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Attorneys for Defendant Micron Electronics, Inc.

U.S. DISTRICT COURT
U.S. BANKRUPTCY COURT
DISTRICT OF IDAHO

MAY - 4 2004

AS FILED
LODGED

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

KIMBERLEY SMITH, MICHAEL B.
HINCKLEY, JACQUELINE T.
HLADUN, MARILYN J. CRAIG,
JEFFERY P. CLEVINGER, and
TIMOTHY C. KAUFMANN, individually
and on behalf of those similarly situated,

Plaintiffs,

vs.

MICRON ELECTRONICS, INC., a
Minnesota corporation,

Defendant.

Case No. CIV 01-0244-S-BLW

**STATEMENT OF UNDISPUTED FACTS
IN SUPPORT OF MICRON
ELECTRONICS, INC.'S MOTION FOR
PARTIAL SUMMARY JUDGMENT RE
PAYMENT OF COMMISSION
PREMIUMS FOR OVERTIME**

**STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF MICRON ELECTRONICS,
INC.'S MOTION FOR PARTIAL SUMMARY JUDGMENT RE PAYMENT OF
COMMISSION PREMIUMS FOR OVERTIME**

Boise-169947.1 0026493-00046

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Pursuant to Local Civil Rule 7.1(b)(1), Defendant Micron Electronics, Inc. ("MEI"), by and through its counsel, hereby submits this Statement of Undisputed Facts in Support of MEI's Motion for Partial Summary Judgment Re Payment of Commission Premiums for Overtime.

1. In 1997, MEI developed and used an Excel spreadsheet to calculate the overtime premiums for inside sales representatives with MEI and its sales subsidiaries. This spreadsheet included commissions earned by inside sales representatives in the overtime calculations. (See Affidavit of Robert Griffard ("Griffard Aff."), filed August 21, 2002 (Docket No. 128), ¶ 12; Affidavit of Gabe Weske ("Weske Aff."), filed August 21, 2002, ¶ 4 (Docket No. 127).)

2. In 1998, MEI began utilizing an Access database in lieu of the Excel spreadsheet described above as the means for calculating overtime commission payments for inside sales representatives. Access used the same calculation methodology as the Excel spreadsheet, but it was more efficient. The Access database included commissions earned by inside sales representatives in its overtime calculations. (Griffard Aff. ¶ 13; Weske Aff. ¶¶ 5-6 and Exhibit B thereto; Affidavit of Farrah Pippenger ("Pippenger Aff."), filed August 21, 2002 (Docket No. 126) ¶ 6.)

3. Because each sales subsidiary of MEI had its own commission plan, the commission calculations were generated by MEI using different databases for each subsidiary. These databases and calculations were updated each time the commission plan changed for the group. However, after the commission amount was determined, the calculation of the overtime premiums to be paid to each inside sales representative was made using the same methodology. (Third Affidavit of Robert L. Griffard in Support of MEI's Motion for Partial Summary

Judgment re Payment of Commission Premiums for Overtime (Filed Under Seal) ("Third Griffard Aff.") ¶ 4, filed contemporaneously herewith; Griffard Aff. ¶ 14; Pippenger Aff. ¶ 7.)

4. In making a sale, each inside sales representative would often be required to engage in numerous telephone calls with a purchaser, both before and after shipment of the goods. This process took several weeks. Therefore, MEI typically could not calculate and pay commissions on a weekly basis. Instead, MEI treated a commission as having been "earned" during the month in which the goods were shipped, rather than in a particular week. Because commissions were calculated on a monthly rather than a weekly basis, the commissions could not be paid on the regular biweekly payday for the workweek in which they were earned. (Griffard Aff. at ¶ 15; Weske Aff. at ¶ 7; Pippenger Aff., at ¶ 8.)

5. Accordingly, inside sales representatives were paid their commissions, as well as additional overtime premiums based on those commissions, in deferred payments. The deferred commissions and overtime were paid in the month following the commission computation period. (Griffard Aff. ¶ 16; Weske Aff. ¶ 8; Pippenger Aff. ¶ 8.)

6. Despite being unable to calculate commissions (and overtime premiums tied to the commissions) until the end of each commission computation period, MEI (on behalf of the applicable sales subsidiary) was able to make overtime payments of base pay (not including amounts attributable to commissions) to the inside sales representatives every two weeks at a rate of one and one-half times their hourly rate. (Griffard Aff. ¶ 19; Weske Aff. ¶ 11; Pippenger Aff. ¶ 9.)

