurate?

[11] MR. THOMAS: Object to the form of the
[12] question.

[13] THE WITNESS: I think that's overly
[14] speculative.

[15] Q: BY MR. DOCKSTADER: The policy says that
[16] you're supposed to review your timesheet and verify
[17] its accuracy before you submit it. Correct?

[18] A: Well, I think that for a supervisor to
[19] make that assumption they would had to specifically
[20] said you've got to do this. And no one ever —
[21] never did that happen.

[22] Q: Never did what happen?

[23] A: To say you've got to do this; you've got
[24] to report this accurately. Until I pressed with
[25] e-mails.

[1] Q: What do you mean until you pressed with
[2] e-mails?

[3] A: Well, in 2001 when management — the
[4] president of the company I believe it was at that
[5] time — I'm trying to remember who it was — sent
[6] out an e-mail saying no overtime without director
[7] approval.

[8] And I e-mailed back to my director,
[9] which was Dominic Casey — was he director? Was
[10] that his title? I don't recall — but Dominic
[11] Casey anyway, saying, well that's going to be very
[12] difficult, you know, with arriving to work and, you
[13] know, trying to time it very precisely so that
[14] you're not late, but you're not a minute early
[15] either. And that when you leave, if you're in the
[16] middle of a call, well, then you have to get off of
[17] that call to try to get as close to accurate as
[18] possible, and the same thing as leaving for your
[19] lunch break.

[20] And so there's bound to always be one or
[21] two hours a week where you're not going to be in
[22] compliance on the no overtime. And this e-mail
[23] went back and forth. Maybe I sent it first to my
[24] supervisor. I don't remember if it was my
[25] supervisor first or if it was directly to Dominic

[1] Casey, but it was going back and forth.

[2] And then he came over and talked with me
[3] like he didn't want necessarily this to appear in
[4] e-mail because then I could perhaps share it with
[5] everybody. It was, okay, you're going to be paid
[6] for the time you report. And so I didn't have an
[7] e-mail I could share it with others who would be
[8] concerned about the same issue.

[9] Q: Who was your supervisor at that time?

[10] A: That was Tawni Weaver I believe.

[11] Q: And you said concerned about the same
[12] issue. I'm not sure what issue you're talking
[13] about.

[14] A: No overtime.

[15] Q: I originally had asked you about whether
[16] or not a supervisor — and let's say Tawni Weaver
[17] in 2001, a supervisor you had then. Shouldn't have
[18] Ms. Weaver been able to assume that before you
[19] submitted your timesheet that you had reviewed it
[20] to ensure it was accurate?

[21] MR. THOMAS: Object to the form of the
[22] question.

[23] THE WITNESS: I don't know. I think that's a
[24] stretch simply because there's no way that a
[25] supervisor could not have known of the

[1] off-the-clock hours people were working. There's
[2] just no way. It's just impossible.

[3] Q: BY MR. DOCKSTADER: What do you mean?

[4] A: Well, first of all, if they had
[5] maintained — I don't know if they have. Maybe
[6] they have. Maybe you can produce it. Did they
[7] maintain those records on the call volumes and the
[8] call times, the call history, the centerview data?

[9] Did they take that into account? Did they look at
[10] those data? Because there were people that were
[11] reporting apparently 40 hours a week, and they're
[12] centerview time was easily up over 50. How could a
[13] supervisor overlook that?

[14] Q: Their what time? Centerview time?

[15] A: Centerview data.

[16] Q: What is that?

[17] A: It is call center data on the telephones
[18] that it records inbound calls, outbound calls. And
[19] I don't remember exactly how detailed it got
[20] because it was only when I was in technical support
[21] that I was really detailed into that when I created
[22] the centerview data spreadsheet. That used by
[23] technical support.

[24] The data certainly showed aux time.
[25] That's auxiliary. It showed ACD time. That's

[1] Automatic Call Dispatch, or something like that,
[2] ACD. And I don't recall what the other one was
[3] called. There was the time which was aux time, and
[4] then there was the ACD time, and then there was the
[5] in between, After Call Work, ACW. And it recorded
[6] all of those, and it recorded time you were
[7] actually in the call, on a phone call.

[8] Q: Do you remember earlier when we were
[9] talking and you indicated you had to have your time
[10] submitted by Monday morning. Is that right?

[11] A: Yes, that's right. I believe 10:00
[12] sounds right.

[13] Q: And that's typically when supervisors
[14] would have to review and approve it. Is that
[15] right?

[16] A: Sometimes they would review them on
[17] Friday and submit them then. And I don't know if
[18] they ever did submit them on Saturday or not. They
[19] probably did. And certainly on Monday for some.
[20] Some would not even review them at all because they
[21] would be automatically approved for your base hours
[22] if a supervisor didn't approve it.

[23] Q: Are you aware if Ms. Weaver reviewed
[24] your timesheets each and every week?

[25] A: I don't know.

[1] Q: Were you aware if Mr. Robinson reviewed
[2] your timesheets each and every week?

[3] A: I don't know.

[4] Q: Are you aware of instances where your
[5] weekly timesheet went to payroll without your
[6] supervisor looking at it?

[7] A: I'm comfortable in saying there must
[8] have been times. I can't put my finger on specific
[9] times, so I can't say that there were times that
[10] they went without approval. I don't know.

[11] Q: When you were a manager reviewing
[12] timesheets for people that you employed at a prior
[13] employer, did you assume that they submitted their
[14] timesheets to you accurately?

[15] A: Yes. Their written time sheets, yes.

[16] Q: And when it was done on the computer,
[17] did you assume they did it accurately?

[18] A: I entered the data on the computer.

[19] Q: Was it similarly appropriate for
[20] Ms. Weaver and Mr. Robinson to assume that you were
[21] accurately recording your time?

[22] MR. THOMAS: Object to the form of the
[23] question.

[24] THE WITNESS: I think we addressed that.

[25] Q: BY MR. DOCKSTADER: I'm talking about

[1] you.

[2] A: That I had?

[3] Q: Yes.

[4] A: I would think they thought just the same
[5] as other reps, that they're going to report the
[6] hours they're going to report, and they're going to
[7] work the hours they're going to work. It was no
[8] mystery that people worked off the clock.

[9] Q: That wasn't my question. My question
[10] was should Ms. Weaver and Mr. Robinson have been
[11] able to assume that the hours you reported were
[12] reported accurately?

[13] MR. THOMAS: Object to the form of the
[14] question.

[15] THE WITNESS: I don't think you can really
[16] assume that. Maybe you need to ask Mr. Robinson or
[17] Ms. Weaver.

[18] Q: BY MR. DOCKSTADER: Have you ever told
[19] them, either one of them, that you weren't
[20] recording your hours accurately?

[21] A: No.

[22] Q: Did they have any reason to distrust you
[23] in terms of your compliance with the policy?

[24] MR. THOMAS: Object to the form of the
[25] question.

Exhibit No. H

[1] Q: During these periods of time that you
[2] say you didn't record your overtime, is that you
[3] wouldn't record any overtime? Is that what you're
[4] telling me?

[5] A: That's correct.

[6] Q: So under time periods where you're
[7] recording overtime and getting paid for it, those
[8] are times you're accurately keeping track of your
[9] overtime; is that right?

[10] A: That's correct.

[11] Q: Do you have any idea how many hours of
[12] overtime you think you did not put down?

[13] A: I regularly worked two to three hours a
[14] week of overtime.

[15] Q: During what period of time?

[16] A: Consistently, I shouldn't say
[17] consistently. For the most part since I started at
[18] Micron.

[19] Q: Were there weeks in which you did not
[20] work any overtime?

[21] A: The weeks that I was on vacation I
[22] didn't work any overtime.

[23] Q: Any other times?

[24] A: No.

[25] Q: Mr. Ell, I'm going to ask you to open up

[1] this rather large binder, if you would.

[2] A: That is a large binder.

[3] Q: And turn to tab No. *026. Do you have
[4] tab No. *026 there in front of you?

[5] A: I do.

[6] Q: Would you take a minute and look at
[7] that, please, that document, Defendant's Exhibit
[8] No. *026.

[9] A: Okay.

[10] Q: Do you recognize that as the company's
[11] policy on timekeeping?

[12] A: It looks familiar.

[13] Q: Would you take a look at Defendant's
[14] Exhibit No. *027. It's under tab *027.

[15] A: Oh.

[16] Q: Do you recognize that to be also a
[17] policy on timekeeping of the company?

[18] A: It looks to be.

[19] Q: I'll represent to you that the first
[20] exhibit, No. *026, if you'll turn back to that is
[21] the timekeeping policy for the VAX.

[22] Do you recall that?

[23] A: I don't exactly, but it looks familiar.

[24] Q: Is that after having a chance to look at
[25] that consistent with your understanding of the

[1] timekeeping policy for use of the VAX when you
[2] started in January of 1999?

[3] A: It looks correct, yes.

[4] Q: And then if you would take a look at
[5] Defendant's Exhibit No. *027, is that consistent
[6] with your understanding of the company's policy on
[7] timekeeping after implementation of a new system
[8] called the me@micronpc.com?

[9] A: It looks right, correct.

[10] Q: After looking at those policies, is that
[11] consistent with your understanding of the company's
[12] policy and practices on timekeeping?

[13] A: Yes.

[14] Q: Did you comply with the requirements of
[15] that policy?

[16] A: No.

[17] Q: In what aspects did you not comply with
[18] the policies?

[19] A: I worked off the clock and didn't record
[20] it.

[21] Q: Any other provisions of the policy that
[22] you did not comply with?

[23] A: Not that I know of.

[24] Q: How often did you not comply with the
[25] policy on timekeeping?

[1] A: Daily — or weekly, I should say.

[2] Q: During what period of time?

[3] A: Since I started at Micron.

[4] Q: I think you testified before that you
[5] did accurately keep your time; is that right?

[6] A: I didn't accurately keep my time, so if
[7] I said that, I was mistaken.

[8] Q: So how often did you not accurately
[9] record your time?

[10] A: On a weekly basis there was on and off a
[11] couple of hours a week that weren't recorded on my
[12] time card.

[13] Q: Did you tell anyone about your
[14] noncompliance with the timekeeping policy?

[15] A: No.

[16] Q: At any time?

[17] A: No.

[18] Q: Do you have any reason to believe that
[19] anyone was aware that you weren't complying with
[20] the policy?

[21] A: Other than my supervisor was there a lot
[22] of times when I was there after hours, there's no
[23] other reason that anybody else would know.

[24] Q: Do you know if your supervisor did know
[25] you weren't complying with the policy?

[1] A: We had had conversations. He doesn't
[2] know that I didn't record those.
[3] Q: You submitted your time on a weekly
[4] basis; is that right?
[5] A: Correct.
[6] Q: And for periods of time you submitted
[7] overtime; isn't that right?
[8] A: I did.
[9] Q: And there were periods of time when you
[10] didn't submit overtime; isn't that right?
[11] A: That's correct.
[12] Q: In those times where you submitted your
[13] time whether as overtime or not, you verified that
[14] it was correct; isn't that right?
[15] A: I did.
[16] Q: And submitted it in that way to your
[17] supervisor?
[18] A: I did.
[19] Q: Any reason that your supervisor should
[20] disbelieve you in terms of your submission?
[21] A: No.
[22] Q: And you never had any conversations with
[23] your supervisor about your failure to accurately
[24] keep your time?
[25] A: I did not.

[1] Q: Did you ever have any such conversations
[2] with anyone else at Micron?
[3] A: No.
[4] Q: Would you turn to Defendant's Exhibit
[5] No. *017, please. It's tab *017. Do you
[6] recognize that to be a copy of the company's policy
[7] on overtime pay?
[8] A: I don't know that I've ever seen this,
[9] but.
[10] Q: Would you take a minute and look at it.
[11] A: Okay.
[12] Q: Have you had a chance to look at that?
[13] A: I have.
[14] Q: And that policy on overtime pay
[15] acknowledges that employees may work overtime;
[16] isn't that right?
[17] A: Correct.
[18] Q: Is that your understanding of the
[19] company's policy that employees could work
[20] overtime?
[21] A: At times that was correct, yes.
[22] Q: And at times that was on a volunteer
[23] basis as reflected in the policy; isn't that right?
[24] A: That is correct.
[25] Q: Do you recall ever having to have

[1] mandatory overtime?
[2] A: No, I don't recall.
[3] Q: The policy also reflects that overtime
[4] requires approval from the employee's supervisor or
[5] manager; isn't that right?
[6] A: That is correct.
[7] Q: Is that consistent with your
[8] understanding of the company's policy?
[9] A: That's what it says here. I don't know
[10] that I've ever asked a supervisor for permission to
[11] work overtime.
[12] Q: Do you think that you may have at any
[13] point in time?
[14] A: I may have.
[15] Q: Do you recall ever being refused
[16] permission when you asked?
[17] A: No.
[18] Q: And the policy also says that
[19] unauthorized overtime is expressly prohibited;
[20] isn't that right?
[21] A: Yes, it does say that.
[22] Q: That's consistent with your
[23] understanding of the company's policy, as well?
[24] A: Yes.
[25] Q: The policy also provides that working

[1] overtime without authorization may result in
[2] disciplinary action; isn't that right?
[3] A: That is correct.
[4] Q: Is that consistent with your
[5] understanding of the policy, as well?
[6] A: Yeah, I guess so.
[7] Q: The policy also says that employees are
[8] not allowed to work off the clock; isn't that
[9] right?
[10] A: That is correct.
[11] Q: And that all time worked including
[12] overtime must be accurately recorded for the week
[13] in which it was performed; is that right?
[14] A: That's correct.
[15] Q: Is that consistent with your
[16] understanding of the company's policy on overtime?
[17] A: Yes.
[18] Q: Did you comply with the requirements of
[19] this policy?
[20] A: I did not.
[21] Q: What requirements did you fail to comply
[22] with?
[23] A: No. 1, I didn't ask to work overtime.
[24] No. 2, I didn't tell anybody or let anybody know or
[25] drop an E-mail when I did work overtime.

