

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

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Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

KIMBERLEY SMITH and MICHAEL B.) HINCKLEY, individually and on behalf) of those similarly situated,) <div style="text-align: right;">Plaintiffs,)</div> vs.) MICRON ELECTRONICS, INC., a) Minnesota corporation,) <div style="text-align: right;">Defendant.)</div>	Case No. CIV 01-0244-S-BLW PLAINTIFFS' OBJECTIONS TO DEFENDANT'S PETITION FOR COSTS AND ATTORNEYS' FEES
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Plaintiffs object to Defendant Micron Electronics, Inc.'s (Micron) petition for costs and attorneys' fees. In support of its petition, Micron submitted the Affidavit of Kim Dockstader. Micron also attached an exhibit that purported to detail the attorney time spent in preparing its pleading its motion to strike or dismiss certain persons who had filed consents to join this lawsuit. Micron alleges that its attorneys took a total of 24.5 hours to prepare the motion and bring it before

58

the Court. The supporting memorandum itself was eight and one-half pages in length. Exhibit A to Mr. Dockstader's Affidavit also reveals that he calculates his lodestar total based on an hourly rate of \$220 and Mr. Tollefson's rate of \$180 per hour. Mr. Dockstader's Affidavit and its exhibit are the only support offered for Micron's attorney fee claim.

Standard for Calculating Attorneys Fees

The Ninth Circuit has made it clear that, in this context, it will use the lodestar method of calculating attorneys' fees. "The most useful starting point for determining the amount of a reasonable fee is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate." *Jordan v. Multnomah County*, 815 F.2d 1258, 1262 & n.5 (9th Cir. 1987) (explaining method to arrive at "lodestar" figure). In determining a reasonable fee award, the Court considers the "experience, skill and reputation of the attorney requesting fees" *Trevino v. Gates*, 99 F.3d 911, 924 (9th Cir. 1996), as well as "the prevailing market rates in the relevant community," *Blum v. Stenson*, 465 U.S. 886, 895 (1984). The "fee applicant has the burden of producing satisfactory evidence, in addition to the affidavits of its counsel, that the requested rates are in line with those prevailing in the community for similar services of lawyers of reasonably comparable skill and reputation." *Multnomah County*, 815 F.2d at 1262. The court must look to the prevailing market rate in the community in which the district court sits. *Gates v. Deukmejian*, 987 F.2d 1392, 1405 (9th Cir. 1993); *cf. Barjon v. Dalton*, 132 F.3d 496, 500 (9th Cir. 1997) ("Generally, the relevant community is the forum in which the district sits.").

No Evidence that Attorneys' Fees Claimed were the Prevailing Rate

Micron does not present any evidence of the reasonableness of the its attorneys' fees except

for Mr. Dockstader's own opinion that "the attorneys' fees . . . are reasonable. . ." Affidavit of Kim J. Dockstader in Support of Petition for Costs and Attorneys' Fees, Paragraph 3. Micron did not support its Petition with any evidence of the prevailing rates for attorneys' fees in the District of Idaho. It merely used the \$220 per hour rate for Mr. Dockstader and the \$180 rate for Mr. Tollefson.

Based on the *Multhomah County* case, Micron was required to demonstrate that \$220 per hour for Mr. Dockstader, who was admitted to practice in Idaho in 1990¹, is the prevailing rate for other lawyers with twelve years' experience. Micron was also required to demonstrate that \$180 per hour for Mr. Tollefson, who was admitted to practice in Idaho in 1997² is the prevailing rate for other lawyers with five years' experience.

"Block Billing" Obscures the Reasonableness of Hours Spent

Several of the time entries submitted by Micron in its Petition are insufficiently detailed to determine the reasonableness of the time spent on the activity. Instead, Mr. Tollefson records 5.6 hours on multiple tasks, without breaking out the individual time for each task. In various forms this type of billing has been referred to as "block billing." *Frevach Land Co. v. Multnomah County*, 2001 U.S. Dist. LEXIS 22255, 26 (D.Or. 2001) (" . . . counsel often billed a total number of hours for a day when more than one task, often many tasks, were performed without specifying what portion of time was spent on each task. I refer to this practice, as other courts have, as 'block billing.'").

The practice of block billing has been criticized by a number of courts because the practice

¹Electronically retrieved biography from Martindale-Hubbell attached as Exhibit A to William H. Thomas Affidavit.

² Electronically retrieved biography of Mr. Tollefson from Martindale-Hubbell attached as Exhibit B to William H. Thomas Affidavit.

obscures the amount of time actually spent on a specific undertaking. *Ace v. Cigna Corp.*, 2001 U.S. Dist. LEXIS 17065, 12-13 (S.D.N.Y. 2001) (“While the practice of block billing is not prohibited in the Second Circuit (citation omitted) vague records make it difficult for this Court to determine how much time the senior associate actually spent on each conference.”). *Ursa Minor Ltd. v. Aon Financial Products, Inc.*, 2001 U.S. Dist. LEXIS 7455, *16 (S.D.N.Y. 2001) (“To the extent, however, that compensable and non-compensable tasks are included in the same [block billed] entry, it must be presumed that the bulk of the time was devoted to non-compensable work.”).

The bulk of Micron’s attorneys’ time entries are of the block-billed nature. Drafting and research are combined in several instances. There appear to be duplicate tasks performed. For example, Mr. Dockstader prepared for the hearing on two separate occasions. Mr. Tollefson “worked on reply brief” on two different occasions. Based on the firm’s billing format, one is unable to determine whether all those tasks are compensable.

Conclusion

Based on the inadequate information provided to the Court by Micron and the lack of evidentiary support for its claims for fees, Micron’s Petition for Attorneys’ fees should be denied.

DATED this 8th day of March, 2002.

HUNTLEY, PARK, THOMAS, BURKETT,
OLSEN & WILLIAMS



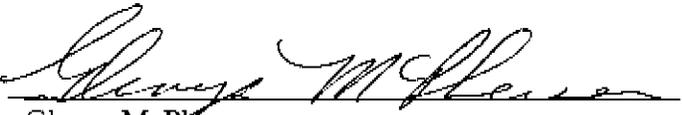
William H. Thomas
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of March, 2002, 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