7. The commission computation periods used by MEI for each of the subsidiaries consisted of either four or five fiscal weeks, depending on the number of weeks in the applicable month. (Griffard Aff. ¶ 17; Weske Aff. ¶ 9; Pippenger Aff. ¶ 10.)

8. Once the commission computation period ended, and in order to compute additional overtime premiums owing to each sales representative, MEI would then calculate the commissions owing to each inside sales representative and apportion those commissions back over the workweeks of the period during which they had been earned (apportioning the total commission over a four- or five-week period, depending on the number of weeks in the month). (Griffard Aff. ¶ 20; Weske Aff. ¶ 12; Pippenger Aff. ¶ 10.)

9. Because MEI and its subsidiaries treated commissions as having been earned during a certain month, rather than in a particular week, it was not possible to allocate the commission among the workweeks of the commission computation period in proportion to the amount of commission actually earned, or reasonably presumed to be earned, each workweek. Instead, an equal amount of the total commissions earned by an inside sales representative during a commission computation period was apportioned to each workweek within that period. MEI allocated commissions equally among the workweeks in each commission computation period by dividing the total amount of commissions earned by the inside sales representative during that period by the number of workweeks contained in that period. (Griffard Aff. ¶ 21; Weske Aff. ¶ 13; Pippenger Aff. ¶ 10.)

10. The equal apportionment of the commission over the month in which the commission was earned was done to enable MEI to calculate and pay any additional overtime compensation owing to the inside sales representatives as a result of the inclusion of the

commission in the representatives' applicable regular rates. As indicated above, inside sales representatives already had received overtime payments based solely on base wages during the month or so preceding this additional computation. (Griffard Aff. ¶ 22; Pippenger Aff. ¶ 11.)

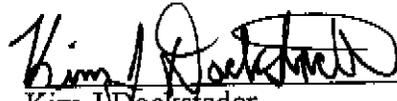
11. Once the amount of commission allocable to each workweek in the commission computation period was determined, that number would be divided by the total number of hours worked by the sales representative in that week, to yield the increase in the hourly rate. MEI would then calculate additional overtime owing to each inside sales representative by multiplying one-half of this figure by the number of overtime hours worked by the representative in that week. (Griffard Aff. ¶ 23 and Exhibit D; Weske Aff. ¶ 14; Pippenger Aff. ¶ 12.)

12. The commission and corresponding overtime premiums would be paid to the inside sales representatives on a monthly basis. The paychecks would therefore generally alternate between one that included the representative's base pay and overtime calculated solely on an hourly basis and a check that included base pay, overtime calculated on an hourly basis, commissions, and the additional overtime premium calculated to include the commission as part of the regular pay. (Griffard Aff. ¶ 25.)

13. Before May 31, 2001, the additional overtime premium paid to the inside sales representatives on the basis of the inclusion of the commission in the regular pay was not separately itemized on their paychecks. However, approximately one week before receiving their commission paychecks, the inside sales representatives would receive a written commission statement. The inside sales representatives could then compare the amount of commission on their statement with the amount of commission actually paid to determine the additional overtime premium due to commissions (if any). (Griffard Aff. ¶ 26; Pippenger Aff. ¶ 15.)

Dated this 4th day of May, 2004.

STOEL RIVES LLP



Kim J. Dockstader
Attorneys for Defendant

**STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF MICRON ELECTRONICS,
INC.'S MOTION FOR PARTIAL SUMMARY JUDGMENT RE PAYMENT OF
COMMISSION PREMIUMS FOR OVERTIME - 6**

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of May, 2004, I caused to be served a true copy of the foregoing **STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF MICRON ELECTRONICS, INC.'S MOTION FOR PARTIAL SUMMARY JUDGMENT RE PAYMENT OF COMMISSION PREMIUMS FOR OVERTIME** by the method indicated below, addressed to the following:

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Daniel E. Williams
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Via U. S. Mail
 Via Hand-Delivery
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 Via Facsimile



Kim J Dockstader

STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF MICRON ELECTRONICS, INC.'S MOTION FOR PARTIAL SUMMARY JUDGMENT RE PAYMENT OF COMMISSION PREMIUMS FOR OVERTIME - 7