[1] worked. Was there ever a time when you recorded
[2] more time than you actually worked?
[3] A: No.
[4] Q: Is it possible that you ever recorded
[5] more time than you actually worked?
[6] A: No.
[7] Q: Is it possible that you ever recorded
[8] more time than you were actually on site?
[9] A: No. Rephrase the question for me,
[10] please, if you could or reask it.
[11] Q: Was there ever a time when you would
[12] have recorded more time worked than you were
[13] actually at the site doing work?
[14] A: No.
[15] Q: Are you certain?
[16] A: I'm certain.
[17] Q: Are you aware of any employees ever
[18] recording more time than they actually worked?
[19] A: I'm not aware of any, no.
[20] Q: Would it be possible to do so?
[21] A: I'm sure it's possible. I'm not aware
[22] of anything.
[23] Q: Would it violate company policy?
[24] A: Absolutely, I would think so.
[25] MR. DOCKSTADER: That's all for now.

[1] at the Nampa facility, what were you referring to?
[2] A: We had a training course in Nampa. We
[3] had a tour of the facility in Nampa.
[4] Q: Anything else?
[5] A: We had sales meetings in Nampa.
[6] Q: Anything else?
[7] A: Not that I can recall.
[8] Q: None of your supervisors ever told you
[9] work off the clock, did they?
[10] A: No.
[11] Q: Is your testimony still the case that
[12] none of your supervisors should have had any reason
[13] to believe that you were working off the clock?
[14] A: Other than seeing me there, no.
[15] Q: But there's no reason why they wouldn't
[16] expect you to record your time accurately, is
[17] there?
[18] A: Say that for me again, please.
[19] Q: There's no reason why they wouldn't
[20] expect you to record your time accurately, is
[21] there?
[22] A: I want to make sure that I understand
[23] the question. You're asking me if the supervisor's
[24] aware that I wasn't recording my time accurately;
[25] is that correct?

[1] MR. HUNTLEY: I have a couple questions.
[2] EXAMINATION
[3] BY MR. HUNTLEY:
[4] Q: Did you ever attend any work function at
[5] the Nampa facility?
[6] A: Yes.
[7] Q: Would that have been during your work
[8] hours?
[9] A: Not always.
[10] Q: If I understand your testimony pursuant
[11] to Mr. Dockstader's questions, you worked off the
[12] clock for every one of your supervisors?
[13] A: That is correct.
[14] Q: Can you think of any way that any one of
[15] those supervisors could have determined that you
[16] were working off the clock?
[17] A: Phone records, security badge, or if
[18] they would have asked me.
[19] MR. HUNTLEY: I don't have any other
[20] questions.
[21] FURTHER EXAMINATION
[22] BY MR. DOCKSTADER:
[23] Q: Mr. Ell, when Mr. Huntley asked you
[24] whether or not you ever attended any work function
[25]

[1] Q: I'd like an answer I guess to the
[2] question that I asked.
[3] A: Can you ask it again, please.
[4] Q: I'll ask the court reporter to read the
[5] question to you again.
[6] (Record read.)
[7] THE WITNESS: No.
[8] MR. DOCKSTADER: No other questions.
[9] (Deposition concluded at 1:22 p.m.)
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Exhibit No. I

1 where it says, "Time is recorded by accessing timesheet at
2 the VAX prompt and entering total daily hours worked"?

3 A. Yes, I see that.

4 Q. And you also see that the policy requires
5 hourly employees to accurately record the time they begin
6 and end their work and also the beginning and ending of any
7 meal period?

8 A. I see that on the sheet. However, in the
9 commercial sales side we were not to input those hours.

10 Q. And do you see paragraph C where it says, "In
11 the event that there is an error in the amount of pay,
12 nonexempt employees should promptly bring the discrepancy to
13 the attention of their supervisor so that corrections can be
14 made as quickly as possible"?

15 A. Yes.

16 Q. And you see the last paragraph where it says,
17 "For additional information, contact the human resources
18 (compensation) department"?

19 MR. THOMAS: Object to the form of the
20 question.

21 A. I see that.

22 BY MR. TOLLEFSON:

23 Q. You're telling me that you did not comply
24 with the requirements of this policy?

25 A. I was not allowed to.

1 Donna Mertig.

2 BY MR. TOLLEFSON:

3 Q. And do you see at the bottom, paragraph F
4 says, "For additional information, contact the payroll
5 department or the human resources department"?

6 MR. THOMAS: Object to the form of the
7 question.

8 A. I see that on this sheet, yes.

9 BY MR. TOLLEFSON:

10 Q. And do you see in paragraph A where it says
11 about the third or fourth sentence, "No work should be
12 performed off the clock"?

13 MR. THOMAS: Object to the form of the
14 question.

15 A. I see that on this sheet.

16 BY MR. TOLLEFSON:

17 Q. Do you have an understanding of what the term
18 "Off the clock" means?

19 A. Yes.

20 Q. What's your understanding?

21 A. Not working overtime that's not recorded.

22 Q. The next sentence says, "All time worked must
23 be recorded."

24 MR. THOMAS: Object to the form of the
25 question.

1 Q. I'm going to hand you what's been marked as
2 Defendant's Exhibit No. 27. This is a one-page document,
3 M2299. I'll represent to you this is a page from a revised
4 version of the employment policy manual. Have you seen this
5 document before?

6 A. I don't recall this.

7 Q. Did you tell me that on some occasions you
8 did look at some of the benefits or policies on the InfoNet?

9 A. Yes.

10 Q. Do you remember how it appeared on your
11 screen, with a similar format with indented paragraphs, do
12 you remember?

13 A. I don't recall how it looked on the screen.

14 Q. Do you see Exhibit No. 27 says the purpose is
15 to record accurate recording for all nonexempt hourly
16 employees?

17 A. I see that on this sheet.

18 Q. The last sentence of paragraph A, do you see
19 where it says, "Time is recorded by accessing
20 me@micronpc.com via the InfoNet and confirming or modifying
21 total daily hours worked on the timesheet"?

22 MR. THOMAS: Object to the form of the
23 question.

24 A. I see that. However, in commercial sales we
25 did not do this. We were told that all hours were input by

1 A. I see that, yes.

2 BY MR. TOLLEFSON:

3 Q. And again the first sentence of paragraph A
4 says, "Nonexempt employees are expected to accurately record
5 all time worked, including the time they begin and end their
6 work, as well as the beginning and ending time of each
7 meal." Do you see that?

8 MR. THOMAS: Object to the form of the
9 question.

10 A. Yes, I see that. However, in commercial
11 sales we were not --

12 BY MR. TOLLEFSON:

13 Q. My question is did you see that? And you're
14 telling me you did not comply with the policy because you
15 were told that you could not input your own hours?

16 MR. THOMAS: Object to the form of the
17 question.

18 A. We were not allowed to input our hours. We
19 were told they were to do it.

20 BY MR. TOLLEFSON:

21 Q. You told me you sent e-mails to Ms. Mertig?

22 A. Yes.

23 Q. Is that M-u-r-t-i-g?

24 A. I believe it was M-e-r-t-i-g.

25 Q. Okay. Thank you. And were the e-mails sent

1 daily or weekly?

2 A. Weekly.

3 Q. And what would the e-mails say?

4 A. She would want you to state the hours.

5 However, the supervisors would go around and say no overtime
6 was being paid. However, the e-mails I would note on an
7 extra line that I -- you know, that there were additional
8 hours. And even on some trips to Boise, Idaho for business
9 she inputted and recorded whatever the hours were, not
10 complete times.

11 Q. So let's kind of break your answer down a
12 little bit. She said that the e-mails you were supposed to
13 state the hours that you worked for the week, right?

14 A. Yes. They would state that you had to work
15 the 40 hours. And at times they would say that you could
16 input additional overtime. The max was usually 45 hours
17 that they would accept on that.

18 Q. Now, you keep referring to they. Who are you
19 referring to?

20 A. Management.

21 Q. Your supervisor?

22 A. Supervisors, yes.

23 Q. This period from -- you're talking in
24 commercial sales from February of 1997 to August of 2000 did
25 you have different supervisors?

1 Q. So on the e-mails you did not actually set
2 forth that you arrived at whatever time and left, you just
3 said --

4 A. No.

5 Q. It would be just total hours worked per day?

6 A. According to their direction, yes.

7 Q. And then you were mentioning that sometimes
8 the supervisors would go around and say no overtime is being
9 paid. Are you talking about the supervisors would --
10 supervisors, you're referring to Mr. Severson or Mr. Hibbs'?

11 A. And others that were there.

12 Q. What do you mean others?

13 A. There were a couple other supervisors, Rick
14 VanOrnum and Lori Chitwood and one more, I believe.

15 Q. Those weren't your supervisors?

16 A. No.

17 Q. The other supervisors in the commercial --

18 A. Well, yes. Commercial and small business.

19 Q. Ms. Mertig, was she the administrative
20 assistant to more than one supervisor?

21 A. She was the administrative assistant to the
22 -- I guess you would call him the general manager in
23 Minnesota that reported to the managers in Idaho.

24 Q. And who is the general manager you're
25 referring to?

1 A. I believe I had two, Jonathan Hibbs and Matt
2 Severson.

3 Q. Do you recall when Jonathan Hibbs became your
4 supervisor?

5 A. When I entered commercial sales.

6 Q. Okay. In February of '97?

7 A. Yes.

8 Q. Do you recall when Mr. -- I'm sorry?

9 A. Severson.

10 Q. -- Severson became your supervisor?

11 A. I believe it was February of 2000.

12 Q. And he remained your supervisor until you
13 left in August of 2000?

14 A. Yes.

15 Q. And can you tell us how Severson is spelled?

16 A. S-e-v-e-r-s-o-n, I believe.

17 Q. And you said the e-mails were sent weekly.

18 What day of the week would you typically send these e-mails
19 to Ms. Mertig?

20 A. I believe she sent the e-mail and told us to
21 respond and I believe that was on Fridays.

22 Q. And you entered the time you worked from
23 Monday through Friday?

24 A. You would just put Monday, eight, Tuesday,
25 eight or whatever.

1 A. At the latter part it was Jonathan Hibbs.
2 And previous to his promotion it was Karl Petters.

3 Q. Is it P-c-t-t-e-r-s?

4 A. I believe so, yes.

5 MR. THOMAS: Do you want to take a break?

6 MR. TOLLEFSON: Yeah, that's not a bad
7 idea. Let's go off the record.

8 (At this time a brief recess was taken.)

9 BY MR. TOLLEFSON:

10 Q. Before the break I was asking you some
11 questions about -- you said that sometimes other
12 supervisors, besides the people that were supervising you,
13 would go around and tell people in the commercial group that
14 no overtime was being paid, is that correct?

15 A. Yes.

16 Q. Was this, the statements from the other
17 supervisors that no overtime was being paid, was that during
18 meetings or was that just informally?

19 A. Informally on the floor.

20 Q. Would they just tell that to you or would
21 they be talking to your whole team?

22 A. They would be speaking loudly to everyone.
23 And I believe it was mentioned at some meetings.

24 Q. Did they always use those words, "No overtime
25 is being paid" or did they say "No overtime is approved," do

1 you remember?

2 A. I believe similar or something to those
3 effect on those statements.

4 Q. If someone said no overtime, is it approved,
5 is that different to you than someone saying no overtime is
6 being paid?

7 A. It's the same.

8 Q. How about did any of the supervisors ever say
9 no overtime without prior approval?

10 A. Yes.

11 Q. And is that different than no overtime
12 approved?

13 A. They would state both.

14 Q. Okay. Both at --

15 A. At different --

16 Q. At different times?

17 A. Yes.

18 Q. Okay. How often did the statements from the
19 supervisors on overtime, how often did they change?

20 A. It was rather consistent. The majority of
21 the time was there's no overtime to be paid past maybe two
22 to five hours, upon approval would they accept those.

23 Q. Okay. When you were saying before about no
24 overtime allowed or no overtime is being paid, you're
25 referring to instances where you could work some overtime if

1 Q. Do you remember how many trips you took to
2 Boise?

3 A. I believe at least three.

4 Q. So you don't think that you were paid for all
5 the time that you worked during those trips to Boise?

6 A. Considering the trips were on weekends and
7 travel time, no.

8 Q. And this other statement, "On the e-mails I
9 would note on an extra line that there were additional
10 hours," are you talking about the Boise trips or is that
11 something else?

12 A. That was in addition to the Boise trips, even
13 during the regular working periods.

14 Q. Okay. So putting aside the Boise trips,
15 during the regular work periods, what do you mean by you
16 would note on an extra line that there were additional extra
17 hours?

18 A. I would note on an extra line stating I came
19 in early, left late and did not take lunch.

20 Q. So the e-mails you would have for each day of
21 the week you would have the total hours that you recorded
22 for that day, but then you would also have an extra line on
23 some of the e-mails where you say that you came in early and
24 worked through lunch? I'm trying to understand what the
25 extra line would say.

1 you got prior approval but only a certain amount?

2 MR. THOMAS: Object to the form of the
3 question.

4 A. Technically you could work overtime upon
5 approval. However, to achieve the quota that you had to
6 achieve, you had to work overtime.

7 BY MR. TOLLEFSON:

8 Q. Do you know if there were people that were
9 able to achieve their quotas without working overtime?

10 A. I don't believe so. There might have been,
11 but most everyone put some sort of overtime in.

12 Q. Let's go back to these e-mails that we were
13 talking about before that you sent to Ms. Mertig. Earlier
14 you were saying the e-mails you would note on an extra line
15 that there were additional hours and even on some trips to
16 Boise, Idaho for business she inputted and recorded whatever
17 the hours were and not to put times. Can you explain those
18 statements a little bit for me?

19 A. For instance, on the trips to Idaho we would
20 generally have to travel on the weekends. And she would
21 actually clearly state that you were only paid for X number
22 of hours at that point. And that was all that was allowed.

23 Q. When you say X number, do you remember, was
24 it more than eight or less than eight?

25 A. I don't recall exactly.

1 A. It wasn't a daily e-mail. It was one e-mail.

2 And I would like on a little note state, you know, I was in
3 early or late and did not take lunch, you know, for the
4 week.

5 Q. But you didn't say that the e-mail didn't
6 include all of your time that you had worked for that week?

7 A. It did not include the correct time because
8 they said that only 40 hours or at the maximum of 45 hours
9 were going to be inputted.

10 Q. I'm trying to understand what the -- if it
11 just said I came in early and worked through lunch, how does
12 the person that receives the e-mail know whether that meant
13 that you didn't record all the time that you worked?

14 A. For instance, if the hours that they were
15 going to record was only 42, coming in early and working
16 through lunch and working late, it was easily a ten to
17 12-hour overtime easily that was not recorded.

18 Q. But if it wouldn't say come in early and
19 leave late, how are they supposed to know that it didn't
20 mean you came in five minutes early or left ten minutes
21 late? Would it specifically say what times you came and
22 left?

23 A. I would put, you know, "Donna, I came in at
24 7:00 a.m. and left at 7:00 p.m. and had no lunch." And for
25 the trips on Boise, since it was on weekends that we took

1 those trips, you know, I would say, okay, travel time. And
2 you know how long it takes to Boise. In addition to that,
3 that it was, you know -- we were gone for these trips X
4 number of hours. And many of the times those Boise trips,
5 we had to be ready by 6:00, 6:30 in the morning and did not
6 return at night until after 10:00 or 11:00. However, she
7 recorded eight hours.

8 Q. And did Ms. Mertig ever respond to the
9 additional comments or lines that you put on your e-mails
10 about that you came in early or left late or worked through
11 lunch?

12 A. Not by e-mail.

13 Q. She would come and speak to you personally?

14 A. She would come and say, well, no overtime.

15 Q. Okay. And that's Ms. Mertig who would come
16 and say that?

17 A. And/or supervisors.

18 Q. And when you say supervisors in that context,
19 would that be Mr. Hibbs or Mr. Severson?

20 A. Both and all involved.

21 Q. And did you ever print or save any of these
22 e-mails that you sent to Ms. Mertig?

23 A. No.

24 Q. Do you know if Ms. Mertig printed or saved
25 any of the e-mails?

1 A. My territory.

2 Q. Do you know how many teams there were in
3 Minnesota, how many commercial sales teams?

4 A. That varied in number according to time
5 period.

6 Q. Do you have any knowledge of how the other
7 teams kept their time for purposes of being compensated?

8 A. In the commercial sales it was kept via Donna
9 Mertig's input.

10 Q. Do you know whether the other sales teams in
11 commercial also sent e-mails to Donna Mertig?

12 A. I believe so, yes.

13 Q. I'll represent to you that there's been
14 testimony in this case that one of the other commercial
15 sales teams actually entered that time in the Micron system
16 and then submitted it for approval as opposed to sending
17 e-mails. Do you have any knowledge of that?

18 A. Was that the small business group?

19 Q. I'm not sure.

20 A. Commercial sales in Minnesota was all
21 inputted by Donna Mertig via instructions of Idaho.

22 Q. How do you know it was via instructions by
23 Idaho?

24 A. Management.

25 Q. Did someone tell you that Ms. Mertig was

1 A. I don't know.

2 Q. You were also referring to the commercial
3 group. Were you on a specific team within the commercial
4 group?

5 A. Yes. I was in the eastern region team. I
6 don't recall the exact name.

7 Q. Was that the team you were on for that whole
8 period from February of '97 to August of 2000?

9 A. The team changed slightly as did my
10 territories change during those time periods.

11 Q. Well, how many people were on your team? Did
12 that vary as well?

13 A. Yes, it varied.

14 Q. Can you give me a sense from five to ten
15 or --

16 A. I believe when I started in commercial sales
17 in approximately February of 1997 I believe there were 12 at
18 that point in time and then I was given the northeast
19 territory. And then there were changes of teams
20 accordingly. And it probably varied probably between seven
21 and ten thereafter. And then the territory changed down to
22 two area codes by the end of my time period at Micron.

23 Q. When you say the territory changed down to
24 two area codes, was that your territory or the team's
25 territory?

1 inputting everyone's time?

2 A. Yes. And she stated it.

3 Q. Who told you that?

4 A. The supervisors and other employees. It was
5 a widely known fact.

6 Q. When you said management, was there anyone
7 else besides supervisors that told you that Ms. Mertig was
8 to keep track of the commercial group's time?

9 A. She was the one to input it. It was just a
10 known fact. Otherwise, the time was not put in and you
11 would not get your paycheck.

12 Q. My question was, was there anyone else
13 besides supervisors who told you that Ms. Mertig was the one
14 who was supposed to keep track of the time?

15 A. Everyone in commercial sales knew that, yes,
16 in Minnesota.

17 Q. My question was was there anyone else besides
18 supervisors -- let's say in management. I'll ask a
19 different question. Was there anyone else besides the
20 supervisors or other coworkers that told you that Ms. Mertig
21 was supposed to keep track of the time?

22 A. Coworkers.

23 Q. No one else besides coworkers and supervisors
24 that told you Ms. Mertig was supposed to keep track of the
25 time?

1 agenda page attached to it.

2 Q. Who is Sara Miller?

3 A. Another inside sales rep.

4 Q. Your name appears at the top document. Did
5 you print this?

6 A. This was my copy of the e-mail.

7 Q. Page 2 is the agenda from the roundtable
8 meeting?

9 A. This was the addenda from the Word document
10 that Sara sent to HR.

11 Q. Looking at the agenda, is there anything
12 listed in the agenda that references a discussion of not
13 being compensated for overtime pay?

14 A. I believe on 1B questioning the year-to-date
15 income being misleading was referencing this.

16 Q. Do you remember did you attend this
17 roundtable meeting?

18 A. Yes.

19 Q. Did it take place on November 23, 1999?

20 A. No. I believe that was the date of the Word
21 document. It may have taken place November 23. I can't
22 remember specifically.

23 Q. But you do remember attending this particular
24 meeting?

25 A. Yes.

1 Q. I'm sorry, you questioned if what were
2 accurately recorded in your commission payment?

3 A. If we received correct commissions and then
4 if we received the correct commission incremental increase
5 in the overtime also.

6 Q. Okay. I see. And of those issues you just
7 discussed, did Jennifer have any response to those?

8 A. No. The only response was to set up
9 additional meetings. And then I believe in January she went
10 on maternity leave. There was no real finalization on any
11 of this.

12 Q. Jennifer Ebeling went on maternity leave?

13 A. Yes.

14 Q. And did she return to the company after her
15 maternity leave?

16 A. She returned, but to a different position.
17 And I think she moved to Wisconsin. I'm not sure exactly
18 how that worked.

19 Q. Okay. And you think she went on maternity
20 leave in January of 2000?

21 A. It was around that time. Maybe -- she had a
22 baby relatively close after these meetings.

23 Q. Okay.

24 A. And Deborah Meinders left the company very
25 closely thereafter.

1 Q. And at this meeting was this issue discussed
2 that people were not being paid for all the overtime they
3 were working?

4 A. Yes, there were questions on the hourly rates
5 and then the targeted incentives and how they were
6 calculated, as noted in the agenda.

7 Q. How does targeted incentives relate to the
8 fact that people claim they weren't being paid for the
9 overtime they were working?

10 A. We understood that upon receiving
11 commissions, if you achieved a certain percentage, then your
12 hourly rate had an incremental increase also in addition to
13 the overtime -- well, the overtime had the incremental
14 increase.

15 Q. That if you achieved a certain commission you
16 would make more money in overtime?

17 A. Yes.

18 Q. Okay. Do you remember specifically what was
19 said at this meeting about people claiming that they weren't
20 getting paid for all the overtime they were working?

21 A. I don't remember specifically. We did note
22 that the majority of the sales reps had to work overtime and
23 we were not being allowed to place more than 45 hours for
24 the overtime. And we also questioned if those were
25 accurately recorded in our commission payment.

1 Q. And who was Deborah Meinders?

2 A. She was in HR, also. I don't remember her
3 exact . . .

4 Q. Okay. Jane Johnson, who was that?

5 A. The names following Jane Johnson, myself,
6 Marilyn Craig, Ginger North, Julie Gardner, Linda Lee,
7 Janice Cronin, Ann Nasset, Sonja Simpson, Michelle Preston,
8 we were the female sales reps in Minnesota.

9 Q. And the names you just gave me, were you all
10 commercial sales representatives?

11 A. Yes.

12 Q. And you're all inside sales representatives?

13 A. Yes.

14 Q. Do you have different supervisors?

15 A. Yes.

16 Q. You said there were subsequent roundtables.
17 You recall there was a roundtable with Mr. Sid Ferrales
18 attending?

19 A. Yes, he had come into town several times.

20 Q. Do you remember more than one roundtable with
21 Mr. Ferrales?

22 A. Yes.

23 Q. When we use roundtable, are we talking about
24 with this same group of female inside commercial sales
25 representatives?

Exhibit No. J

[1] A: Yes.
[2] Q: And the policy also requires that all
[3] time worked, including overtime, must be accurately
[4] recorded for the week in which it is performed.
[5] Isn't that right?
[6] A: Yes.
[7] Q: Did you comply with the requirements of
[8] this policy?
[9] A: The written policy, no.
[10] Q: Did you comply with the requirements of
[11] Exhibit *017, the company's overtime policy?
[12] A: No.
[13] Q: In what aspects did you not comply with
[14] this policy?
[15] A: I did not record my overtime and did not
[16] get prior approval for overtime.
[17] Q: Are there any other aspects in which you
[18] did not comply with this policy?
[19] A: Not that I can see.
[20] Q: You've mentioned two things in terms of
[21] your noncompliance with this policy. One is that
[22] you did not record your overtime. Is that your
[23] testimony?
[24] A: Yes.
[25] Q: The other is that you did not get prior

[1] question?
[2] MR. DOCKSTADER: Would you read back the last
[3] question, please.
[4] (Record read.)
[5] THE WITNESS: Yes.
[6] Q: BY MR. DOCKSTADER: Specifically we've
[7] talked about your giving a range or an average, an
[8] estimate of hours that you think you didn't record.
[9] Is that right?
[10] A: Yes.
[11] Q: And I think your testimony was two to
[12] three hours — is that right? — per week on a
[13] weekly basis?
[14] MR. WILLIAMS: Object to the form.
[15] THE WITNESS: Two to three hours, no.
[16] Q: BY MR. DOCKSTADER: Now let's talk about
[17] — rather than the amount of hours, can you tell me
[18] when it is that you did not comply with the policy
[19] by failing to record all of your overtime hours?
[20] A: When?
[21] Q: Yes, when.
[22] MR. WILLIAMS: Object to the form. Go ahead.
[23] THE WITNESS: I would say probably within the
[24] first month I started working there.
[25] Q: BY MR. DOCKSTADER: Why do you say that?

[1] approval for overtime. Is that right?
[2] A: Yes.
[3] Q: With respect to the first of these, that
[4] you didn't record overtime, are you saying you
[5] didn't record any of your overtime?
[6] A: No.
[7] Q: What are you saying?
[8] A: I'm saying that I didn't record all of
[9] my overtime.
[10] Q: So there were times when did you comply
[11] with the policy by recording overtime?
[12] A: Yes.
[13] Q: And there were times when you did not
[14] comply with the policy when you elected not to put
[15] down some of your overtime. Is that right?
[16] A: Yes.
[17] Q: Is that right?
[18] A: Yes.
[19] Q: And we talked a little bit earlier in
[20] your deposition about the times when you did not
[21] record all of your overtime. Do you recall that?
[22] MR. WILLIAMS: Object to the form based on
[23] "little bit."
[24] Q: BY MR. DOCKSTADER: Go ahead.
[25] A: I'm sorry, could you repeat the

[1] A: Because I started working overtime right
[2] away. I don't know. It's — I would imagine it
[3] would be in that time frame. I don't recall
[4] specifically.
[5] Q: There were also times during your
[6] employment from July 2000 through May 2001 that you
[7] did record all of your overtime. Isn't that right?
[8] A: Yes.
[9] Q: Do you know when those times were?
[10] A: I do not.
[11] Q: How often did you not record all of your
[12] overtime hours?
[13] A: It was sporadic.
[14] Q: And when you say "sporadic," what do you
[15] mean?
[16] A: It was never a set time frame. I didn't
[17] record it one week and not record it another, or,
[18] you know, every odd week of the month did it and
[19] didn't — it was sporadic.
[20] Q: What was the reason that it was
[21] sporadic?
[22] A: Sometimes it was that I didn't have very
[23] much overtime, like I worked just 42, 43 hours,
[24] something like that. Sometimes it was that I
[25] didn't work any overtime. Obviously that would

[1] team meeting in which other members of your group
[2] were present. Isn't that right?

[3] **A:** Yes.

[4] **Q:** And you don't have any recollection, as
[5] I remember from your earlier testimony, as to when
[6] that meeting occurred. Is that right?

[7] **A:** I do not.

[8] **Q:** And if either Mr. Nava or other
[9] representatives who were in attendance at that
[10] sales team meeting have no recollection of Mr. Nava
[11] ever making that statement warning not to record
[12] more than 47 hours, would you have any reason to
[13] believe they were wrong?

[14] **A:** Yes. I was there.

[15] **Q:** Is it possible that you misunderstood
[16] what Mr. Nava said to you?

[17] **MR. WILLIAMS:** Object to the form.

[18] **THE WITNESS:** He didn't say it to me. He
[19] said it to the whole room and, no.

[20] **Q:** BY MR. DOCKSTADER: What is your factual
[21] basis or personal knowledge with respect to the
[22] allegation in the last sentence of paragraph 22,
[23] that sales representatives have consistently worked
[24] many hours in excess of 47 in a workweek, and
[25] Micron failed to pay them for all hours worked.

[1] What's your factual basis for that allegation?

[2] **A:** Conversations with other people stating
[3] they hadn't written down their hours.

[4] **Q:** You recorded more than 47 hours on many
[5] occasions, did you not?

[6] **MR. WILLIAMS:** Object to the form.

[7] **THE WITNESS:** On several occasions, yes.

[8] **Q:** BY MR. DOCKSTADER: In fact, we've looked
[9] at a number of your timesheets in which you did
[10] record far in excess of 47 hours, did you not?

[11] **MR. WILLIAMS:** Object to the form.

[12] **THE WITNESS:** Yes.

[13] **Q:** BY MR. DOCKSTADER: And you were paid
[14] for that time that you recorded in excess of 47
[15] hours, were you not?

[16] **A:** I believe I was compensated for part of
[17] it, yes.

[18] **Q:** What part were you not compensated for?

[19] **A:** I don't think my commissions were added
[20] back into it as my base overtime.

[21] **Q:** And that's your belief?

[22] **A:** Yes.

[23] **Q:** Have you ever checked any information to
[24] see whether your believe is correct?

[25] **A:** In my — I've checked to see — I got

[1] the e-mail from — I can't remember her name —
[2] compensation that indicated that they were doing it
[3] incorrectly.

[4] **Q:** What e-mail is that?

[5] **A:** There was an e-mail — like I said, I
[6] don't remember her name in compensation — that I
[7] read — it wasn't addressed to me — about how the
[8] calculation was done.

[9] **Q:** That was an e-mail that came out after
[10] the Gores transaction. Right?

[11] **A:** I don't recall.

[12] **Q:** What did you do with that e-mail?

[13] **A:** I didn't have the e-mail. I read it.

[14] **Q:** You read it. And did it say in your
[15] recollection that the calculation was incorrect, or
[16] did it just illustrate how the calculation was
[17] done?

[18] **A:** Illustrated it.

[19] **Q:** And you believe that the illustration
[20] was incorrect?

[21] **A:** I believe the illustration was correct.

[22] I believe they were doing it incorrectly.

[23] **Q:** What is the basis for that belief?

[24] **A:** Conversations that I've had with other
[25] people.

[1] **Q:** Who?

[2] **A:** Tawni Weaver, and reading the
[3] calculations myself. It just looks like they
[4] didn't add back in all of that time for your
[5] commission back into the base hourly rate.

[6] **Q:** If they, in fact, did do the calculation
[7] correct, would you have any basis to dispute that
[8] issue any longer?

[9] **MR. WILLIAMS:** Object to the form.

[10] **THE WITNESS:** If they did add it back into
[11] it? I think they probably did add part of it back
[12] into it. I don't think they added it back in to
[13] the time and a half.

[14] **Q:** BY MR. DOCKSTADER: With respect to
[15] paragraph 23, what factual basis or personal
[16] knowledge do you have that management at Defendant
[17] Micron discourages Plaintiffs and other similarly
[18] situated sales representatives from accurately
[19] recording their time spent working for Micron by
[20] verbally reprimanding employees who may have
[21] recorded too much overtime?

[22] **A:** There were times when Jaime wasn't
[23] thrilled with what I had written down and told me
[24] so.

[25] **Q:** Were you verbally reprimanded for

[1] recording too much overtime?
[2] A: Yes.
[3] Q: When?
[4] A: I don't know the specific dates.
[5] Q: Did you get paid for the overtime?
[6] A: Yes.
[7] Q: And what was the basis for Mr. Nava
[8] reprimanding you for recording too much overtime?
[9] A: That I had worked too much overtime in
[10] his opinion.
[11] Q: During that period of time, were there
[12] limits on the amount of overtime that reps could
[13] work?
[14] A: I don't recall.
[15] Q: For what reason would he have to get
[16] upset with you if you were working too much
[17] overtime?
[18] A: Came out of his budget.
[19] Q: Is that what he told you?
[20] A: Yes.
[21] Q: On how many occasions did he tell you
[22] that you were working too much overtime?
[23] A: Well, particularly when I worked on the
[24] manufacturing floor. He was really not happy about
[25] that. He said specifically that comes out of our

[1] (Exhibit No. *-140 marked.)
[2] Q: BY MR. DOCKSTADER: I'm handing you
[3] what's been marked as Exhibit *-140. Do you
[4] recognize that to be a copy of your W-2 for the
[5] year 2000?
[6] A: Yes.
[7] Q: And what company is reflected on that?
[8] A: Micron PC, Inc.
[9] Q: Do you have any reason to believe that
[10] any other company employed you during that period
[11] of time other than what's reflected on your W-2?
[12] MR. WILLIAMS: Object to the form, calls for a
[13] legal conclusion. Go ahead again. Asked and
[14] answered.
[15] THE WITNESS: Micron Electronics is the
[16] overall company.
[17] Q: BY MR. DOCKSTADER: Is Micron
[18] Electronics on the W-2?
[19] A: No.
[20] Q: So you've indicated that Mr. Nava got
[21] upset with you for recording too much overtime on
[22] how many occasions? Did you say twice?
[23] A: At least twice.
[24] Q: And one time was when you went over and
[25] worked in manufacturing. Right?

[1] budget.
[2] Q: And you were over working for a
[3] different department, in fact, a different company,
[4] Micron Electronics?
[5] A: No, it was the same company.
[6] Q: Micron PC, Inc., was you employer, was
[7] it not?
[8] MR. WILLIAMS: Object to the form.
[9] THE WITNESS: Micron Electronics was my
[10] company. Micron in general. It was just Micron.
[11] Q: BY MR. DOCKSTADER: Who paid your check?
[12] MR. WILLIAMS: Asked and answered.
[13] THE WITNESS: Micron.
[14] Q: BY MR. DOCKSTADER: Micron PC, Inc.?
[15] A: Micron.
[16] Q: Should we take a look at your W-2?
[17] A: We can. It's all the same company to
[18] me.
[19] Q: Which company do you think it is on your
[20] W-2?
[21] A: It doesn't matter. It was all the same
[22] company to me.
[23] Q: Which company do you think is on your
[24] W-2?
[25] A: I don't know.

[1] A: Yes.
[2] Q: What was the other time?
[3] A: I don't recall.
[4] Q: Do you remember when it was?
[5] A: It was earlier on.
[6] Q: Did you suffer any consequences from him
[7] mentioning this, in terms of a cut in pay, or any
[8] disciplinary action whatsoever?
[9] A: No.
[10] Q: Did you, in fact, record that time and
[11] get paid for it?
[12] MR. WILLIAMS: Object to the form.
[13] THE WITNESS: It had already been recorded.
[14] Q: BY MR. DOCKSTADER: And paid for.
[15] Correct?
[16] A: Yes.
[17] Q: Could you take a look at paragraph 24.
[18] What is your knowledge and personal experience with
[19] respect to the factual basis for the allegation in
[20] the first sentence?
[21] A: My interview?
[22] Q: That Micron encourages off the clock
[23] work by leading sales representatives to believe
[24] that the sales representative position is the
[25] beginning of a career path that would lead to a

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1 clock?
 2 MR. WILLIAMS: Object to the form.
 3 THE WITNESS: I'm not aware of any written -- any
 4 documents.
 5 Q. BY MR. DOCKSTADER: Do you have knowledge of
 6 any facts or actual circumstance that occurred that would
 7 support the allegation in the complaint that Micron PC
 8 unlawfully induced you to work off the clock?
 9 MR. WILLIAMS: Object to the form. Go ahead.
 10 THE WITNESS: Did you ask if I have any records or
 11 facts --
 12 Q. BY MR. DOCKSTADER: I asked you if you had
 13 any knowledge of facts or factual circumstances that
 14 would support an allegation that Micron PC unlawfully
 15 induced you to work off the clock.
 16 MR. WILLIAMS: Object to the form. Go ahead.
 17 THE WITNESS: Well, I don't have documents or
 18 anything, but I have memory.
 19 Q. BY MR. DOCKSTADER: What is your memory of
 20 any facts or circumstances that would support an
 21 allegation that you were unlawfully induced to work off
 22 the clock?
 23 MR. WILLIAMS: Object to the form. Go ahead.
 24 THE WITNESS: I don't know if it was unlawful or
 25 not, and I don't think they said you had to do it, but

1 that I wouldn't get in trouble for it.
 2 Q. That meeting with Jaime Nava, did that occur
 3 in the spring of 2001?
 4 A. I don't remember. It was an employee
 5 meeting, just his team.
 6 Q. Was Kim Smith at that meeting?
 7 A. I believe she was. That was a long time ago.
 8 Q. Before that meeting, had you more often than
 9 not recorded the overtime that you worked?
 10 MR. WILLIAMS: Object to the form. Go ahead.
 11 THE WITNESS: I don't remember.
 12 Q. BY MR. DOCKSTADER: Did you ever make a
 13 request for approval to work overtime and have it denied
 14 by management?
 15 A. Not that I can remember.
 16 Q. Are you aware of any manager ever denying a
 17 request to work overtime?
 18 A. I don't remember because, honestly, I don't
 19 remember requesting overtime. It was just -- they just
 20 allowed it.
 21 Q. Did you ever get disciplined for working too
 22 much overtime?
 23 A. There was a couple times I think I recorded
 24 47 hours or something, and they said, hey, you're only
 25 supposed to be at 45 or something.

1 they allowed it.
 2 Q. BY MR. DOCKSTADER: Allowed what?
 3 A. They allowed you to work extra time and not
 4 record it. I feel -- I think they were in the same boat
 5 I was, you know. Sell as many computers as we could, you
 6 know, for the company. But for me personally, so I could
 7 make commission.
 8 Q. Did anybody induce you to do that, to work
 9 off the clock?
 10 A. No, I mean, we had a meeting one time with
 11 Jaime Nava. He said you can only work four to five
 12 hours, something like that. And, you know, it seems like
 13 he said something about -- I don't remember exactly --
 14 but it was something like, you know, if you need to work
 15 a little extra to get things done, to get more computers
 16 sold, then that's okay.
 17 And so I think I pulled him aside later, and
 18 I think I said, I don't care about the overtime anyway
 19 'cause it's not that much money. There's more money in
 20 the commission, you know. And he says, basically he
 21 says, okay, but you know you can only put down 45 hours
 22 right now. We might get more later or something.
 23 Q. Did that induce you to work overtime off the
 24 clock?
 25 A. It made me feel more comfortable about it;

1 Q. Was that disciplinary action?
 2 A. No. They just told me verbally.
 3 Q. Were you ever disciplined for recording or
 4 working too much overtime?
 5 MR. WILLIAMS: Object to the form.
 6 THE WITNESS: There were times they told me only
 7 to work 45 hours, 5 hours overtime in a week.
 8 Q. BY MR. DOCKSTADER: Did you record or work
 9 more than five hours in a week?
 10 A. They allowed us to work more.
 11 Q. Did you actually record or work more than
 12 five hours at those times when they told you that?
 13 MR. WILLIAMS: Object to the form. Go ahead.
 14 THE WITNESS: I think there was one or two times,
 15 like I said originally, that I recorded, say, 47 hours or
 16 something. I think I always worked more.
 17 Q. BY MR. DOCKSTADER: And were you disciplined
 18 for working more?
 19 MR. WILLIAMS: Object to the form. Asked and
 20 answered. You can go ahead though.
 21 THE WITNESS: Okay. Are you asking if I was
 22 disciplined for working more hours or if I was
 23 disciplined for recording more hours?
 24 Q. BY MR. DOCKSTADER: Were you ever disciplined
 25 for recording or working too much overtime?

[1] A: Yes.
[2] Q: And how many people were in the group
[3] that you were in working for Mark Cox, do you
[4] remember?
[5] A: It fluctuated. I would say
[6] approximately eight.
[7] Q: Do you know who was Mark Cox's manager
[8] at that time?
[9] A: I don't recall the reporting structure,
[10] but I believe it was Dave Haworth.
[11] Q: And do you know the reporting structure
[12] up above Mr. Haworth at that time?
[13] A: Mr. Haworth's manager would have been
[14] Harry Heisler.
[15] Q: Above that?
[16] A: Harry Heisler would have reported to
[17] Joel Kocher.
[18] Q: This is a different reporting structure
[19] than the reporting structure you had been in with
[20] Micron Commercial. Isn't that right?
[21] A: Yes, definitely.
[22] Q: Different than the reporting structure
[23] you'd been in with Micron PC. Isn't that right?
[24] A: Yes.
[25] Q: And different from the reporting

[1] that right?
[2] A: Yeah, I worked overtime, but didn't get
[3] paid for it. That is right.
[4] Q: When you were on a salary?
[5] A: Yeah.
[6] Q: When you came back and worked for Micron
[7] in a sales position in '96, you were on an hourly
[8] basis plus commission. Isn't that right?
[9] A: That's right.
[10] Q: And during 1996 through 1999, did you
[11] work overtime?
[12] A: Yes.
[13] Q: And did you record the hours of overtime
[14] that you worked?
[15] A: I would say for the most part yes, but
[16] some hours were not recorded.
[17] Q: When you say some hours were not
[18] recorded, do you know how many?
[19] A: I'd have to sit for a while and think
[20] about that. I don't have an estimate on that.
[21] Q: Well, have you thought about it before I
[22] asked that question?
[23] A: Briefly.
[24] Q: And what have you thought about it so
[25] far?

[1] structure you had been in when you were working
[2] with Micron Computer and Edge Technology?
[3] A: Yes.
[4] MR. DOCKSTADER: We've been going about an
[5] hour. Let's take a quick break.
[6] (Recess.)
[7] Q: BY MR. DOCKSTADER: Mr. Kaufmann, when
[8] you worked in the material recovery division, you
[9] were paid on an hourly base. Isn't that right?
[10] A: Hourly and salary.
[11] Q: Hourly and then you became a supervisor
[12] and you went to salary. Is that right?
[13] A: Right.
[14] Q: And during the time that you were on an
[15] hourly basis, did you work overtime?
[16] A: Yes.
[17] Q: And did you record the hours of overtime
[18] that you worked?
[19] A: Yes.
[20] Q: And did you get paid for those overtime
[21] hours?
[22] A: Yes.
[23] Q: And obviously when you were on salary
[24] you didn't work -- well, you might have worked
[25] overtime, but you didn't get paid for overtime. Is

[1] A: I would say during the busier years for
[2] myself, which would be '97, '98, and '99, I
[3] probably -- I don't know when I started working at
[4] home, but I worked at home some as well. I would
[5] probably work off the clock between zero and five
[6] hours a week.
[7] Q: When you say off the clock, what do you
[8] mean?
[9] A: Hours that were not reported on my time
[10] sheet.
[11] Q: And when did you first start doing that?
[12] A: I don't have exact dates.
[13] Q: You didn't do it when you worked back
[14] through 1993 through '95. Isn't that right?
[15] A: No.
[16] Q: You started doing it sometime between
[17] 1996 through 1999. Is that right?
[18] A: Mm-hmm. Correct.
[19] Q: You said probably when you got busier in
[20] 1997, 1998, 1999. Is that right?
[21] A: Yes, yes.
[22] Q: What led you to start doing it in 1997?
[23] A: Inability to get all of your work done
[24] on an 8:00 to 5:00 day.
[25] Q: Did you report overtime hours during

[1] 1997?

[2] A: Some of them, yes.

[3] Q: At what point did you decide to not
[4] report hours?

[5] A: When I knew that Dominic may have —
[6] Mr. Casey may have difficulty getting those other
[7] hours approved.

[8] Q: And how did you know that?

[9] A: Just a general rule of thumb. Just
[10] verbal conversations with Mr. Casey.

[11] Q: Tell me about what verbal conversations
[12] you're referring to.

[13] A: You know, Mr. Casey would have a
[14] meeting, say, you know, "Up to 45 hours is fine,
[15] you know, five hours of overtime a week, but you
[16] guys need to work more than that, it's going to be
[17] on your own time."

[18] Q: And when did Mr. Casey tell you this?

[19] A: I don't have an exact date.

[20] Q: Do you know where it was when he told
[21] you this?

[22] A: No.

[23] Q: Do you know who was there?

[24] A: Varying people.

[25] Q: Who?

[1] A: It would have been other people on our
[2] team, and then they'd change from time to time,
[3] too.

[4] Q: Well, the specific — do you recall
[5] specifically what he said?

[6] A: No, just that that was the general
[7] policy of thumb.

[8] Q: What do you mean by general policy?

[9] A: If you wanted to work above and beyond
[10] that, you could. You just couldn't put it on your
[11] time sheet.

[12] Q: And who was present when Mr. Casey said
[13] this?

[14] A: Other team members, salespeople.

[15] Q: Who?

[16] A: I don't have all of their names.

[17] Q: Do you know if anyone else heard this
[18] comment?

[19] A: There would have been — yeah, it would
[20] have been other people in that meeting room.

[21] Q: Who? Do you know anyone specifically,
[22] to your knowledge, who would back up your memory?

[23] MR. WILLIAMS: Object to the form.

[24] THE WITNESS: I don't have — they would have
[25] that information better than I would of who was in

[1] those meetings.

[2] Q: BY MR. DOCKSTADER: Do you remember the
[3] purpose of the meeting?

[4] A: General sales meeting, weekly.

[5] Q: Was it at any particular sales meeting
[6] that you can recall this conversation?

[7] A: No.

[8] Q: Do you recall what year?

[9] A: No.

[10] Q: Do you recall what position you were in
[11] at the time?

[12] A: No, because I had several positions.

[13] Q: Do you recall what position Mr. Casey
[14] was in at the time?

[15] A: Supervisor.

[16] Q: Do you recall what sales group you were
[17] working for?

[18] A: He and I both worked under all those
[19] sales groups we went through earlier, so it would
[20] have been through each of those entities.

[21] Q: Do you know what work schedule you were
[22] working at the time?

[23] A: I started out with a flexible shift in
[24] '96, and when I was on a notebook I still had a
[25] flexible shift. I moved to more of a fixed shift

[1] when I was account developer, so later, '98, '99.
[2] I think maybe part of '97.

[3] Q: And do you know what position or shift
[4] you were working when this conversation took place?

[5] A: No. I personally worked 8:00 to 5:00.
[6] I don't know when it occurred.

[7] Q: Do you recall how long the conversation
[8] took?

[9] A: No.

[10] Q: Did you respond to this comment by
[11] Mr. Casey?

[12] A: No, because it wasn't out of the
[13] ordinary.

[14] Q: You didn't make any response?

[15] A: No.

[16] Q: Did anyone else make any response?

[17] A: No.

[18] Q: Do you recall, did this conversation
[19] take place once?

[20] A: It took place more than once, but I
[21] can't recall and how many times.

[22] Q: And on any of those other times can you
[23] recall where the conversation took place?

[24] A: No.

[25] Q: Can you recall at any of those other

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[1] other people who are involved in this lawsuit
[2] against Micron Electronics?

[3] A: Regarding this case, I have not.

[4] Q: Have you had any e-mail correspondence
[5] with Jeff Clevenger about this case?

[6] A: Yes, I have.

[7] Q: Were your attorneys or counsel involved
[8] in those e-mails?

[9] A: No.

[10] Q: Can you tell me a little bit about your
[11] e-mail correspondence with Jeff?

[12] A: When I first read the article in the
[13] Idaho Statesman, I pulled the link off of the
[14] Statesman web site and e-mailed it to him as a
[15] point of humor.

[16] Q: Any other e-mail communication with
[17] Mr. Clevenger about this case?

[18] A: I don't recall.

[19] Q: Any other e-mail communications with
[20] anyone else involved in this case aside from your
[21] counsel?

[22] A: I believe when I sent that first e-mail
[23] I believe I carbon copied Kevin Ingall, but I can't
[24] be certain.

[25] Q: When you worked at Micron, were you ever

[1] I'll let that one hang.

[2] THE WITNESS: I apologize. I really don't
[3] understand the question.

[4] Q: BY MR. TOLLEFSON: Sure. That's fine.

[5] And I'm not going to tout it was a model question.

[6] While you were a web sales rep, you said that you
[7] earned commissions on a monthly basis. Is that
[8] correct?

[9] A: Yes.

[10] Q: Were you ever told that any commissions
[11] that you earned in a given month would increase the
[12] amount of overtime you were paid if you had worked
[13] overtime during that same month?

[14] A: In those terms I don't recall any
[15] communication.

[16] Q: Do you have any other understanding
[17] about whether there was any relation between the
[18] commissions that you earned and the overtime that
[19] you were paid?

[20] A: Not that I can recall in this context if
[21] I'm understanding things correctly.

[22] Q: Micron's records show that for the month
[23] of November 1998 you earned \$513.92 in commissions.
[24] Would you have any reason to dispute that?

[25] MR. THOMAS: Object to the form of the

[1] told there was a component of your commission
[2] paycheck that also included additional overtime pay
[3] calculated based on your commissions?

[4] A: I don't understand.

[5] Q: Sure. Do you have any understanding as
[6] to whether you received any -- well, I'm sorry.
[7] Let me step back for a minute. What's your
[8] understanding of overtime pay?

[9] A: My understanding of overtime pay is any
[10] amount of hours worked above and beyond 40 in a
[11] given workweek.

[12] Q: And what's your understanding of -- is
[13] it your understanding that you would get time and a
[14] half for any hours above 40 in a given workweek?

[15] A: In a general consortium, yes.
[16] Specifically to Micron, I can't recall.

[17] Q: When you were working at Micron, did you
[18] have any understanding as to whether in addition to
[19] time and a half for overtime hours, did you have
[20] any understanding whether there was any additional
[21] component of whether you were paid any additional
[22] amount of overtime based on commissions you had
[23] earned during the month in which you worked the
[24] overtime? Sorry it's hard to follow.

[25] MR. THOMAS: I'm not even going to object.

[1] question.

[2] THE WITNESS: I can't remember.

[3] Q: BY MR. TOLLEFSON: Sure. If the payroll
[4] records indicated that you were actually paid
[5] \$560.87 as a commission payment for November 1998,
[6] would you have any reason to dispute that?

[7] MR. THOMAS: Object to the form of the
[8] question.

[9] THE WITNESS: No.

[10] Q: BY MR. TOLLEFSON: If Micron's records
[11] indicated in the second week of November 1998 you
[12] recorded and were paid for 53 and a half hours,
[13] would you have any reason to dispute that?

[14] MR. THOMAS: Object to the form of the
[15] question.

[16] THE WITNESS: Not that I can recall.

[17] Q: BY MR. TOLLEFSON: If the company's
[18] records indicated that for the third week of
[19] November 1998, you reported and were paid for 69
[20] hours, would you have any reason to dispute?

[21] MR. THOMAS: Object to the form of the
[22] question.

[23] THE WITNESS: No.

[24] Q: BY MR. TOLLEFSON: And would you have any
[25] reason to dispute that for week four, November

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[1] yes.
[2] Q: And those commissions were paid to you
[3] on a monthly basis. Is that right?
[4] A: Yes.
[5] Q: When you started in or about October of
[6] '98, you joined Micron Electronics as their
[7] employee. Is that right?
[8] A: I believe that was the name of the
[9] company.
[10] Q: And do you know whether your start date
[11] was any different than October 12, 1998, as
[12] reflected in the letter?
[13] A: No.
[14] Q: You don't know?
[15] A: I don't know.
[16] Q: Did you eventually transfer employment
[17] to a subsidiary called Micron PC, Inc?
[18] A: I don't know. They did a lot of
[19] different things with the name.
[20] Q: Directing your attention back to
[21] Deposition Exhibit No. *077, I believe, would you
[22] take a look at that. Do you have that in front of
[23] you?
[24] A: Yes.
[25] Q: Would you take a look at page number

[1] A: Yes. I just didn't know when they
[2] switched over. I mean, I had no control of what
[3] they did with the name of the company.
[4] Q: Well, sometime after you started in
[5] October of '98 with Micron Electronics you
[6] transferred to Micron PC. Is that right?
[7] A: That's a fair statement.
[8] Q: When you started, did you receive a copy
[9] of the commission plan?
[10] A: I believe so.
[11] Q: And that's one of the documents you no
[12] longer have. Is that right?
[13] A: That's correct.
[14] Q: Do you remember anything about that
[15] commission plan, the first one?
[16] A: Yes.
[17] Q: What do you remember?
[18] A: I remember you needed to sell more than
[19] \$200,000 in revenue to start getting commission.
[20] Q: There was a threshold, then?
[21] A: Right.
[22] Q: Do you remember anything else about
[23] that?
[24] A: There were other thresholds that
[25] differentiated what percentage commission you

[1] 4110 of Deposition Exhibit *077.
[2] A: Okay.
[3] Q: That's your W-2. Is that right?
[4] A: Yes.
[5] Q: And that reflects an employer of Micron
[6] PC, Inc., at 625 Stratford Road. Is that right?
[7] A: Yes.
[8] Q: And is that the company that you worked
[9] for during that period of time as reflected on the
[10] W-2?
[11] A: Yes.
[12] Q: And if you could, take a look at the
[13] remainder pages numbered 4111 through 4123, your
[14] deposit notices. Do you see those?
[15] A: Yes.
[16] Q: And the company listed on the deposit
[17] notice underneath micronpc.com it says Micron PC,
[18] Inc. Is that right?
[19] A: Yes.
[20] Q: Does that refresh your memory in terms
[21] of the company that you were working for during
[22] that period of time?
[23] A: Yes.
[24] Q: And it says Micron PC, Inc. Is that
[25] right?

[1] received. I don't remember the specifics.
[2] Q: Did that commission plan stay the same
[3] during the time of your employment?
[4] A: No.
[5] Q: How often did it change?
[6] A: A lot.
[7] Q: Give me an idea.
[8] A: I would venture to guess I had 10 or 12
[9] different pay plans over the two plus years I was
[10] there. I don't have an exact number. That's just
[11] a guess.
[12] Q: I understand.
[13] A: I also think the first pay plan may have
[14] mentioned how we got paid overtime, but I can't
[15] remember.
[16] Q: Do you remember what it said in general?
[17] A: I remember how Jim Watkins explained it.
[18] I don't remember what the actual documents said
[19] versus what he explained.
[20] Q: Well, then, let's see what you remember
[21] about what Mr. Watkins explained to you. What do
[22] you remember?
[23] A: Jim said that we're going to be required
[24] to work a lot of overtime and weekends because
[25] we're so busy, but that's good because you'll make

[1] a lot of money on overtime. He said because
[2] overtime is — they figure your commission on
[3] overtime, how many hours you work, your \$7 an hour,
[4] plus what you averaged on commissions per hour to
[5] get a rate that's, say, \$15 an hour, and you get
[6] time and a half of that.

[7] Q: Plus some additional for the commission
[8] that you worked?

[9] A: That's what I'm saying. If you took
[10] your hourly and what you made in commission,
[11] divided it up by how many hours you worked, it
[12] averaged you made \$15 an hour that month, you would
[13] get time and a half of that for your overtime.

[14] Q: This was when you started out at \$7 per
[15] hour?

[16] A: Yes.

[17] Q: When do you remember Mr. Watkins telling
[18] you that?

[19] A: Within the first two weeks, the first
[20] week or two we were in training, basically computer
[21] training. Like the last day of training, he came
[22] in and explained that pay plan to us and kind of
[23] got to know us a little more because he was going
[24] to be our supervisor, and he went into detail on
[25] that.

[1] Q: Do you remember who you went through
[2] training with?

[3] A: Sure.

[4] Q: Who?

[5] A: Forrest Brown, Carl Bennett.

[6] Q: Is that with a "C" or "K", Carl?

[7] A: I think it was with a "C."

[8] Q: Who else?

[9] A: Patty Diaz, Brooks Durfee. There was, I
[10] believe, one other individual that didn't end up
[11] staying on. His other company offered him more
[12] money, so he decided to stay.

[13] Q: You don't remember the name?

[14] A: I don't.

[15] Q: Anyone else that you can remember?

[16] A: Not that I can remember.

[17] Q: So Jim Watkins came in towards the end
[18] of this two-week training period to explain the
[19] commission plan to you?

[20] A: Yes.

[21] Q: And also as part of that, do you
[22] remember him explaining how you would get paid
[23] overtime?

[24] A: Yes.

[25] Q: And he told you that you would get paid

[1] time and a half for your overtime?

[2] A: Of what you averaged per hour for that
[3] month.

[4] Q: Do you remember him saying you would get
[5] time and a half if you worked more than 40 hours in
[6] a week? How do you remember that?

[7] A: He wrote an example up on the white
[8] board, and I had it written down on that commission
[9] statement. I wish I still had that.

[10] If you worked 20 hours of overtime in a
[11] month, and you averaged \$15 an hour, for that 20
[12] hours you worked you would get time and a half of
[13] \$15 an hour.

[14] Q: Did you understand the example, or do
[15] you recall it having to do with the amount of
[16] commissions that you earned?

[17] A: It did. It did have to do with that
[18] because that's how you averaged what you made per
[19] hour.

[20] Q: I see. So it was your understanding
[21] that if you worked overtime you would get paid
[22] additional depending on the amount of commissions
[23] you earned?

[24] A: That's right. If you would have earned
[25] no commissions and worked 20 hours of overtime, all

[1] you would get is time and a half of your \$7 an
[2] hour.

[3] Q: Got it. So he was telling you that in
[4] addition to the time and a half that you would get,
[5] you would also get an additional amount related to
[6] commissions. Is that right?

[7] A: Right.

[8] Q: Do you remember him telling you anything
[9] else about the commission plan or about overtime?

[10] A: I do. I remember he said it was going
[11] to be changing in two weeks.

[12] Q: What was going to be changing?

[13] A: The commission plan.

[14] Q: Do you remember what the changes were
[15] going to be?

[16] A: No.

[17] Q: Is that in terms of the thresholds and
[18] that sort of stuff?

[19] A: You know, I don't remember. Or maybe he
[20] said it was going to change in the next month or
[21] something. I don't remember.

[22] Q: Do you remember what the changes were
[23] that happened within that month?

[24] A: Well, it was my understanding that the
[25] overtime had changed. They weren't going to pay it

[1] based on the commissions anymore. It was just time
[2] and a half of your hourly.

[3] Q: What was that understanding based on?

[4] A: I don't remember.

[5] Q: When did you first develop that
[6] understanding?

[7] A: Within my first month, month and a half.

[8] Q: And what's it based on?

[9] A: Again, I don't remember. I don't
[10] remember if I heard it from Jim or --

[11] Q: What's that?

[12] A: I don't remember if I heard that from
[13] Jim, or if it was in the pay plan or if HR told me.
[14] I don't remember.

[15] Q: Do you know if, in fact, there was a
[16] change?

[17] A: To the best of my knowledge I never
[18] received any overtime compensation with regard to
[19] my commission.

[20] Q: But you did receive time and a half for
[21] your overtime?

[22] A: On my hourly.

[23] Q: Did you ever ask anyone about the
[24] reported change and not getting overtime based on
[25] commission?

[1] did?

[2] A: Because it was on my mind. And any time

[3] I had questions regarding compensation about my job

[4] I typically asked my supervisor.

[5] Q: Do you remember if he said anything to
[6] you about this conversation?

[7] A: No, I just don't remember.

[8] Q: Not sure if the conversation occurred?

[9] A: I'm not sure if it occurred, and if it
[10] did, I'm don't know what was said.

[11] Q: If I understand what you're saying, if
[12] you had concerns about what you were getting paid,
[13] it was your practice to bring those to somebody's
[14] attention?

[15] A: Yes.

[16] Q: And since this was an area of concern to
[17] you, you assume that you brought it to somebody's
[18] attention?

[19] A: Yes.

[20] Q: But you don't remember whether, in fact,
[21] you did or not?

[22] A: Right.

[23] Q: Do you remember any of the other
[24] subjects that you received training on during your
[25] two-week orientation?

[1] A: Sure.

[2] Q: Who?

[3] A: Sure, I talked to a lot of people
[4] because it was fairly significant. The only one I
[5] can for sure remember is Chris McCollough.

[6] Q: What do you remember talking to Chris
[7] McCollough about?

[8] A: I just asked him about that.

[9] Q: Is Chris a coworker?

[10] A: Yes. And he had been there, I don't
[11] know, probably a couple of years before I was. And
[12] he sat back to back to me. So I relied on him a
[13] lot. I was new.

[14] Q: And what did Chris tell you?

[15] A: I don't remember, other than him saying
[16] he used to get paid extra.

[17] Q: Did you ever talk with Mr. Watkins about
[18] your understanding of the change?

[19] A: Probably.

[20] Q: Did you?

[21] A: I don't remember.

[22] Q: You don't remember having that
[23] conversation with him?

[24] A: I probably did, but I don't remember.

[25] Q: What makes you say that you probably

[1] A: I think they made us take a sexual
[2] harassment class. I know a lot of PC specific
[3] training is all I remember. There could be more.

[4] Q: Would you have to sign some documents
[5] when you were at the training?

[6] A: I don't remember.

[7] Q: At your prior jobs that we discussed
[8] that you listed on your employment application that
[9] you worked on an hourly basis, did you have to keep
[10] your time?

[11] A: Yes.

[12] Q: At which jobs did you have to keep your
[13] time?

[14] A: Well, at Sports Entertainment Group I
[15] was on a fairly set schedule. I didn't really
[16] write anything down from that. At Hermans, we
[17] punched a time card. At Gill Iker's I submitted a
[18] timesheet every two weeks or something.

[19] Q: In those jobs, then, you actually had to
[20] keep track of your time and submit it to somebody
[21] for approval, except for perhaps Mr. Zappy?

[22] A: Right.

[23] Q: And you also had to keep your time when
[24] you went to work for Micron. Is that right?

[25] A: Yes.

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[1] A: That's correct.
 [2] Q: And the beginning and ending time of any
 [3] split shift or departure from work for personal
 [4] reasons; isn't that right?
 [5] A: Yes.
 [6] Q: And that it also indicates that time is
 [7] recorded by accessing the time sheet at the VAX
 [8] prompt and entering total daily hours worked; is
 [9] that right?
 [10] A: That's what it says.
 [11] Q: That was the policy that was in effect
 [12] January 28th of '99, isn't that right, as indicated
 [13] at the bottom of that page?
 [14] A: I don't recall. It has the date on the
 [15] bottom.
 [16] Q: The policy also indicates that, prior to
 [17] submission of time sheets for supervisor approval,
 [18] that an employee is responsible for reviewing their
 [19] time sheets to verify the accuracy of all time
 [20] recorded; isn't that right?
 [21] A: That's what it says.
 [22] Q: And that also, in the event there's any
 [23] error, they should promptly bring the discrepancy
 [24] to the attention of their supervisor so that
 [25] corrections can be made as quickly as possible;

[1] isn't that right?
 [2] A: That's what it says.
 [3] Q: And then it also provides in paragraph E
 [4] that if you alter, falsify, or tamper with time
 [5] records or record time on somebody else's time
 [6] sheet, it results in disciplinary action including
 [7] termination; is that right?
 [8] A: Yes.
 [9] Q: Is that your understanding of the
 [10] company's policy on timekeeping during this time
 [11] frame from October '97 through 1999?
 [12] A: I don't remember ever reading this
 [13] before.
 [14] Q: Is that inconsistent with your
 [15] understanding of what the policy was?
 [16] A: I don't know.
 [17] Q: Well, during the time period you worked
 [18] there, is it inconsistent with your understanding
 [19] of what the policy was? Did you ever learn it was
 [20] anything different than that?
 [21] A: I didn't know either way. I just knew I
 [22] submitted a time sheet once a week. I never — I
 [23] don't remember ever reading this policy here. It
 [24] sounds like a pretty good policy, but whether it's
 [25] the one that we used or had access to, I don't

[1] know.
 [2] Q: Did you, in fact, comply with this
 [3] policy? Did you do what the policy required?
 [4] A: What? This policy?
 [5] Q: Yes.
 [6] A: I couldn't tell you.
 [7] Q: You couldn't tell me whether you
 [8] recorded your time on the VAX? I thought you
 [9] indicated before you did.
 [10] A: That was the tool for recording time. I
 [11] don't know if I did it every time or if my
 [12] supervisor did it or — I don't remember how the
 [13] VAX process worked. I know that it was the
 [14] software they used to keep time, and I remember
 [15] seeing — I can remember seeing the screens, but I
 [16] don't remember what it was all about.
 [17] Q: Do you have any reason to believe that
 [18] you did not accurately record the time you began
 [19] and ended your work?
 [20] A: Ask the question again. I'm sorry.
 [21] Q: Could you repeat the question for the
 [22] witness, please.
 [23] (Record read.)
 [24] THE WITNESS: That's a hard question to
 [25] answer.

[1] Q: BY MR. DOCKSTADER: What's hard about
 [2] the question?
 [3] A: Towards the end of my employment at
 [4] Micron, we didn't use the VAX system. We had
 [5] strict guidelines in place of what we had to get
 [6] done in a day, and we also had several periods
 [7] where we were not allowed to have unapproved
 [8] overtime. So kind of a catch 22. You want to keep
 [9] your job. You want to make sure that you have
 [10] everything done in your allotted time period. You
 [11] don't want to submit overtime if it's not approved,
 [12] but sometimes you had to stay a little bit later to
 [13] get what you needed to have done in that day to
 [14] meet your requirements to keep your job.
 [15] So did I not put all my time on time
 [16] sheets? That happened occasionally.
 [17] Q: When?
 [18] A: I don't remember specific dates, but I
 [19] know from time to time that that had to be done
 [20] to — you have to keep your job, and is it worth
 [21] working a little bit of — staying a little bit
 [22] late not marking it on the clock to keep your job
 [23] and get things done.
 [24] Q: With respect to Deposition Exhibit *026
 [25] and entering your time on the VAX, which is what we

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1 compensation or additional help in our department.
 2 Q Did you raise those issues with Mr. Pease?
 3 A Always.
 4 Q And when I say you -- I'm sorry. Did
 5 you -- Let's take it -- break it down. Did those
 6 issues come up in the team meetings with Mr. Pease?
 7 A Those issues came up at sales meetings
 8 that I attended with Mr. Pease and with other
 9 supervisors.
 10 Q You said earlier that this January of 1999
 11 time frame was one of the times where we were
 12 working more hours than we were being paid for. Why
 13 were you working more hours than you were being paid
 14 for?
 15 A Because we were informed that there was a
 16 budget freeze, so we were not able to collect
 17 overtime or additional compensation.
 18 Q Okay. Tell me --
 19 MR. TOLLEFSON: Actually, should we take a
 20 break, Bill?
 21 MR. THOMAS: Sure.
 22 MR. TOLLEFSON: All right.
 23 (Whereupon, a short recess was taken.)
 24 Q (BY MR. TOLLEFSON) Ms. Saari, can you
 25 explain to me how -- And I realize it may have

1 A Vaguely, yes.
 2 Q I'm going to hand you what's been
 3 previously marked as Exhibit 6 in this case.
 4 (Discussion held off the record.)
 5 Q (BY MR. TOLLEFSON) If you would turn to
 6 the second page of Exhibit 6.
 7 A (Witness complies.)
 8 Q Do you see after the No. 2 there's a
 9 dialogue box there? It has kind of a time entry,
 10 spaces in it? Do you see that?
 11 A (Indicating.)
 12 Q Oh, I'm sorry. It would actually be
 13 page 1. I apologize.
 14 A Okay.
 15 Q Do you see that after the No. 2 but before
 16 where it says Figure 1?
 17 A Yes.
 18 Q Does that dialogue box there on Exhibit 6,
 19 does that look familiar?
 20 A Vaguely familiar, yes.
 21 Q Do you remember -- Well, do you remember
 22 receiving training on how to use the me@Micron
 23 timekeeping system?
 24 A Not specifically.
 25 Q Okay. Did you understand how to use the

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1 changed over time at Micron. How did you input or
 2 record time at Micron?
 3 A On the computer.
 4 Q Okay.
 5 A On line.
 6 Q Tell me, what do you remember about that
 7 in a little more detail about how did you record the
 8 time on the computer?
 9 A I put time in every two weeks, or it had
 10 to be in every two weeks. Sometimes daily.
 11 Sometimes I'd put it in the day that it was due and
 12 write it down on a Post-it note or something.
 13 Q Okay. So is it fair to say from your
 14 answer that you did not have a typical practice
 15 about -- over the duration of your employment at
 16 Micron of always recording the time in a
 17 particular -- like on a particular day or
 18 particular --
 19 A Not that I remember, no.
 20 Q Okay. Do you remember using a system
 21 called the VAX system?
 22 A Vaguely, yes.
 23 Q Do you remember whether or not at some
 24 point the VAX timekeeping system was replaced by the
 25 me@Micron timekeeping system?

1 me@Micron timekeeping system?
 2 A Yeah. I would have had to to put my time
 3 in.
 4 Q Do you remember, on the VAX system, did
 5 you put in a start time and a stop time, or did you
 6 put in just a total number of hours for the day on
 7 the previous timekeeping system?
 8 A I don't remember.
 9 Q You started at Micron in -- Was it
 10 November of 1997? Do you remember when you first
 11 started to -- Well, let me strike that and let me
 12 ask this a different way.
 13 Were you telling me earlier that there
 14 were some times that you would not record all the
 15 time that you worked?
 16 A Yes.
 17 Q After you first started at Micron in
 18 November of 1997, do you remember, when was the
 19 first time that you -- the first instance that you
 20 did not record all the time that you worked?
 21 A I don't remember an exact date.
 22 Q Okay. Were there occasions when you did
 23 accurately record the time that you worked?
 24 A Yes.
 25 Q And then those occasions when you did

1 accounts what I dealt with just kept moving upward
2 as far as dollar amount and prestige and things like
3 that, so --

4 Q Okay. And maybe I can -- I just wanted to
5 know if -- When you returned to work at this
6 commercial department position in 1999, so for the
7 one year that -- additional year that you remained
8 with Micron, for that year were your job duties and
9 responsibilities essentially the same from when you
10 came back in October of '99 through September of
11 2000? Just that time period.

12 A They increased during that time period.

13 Q Okay. And by increased, what are you
14 referring to?

15 A I sold parts and accessories. I sold
16 systems. Didn't just work with commercial clients,
17 so in some ways it was the same, in some ways it was
18 different.

19 Q So even after October of 1999, after that
20 date, you didn't just work with commercial clients?

21 A No.

22 Q Okay. You still continued to work with
23 government or state and local --

24 A Yes. I did that throughout my career at
25 Micron.

1 Q Okay. And, again, I'm trying to focus you
2 on the October of '99 through September of 2000 time
3 period. Did your -- Was your main focus still on
4 the parts, monitors, batteries, all those sorts of
5 things?

6 A Not exactly. Since there were fewer of us
7 after the layoff, the demand for our skills grew, so
8 we were utilized by everyone in the company.

9 Q Okay.

10 A And with those customers, a lot of times
11 the customers did not want to buy one thing from one
12 person and one thing from another person in a
13 department, so whoever you were working with, you
14 serviced them for everything that they needed.

15 Q Did you have an understanding as to
16 whether your job -- Again, I'm focusing on this
17 October '99 through September of 2000 time frame. --
18 your job as an additions sales representative was
19 different from others in the commercial department
20 who were inside sales representatives?

21 A Not exactly.

22 Q Okay.

23 A I had access to an additional database of
24 accessories, but I also had access to the same
25 database that they had, so there was an overlap.

1 Q Do you know whether -- Again, on this last
2 year time frame, do you know whether you had the
3 same commission plan that the inside sales
4 representatives in the commercial department had?

5 A I was supposed to. Whether or not I
6 actually did, I can't answer that, because it
7 changed so frequently.

8 Q Do you know who Rickey Ferrara was?

9 A I think so.

10 Q Do you know whether -- Do you recall him
11 being another inside -- well, him being an inside
12 sales representative in the commercial group?

13 A He was in sales. I know the name.

14 Q Okay. Was -- And I apologize if I already
15 asked you this. Was Mr. VanOrnum your supervisor
16 from October of '99 -- Did he remain your supervisor
17 from October of '99 through September of 2000?

18 A Yes.

19 Q Okay. Do you recall whether, when you
20 were laid off and then rehired, whether you were
21 rehired at a higher hourly rate?

22 A I don't recall the numbers. I'm assuming
23 so, but I don't recall the numbers.

24 Q Okay. I'm going to ask you specifically,
25 do you remember Mr. VanOrnum ever telling you

1 anything about how much overtime you were allowed to
2 work?

3 A Just that it wasn't going to be paid if we
4 worked it.

5 Q So during the October of '99 through
6 September of 2000 time frame, did you ever record
7 more than 40 hours per week?

8 A I don't recall.

9 Q Do you know whether, as an additions sales
10 representative in commercial, you had different --
11 different hourly limitations, different limitations
12 on hours that you could work than the inside sales
13 representatives in commercial?

14 A I wasn't aware that there was a
15 difference. I don't think that the -- Even the
16 customer service representatives worked overtime.

17 Q Do you remember Mr. VanOrnum specifically
18 saying that overtime wouldn't be paid if you worked
19 it, or do you remember him specifically using those
20 words?

21 A He always had a lot of catch phrases, and
22 one of them was take it for the team. And I don't
23 remember him specifically saying, do not record your
24 overtime, but it was understood that you were taking
25 it for the team and for the betterment of the

1 company, to increase production.

2 Q Did you ever hear Mr. VanOrnum say that
3 you could request to be approved to work additional
4 overtime hours?

5 A I don't remember.

6 Q Did you ever request -- Now I'm going to
7 ask about the entire duration of your employment at
8 Micron. Did you ever ask permission to get approval
9 to work additional overtime hours?

10 A Yes.

11 Q Which supervisors do you remember
12 requesting that permission with?

13 A I don't remember the specific supervisors,
14 and the requests for overtime were not always made
15 to the supervisor that you reported to on paper. It
16 could have been made to someone in Idaho. We had a
17 lot of contact with some of the supervisors in
18 Idaho, and it was whatever supervisor needed you.
19 If I was working on a contract with government, I
20 was working on an educational bid, sometimes you
21 talked to the supervisor of that department, so
22 those lines would cross and then that supervisor
23 could give you authorization. It didn't necessarily
24 need to come from your direct report.

25 Q And on those occasions when you did

1 Q Okay. Any other reasons?

2 A Not that I remember.

3 Q On the occasions when you did ask for
4 permission to work overtime hours, do you remember
5 whether, on those occasions, you recorded the
6 overtime hours that you worked?

7 A Sometimes I did and sometimes I didn't.

8 Q And on the occasions when you did not, why
9 did you not record them?

10 A Because I knew they would not be
11 compensated hourly.

12 Q Were there ever any occasions when you
13 recorded overtime hours on the timekeeping system
14 and then you were not paid for the hours that you
15 recorded?

16 A I don't remember.

17 Q Do you have any recollection of an
18 instance where you recorded time on the timekeeping
19 system and you were not paid for all the time that
20 you recorded?

21 A I don't recall.

22 Q Do you have any reason to believe that
23 there was ever an instance when you recorded time on
24 the timekeeping system and you were not paid for all
25 the time that you recorded?

1 request permission to work overtime hours, were the
2 requests ever denied?

3 A No one ever told me not to work overtime.
4 It was usually different from a compensation
5 standpoint. Of course they wanted the work done.

6 Q On those occasions when you asked a
7 supervisor permission, did you ever ask a supervisor
8 for permission to record additional overtime hours?

9 A I don't think that I did, because the
10 expectation, in this period of time, was that it
11 wasn't going to be paid. Early on it was recorded,
12 and whether it was paid or not, I don't remember.
13 But there was a period of time when it was worked
14 and not compensated.

15 Q Did you, on -- When you were saying -- You
16 said -- You testified earlier that there were
17 occasions that you asked permission for approval to
18 work overtime hours; is that correct?

19 A Yes.

20 Q Why would you ask for that permission on
21 those occasions?

22 A A couple of times because it would require
23 coming in on weekends, and because of the nature of
24 the security of the building, I wanted to make sure
25 that that was okay.

1 MR. THOMAS: Object to the form of the
2 question.

3 Answer.

4 A Could you repeat the question?

5 Q (BY MR. TOLLEFSON) Sure. Just so you
6 know, too. Mr. Thomas can correct this. From time
7 to time he may object to a question that I ask.
8 Just let him finish and state everything he's got to
9 say, and then unless he specifically tells you not
10 to answer the question, you have to go ahead and
11 answer the question. But I'm always happy to repeat
12 it, too, if the objection is really long.

13 And I'll go ahead and state the question
14 again. Do you have any reason to believe that there
15 was ever an instance when you recorded time on the
16 timekeeping system and you were not paid for all the
17 time that you recorded?

18 MR. THOMAS: Object to the form.

19 A Can I repeat the question back to you to
20 make sure I understand it?

21 Q (BY MR. TOLLEFSON) Sure.

22 A Do I have a reason to believe that I
23 entered time in correctly and was not compensated
24 for it?

25 Q Yes.

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1 A. I believe my memory, I believe he
 2 discussed the hours worked overtime.
 3 Q. Do you remember what he told you?
 4 A. I don't recall, no.
 5 Q. Do you remember what he told you in
 6 terms of what he thought he had worked in terms of
 7 overtime?
 8 A. No. I don't believe that was
 9 discussed.
 10 Q. Do you remember what you told him in
 11 that conversation?
 12 A. I do not recall, no.
 13 Q. What was your reason for calling
 14 Mr. Kaufmann versus anyone else that you might
 15 have known?
 16 A. He was the only name I recognized.
 17 Q. Well, at the time that you received
 18 *-236K, his name isn't on that document, is it?
 19 A. No.
 20 MR. HUNTLEY: I'm going to object. There
 21 was other documents that were mailed with that
 22 notice there.
 23 MR. DOCKSTADER: You can object. I'll just
 24 ask him.
 25 Q. BY MR. DOCKSTADER: Do you remember

1 unlawfully induced you to work off the clock?
 2 A. Do I have any proof besides personal
 3 knowledge?
 4 Q. Yes.
 5 A. No.
 6 Q. What is your personal knowledge in that
 7 respect?
 8 A. That I did the time.
 9 Q. But specifically to the allegation that
 10 the company unlawfully induced you to work off the
 11 clock, what knowledge did the company ever
 12 unlawfully induced you to do that?
 13 A. Just there would be times when Howarth
 14 would come up to me, and there would be somebody
 15 new on the team. And he would make comments like,
 16 you know, "You need to get them on the program,"
 17 things like that.
 18 Q. "Get them on the program," what do you
 19 understand that to mean?
 20 A. My understanding is that would be to -
 21 you're going to have to put in the extra time to
 22 get the job accomplished.
 23 Q. Is that what he said?
 24 A. That's what he meant.
 25 Q. How do you know that's what he meant?

1 what other documents were mailed with that
 2 consent, that *-236K?
 3 A. I do not recall, no. But there had to
 4 have been something with his name on it or I
 5 wouldn't have -
 6 Q. Did you know Mr. Kaufmann from when you
 7 worked there?
 8 A. We were acquaintances.
 9 Q. Did you have to look up his phone
 10 number, or did you already have it?
 11 A. No. I had to look it up.
 12 Q. How long did the conversation last?
 13 A. I don't recall. It was short.
 14 Q. Did either of you express a belief as
 15 to the merits of the lawsuit?
 16 A. No.
 17 Q. Do you have any knowledge of the
 18 company unlawfully inducing you to work off the
 19 clock?
 20 A. I felt it was always kind of a written
 21 under law that we weren't there to work for our
 22 hourly wage, we were there to work for the
 23 commissions.
 24 Q. Do you have any facts that would
 25 support an allegation that the company ever

1 A. Because that's how I interpreted it.
 2 Q. So that only came from Mr. Howarth.
 3 Correct?
 4 A. That's correct.
 5 Q. No one else ever told you that?
 6 A. That's correct.
 7 Q. Do you have any knowledge of managers
 8 altering timecards that were entered by reps?
 9 A. No, I do not.
 10 Q. Do you have any knowledge that the
 11 company ever failed to calculate overtime pay
 12 correctly?
 13 A. I believe that they always calculated
 14 time and a half of our hourly wage.
 15 Q. Do you have any knowledge of the
 16 company including an overtime premium for
 17 commissions?
 18 A. I never saw that, no.
 19 Q. Do you have any knowledge of it?
 20 A. Knowledge of them doing that?
 21 Q. Yes.
 22 A. I never saw it done, no.
 23 Q. Do you have any reason to believe that
 24 it was not done?
 25 A. I never saw it. In my personal case, I

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1 overtime."

2 Q. When you say "year-end," with regards
3 to the sales you're talking about, is it fiscal
4 year or calendar year?

5 A. I understood it to be fiscal year. I
6 believe it was August, August of each year would
7 be fiscal year-end. Micron's on a strange quarter
8 reporting, not calendar.

9 Q. So September would start the next
10 fiscal year?

11 A. I believe that was correct.

12 Q. When Mr. Arana was your supervisor, did
13 he ever tell you to work off the clock?

14 A. Nope.

15 Q. When Mr. Brandon was your supervisor,
16 did he ever tell you to work off the clock?

17 A. No.

18 Q. Did Mr. Casey ever tell you to work off
19 the clock?

20 A. No.

21 Q. Did Mr. Ellis ever tell you to work off
22 the clock?

23 A. No. I would like to add that I looked
24 at my territory as my own business. I managed it.
25 I used resources to make sure it ran well. I made

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1 sure my customers were happy. I felt like I was
2 responsible for my territory. I worked the hours
3 necessary to keep my customers happy and to get my
4 commission check. Nobody told me what hours to
5 work specifically. I just did it. And I was
6 happy.

7 Q. So is it fair to say that the
8 commission portion of your paychecks, did that
9 make up the bulk of your pay?

10 MR. THOMAS: Object to the form of the
11 question.

12 THE WITNESS: Not always, but most of the
13 time. The commission system of pay was a form of
14 discontent because they continued to change it.

15 Q. BY MR. TOLLEFSON: The commission plans
16 changed fairly often?

17 A. Constantly.

18 Q. Meaning it was hard to keep track of
19 how much money you were going to be able to make?

20 A. Correct. And that I believe was done
21 purposely.

22 Q. Do you have any understanding, was the
23 commission plan -- well, why do you believe that
24 they were changed purposely?

25 A. It's my opinion that the sales

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1 management team did not have a good understanding
2 of how to motivate salespeople, and so they would
3 build a commission plan that would reward some
4 salespeople and punish others. And for those of
5 us who had a good sales territory, we could make
6 good money. But as soon as we started making
7 really good money, then the plan would change
8 again. And the company was in turmoil. They were
9 not having fun. And they were changing our plans
10 constantly.

11 I thought that somebody -- and I did
12 object to and a lot of us salespeople did --
13 should bring up the fact that the commission plans
14 were changed haphazardly at their will and we had
15 no say in the matter.

16 Q. Who was your understanding set the
17 commission plan for Micron Commercial, the
18 commercial group?

19 A. I believe David McCauley in the end had
20 final say on its structure, but as I understood,
21 there was a lot of input from other departments
22 like HR and payroll and the sales managers.

23 Q. The sales managers in commercial?

24 A. Yes.

25 Q. Were the commission plans -- was the

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1 commission earned, was it always based on orders
2 shipped?

3 A. The plans changed so frequently the
4 basis of payment were on items such as margins,
5 orders booked, orders shipped, total revenue. It
6 was a moving target.

7 Q. You said that sometimes the commission
8 plans would be changed so they rewarded some
9 salespeople and punished others. Can you give me
10 an example of what you meant by that.

11 A. One time one plan that they
12 implemented, and I don't think it lasted very
13 long, salespeople like myself could typically book
14 between 700,000 and a million dollars of equipment
15 a month. Other salespeople could find it
16 difficult to book 150,000 in a month. So because
17 I had and others had what they called run rate
18 business that generated these large sales, they
19 structured my plan around -- each one of us had an
20 individual goal to set around the next step. And
21 so I in one month could book \$800,000 worth of
22 equipment and get zero commission and my coworker
23 could book \$150,000 and get a commission check.
24 It was very frustrating.

25 Q. So did you have a different commission

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1 plan than another inside sales rep on your same
2 team or are you talking about the individual
3 goals?

4 A. The plan was the same. The goals were
5 different for each territory.

6 Q. So if there was another inside
7 salesperson who had the same territory as you, you
8 would both have the same goal?

9 A. We always had our own territory.

10 Q. Okay. So within your team, each person
11 on the team had a separate territory to which they
12 were assigned?

13 A. That's correct.

14 Q. And was it your understanding that each
15 person on the team, therefore, had a different
16 goal under the same commission plan, each
17 salesperson on the team would have a different
18 goal?

19 A. Yes, depending on their territory.

20 Q. And were the commissions -- when you
21 did earn a commission, was it paid on a monthly
22 basis?

23 A. I believe so, yes.

24 Q. So if, as an example, let's say for
25 January of 2000 you earned a particular amount in

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1 commissions for that month, would you typically
2 receive payment for that January commission, the
3 check at the end of the month for February?

4 A. I don't recall. I think it did -- I
5 think there was a 30-day time lag, because they
6 had to compile the month's information in order to
7 get it. And I don't think it was compiled and
8 given to us on the first paycheck of the following
9 month. It was the second, as I recall. I know
10 there was a delay.

11 Q. Would you get a monthly at some point
12 after -- let's just use as an example January of
13 2000. At some point after the month of January
14 ended but before you received your paycheck, would
15 you receive a commission statement that would show
16 how much commission you earned for the month?

17 A. Yes.

18 Q. And that would also include things like
19 SPIFFs and incentives and those sorts of things,
20 was that usually on the commission sheet or was
21 that separately set out?

22 A. As I recall it was on the commission
23 statement. The SPIFFs were on there.

24 Q. When you did receive your paycheck,
25 again, if it was the end of February when you

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1 received the payment for the January commission,
2 were you able to tell on the paycheck what portion
3 of that paycheck was made up of payment for your
4 commission? Does that make sense?

5 A. I don't understand the question.

6 Q. I didn't ask it very well. Let's say
7 you received a paycheck for \$3,000 at the end of
8 February. Was there somewhere within the pay stub
9 that went with the paycheck, did it itemize out
10 what portion of that \$3,000 was attributable to
11 the commission that you'd earned in January?

12 A. I believe so, yes.

13 Q. Did you ever notice that the portion of
14 the paycheck that itemized what commission you'd
15 earned in January, that that amount was actually
16 higher than the amount that was reflected on your
17 commission statement?

18 A. I believe it did occur a time or two,
19 but the commission statements when they did come
20 out were more often than not wrong.

21 Q. So --

22 A. And it was time-consuming and tedious
23 to go back, and I would have to meet with payroll
24 people and HR people and say, "You guys didn't
25 calculate this right" or "With this new plan you

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1 missed this." And they would come up with excuses
2 and then I'd get paid another month later. It was
3 a mess.

4 Q. Okay. So on the occasions when your
5 commission statements were incorrect, you would go
6 and raise that as an issue and try as best you
7 could to get those fixed?

8 A. Every time.

9 Q. Every time. Okay.

10 A. Every time it was incorrect I would
11 address the issue.

12 Q. Was there ever an occasion where you
13 recall where the commission statement that you
14 received when it was correct, that the subsequent
15 paycheck that you got when you were paid for the
16 commission was shown on that statement that you
17 were actually paid slightly more in the paycheck
18 than was shown on the commission statement?

19 A. Yes.

20 Q. What was your understanding of -- did
21 you have an understanding as to why it was
22 slightly higher in the paycheck?

23 A. It popped up and it happened just one
24 month out of the blue. Nobody really knew what it
25 was for. We started asking questions, and it was

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1 based on overtime hours that we had submitted,
2 that somehow they had to apply that overtime to
3 the commission, which didn't make sense to me.
4 And the overtime when we did get paid overtime --
5 and this was much later down the road where this
6 would show up, it was like it just showed up. And
7 it didn't show up early on and I can't recall when
8 they did start doing it, but that's how they
9 explained it, that we got paid overtime on our
10 commission, which everybody just kind of shook
11 their head and really never understood how that
12 worked.

13 Q. But from that point forward did you
14 notice whether every time you worked some overtime
15 hours that you got some additional amount on your
16 paycheck for that calculated as part of your
17 commission?

18 A. From the first time I noticed it, I
19 cannot say for sure that it occurred every time
20 that I worked overtime that I got overtime on my
21 commission. It could be true, but I can't verify
22 that because the people that were working in
23 payroll and that, they were constantly changing
24 jobs, too. There were times it was -- I recall it
25 was insignificant, and I didn't take the time to