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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' RESPONSE TO
DEFENDANT'S MOTION FOR
PROTECTIVE ORDER
FILED AUGUST 6, 2004**

Plaintiffs,)

vs.)

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

Defendant.)

PLAINTIFFS' RESPONSE TO DEFENDANT'S MOTION FOR PROTECTIVE ORDER
FILED AUGUST 6, 2004, P. 1

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Plaintiffs, by and through their counsel of record, hereby provide their response what Defendant's style as their Motion for Protective Order or, in the alternative, Motion for Extension of Time to Respond to Plaintiffs' Sixth Set of Requests for Production of Documents filed August 6, 2004.

INTRODUCTION

By the instant motion, Defendant tries to place Plaintiffs in an evidentiary box. Without good faith grounds, Defendant is coming before the U.S. Magistrate on a discovery motion to withhold relevant documents that Defendant's counsel has indicated they already possess so that Plaintiffs do not have them available to give to their expert damages witness in time for him to consider them before his report is due pursuant to deadlines established by the U.S. District Court. In attempting to justify this spurious motion, Defendant deliberately misreads Judge Winmill's applicable Scheduling Order. Under these circumstances, this Court should not only deny Defendant's motion in its entirety, but award Plaintiffs their reasonable costs and fees in dealing with this unjustifiable delaying tactic.

RELEVANT FACTS

Despite Defendant's earlier misrepresentations set forth in counsel's correspondence,¹ there is no real dispute that Judge Winmill's Scheduling Order of May 23, 2003 (docket # 166)

¹ See, Exhibit B to the Affidavit of Gregory C. Tollefson in support of Defendant Micron Electronics, Inc.'s Motion for Protective Order or, in the alternative, Motion for Extension of Time to Respond to Plaintiffs' Sixth Set of Requests for Production of Documents filed August 6, 2004 (docket # 251). Subsequent references to this Affidavit are cited to "the Affidavit of Gregory C. Tollefson."

established a deadline for discovery "concerning the class certification issues only" of May 3, 2004. It imposed no such deadline relating to non-class certification issues such as damages. Defendant conceded this point in a letter dated July 29, 2004.² The Scheduling Order did, however, require Plaintiffs to disclose expert opinions September 1, 2004 (Scheduling Order at ¶ 9), which date was later modified to October 15, 2004 by Judge Winmill's Order of July 8, 2004 (docket # 212).

Anticipating the need to allow their damages expert enough time to provide a detailed report by October 15, 2004, Plaintiffs served Defendant with their Sixth Set of Requests for Production of Documents on July 7, 2004 ("Plaintiffs' Sixth Set"). As is clear from these requests,³ they do not constitute requests for 545 different kinds of documents, but rather requests for seven (7) categories of documents relating to all class members. These categories include payroll and other income records, commission records, time records, personnel file records and any other records of entry or departure from the workplace.⁴

Despite this record and even after the admission in their letter of July 29, 2004, that Judge Winmill's deadline did not apply to discovery relating to damages, now Defendant argues again

² See, Exhibit D to the Affidavit of Gregory C. Tollefson.

³ Exhibit A to the Affidavit of Gregory C. Tollefson.

⁴ According to prior testimony, Defendant had a "swipe card" entry system to its facilities. Plaintiffs are seeking any available data from this system to be able to calculate the difference between the times at which a class member was present at the workplace and the times indicated on their timesheets.

that Plaintiffs' Sixth Set violated "the Court's clear deadlines"⁵ and that the requests were "untimely" (Defendant's Memorandum: 5).

ARGUMENT

Defendant's argument is specious, as reflected by its earlier admission that Judge Winmill's Scheduling Order did not impose a deadline for discovery relating to non-certification issues. Both the clear language of Judge Winmill's Order and Defendant's earlier admission render Defendant's repeated arguments on this issue baseless. Also baseless is Defendant's suggestion that Plaintiffs' requests do not "deal with damages." Plaintiffs' damages expert needs to be able to rely on personnel records to establish dates of employment. He needs any payroll, commission or other income records to determine rates of pay and to be able to calculate the premium rate, which changed from period to period based on commissions. He needs scanning records to determine if they are a reliable basis upon which to estimate off-the-clock work totals. These issues are elementary and Defendant's pretense of ignorance regarding the relevance of these documents to damages is only more evidence of bad faith.

Finally, Defendant resorts to arguing with the wisdom of Judge Winmill's Scheduling Order and suggest for the first time that damages discovery should have been completed long ago. If Defendant has serious objections to Judge Winmill's Scheduling Order, it should direct such complaints to Judge Winmill rather than attempt to void that Order through a motion for protective order to this Court. As a "professional courtesy" (Defendant's Memorandum: 5),

⁵ See Defendant Micron Electronics, Inc.'s Memorandum in Support of Motion for Protective Order or, in the alternative, Motion for Extension of Time to Respond to Plaintiffs' Sixth Set of Requests for Production of Documents, p. 4. Subsequent references to this filing are cited to "Defendant's Memorandum" by page number.

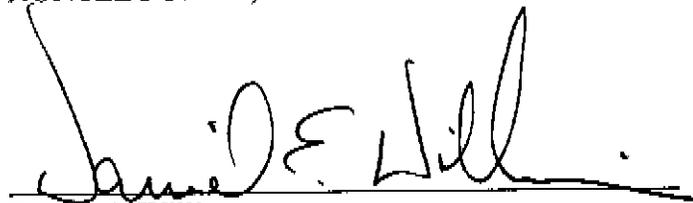
Defendant suggests moving out the deadline for expert disclosures. Plaintiffs have not and will not agree to such a suggestion. Through various means Defendant has delayed trial in this action for far too long already. Plaintiffs are unwilling to take whatever chance, large or small, that delaying expert disclosures will jeopardize their current trial setting.

CONCLUSION

Based on all the foregoing, Plaintiffs respectfully requests that the Court deny Defendant's motion in all respects and award Plaintiffs their reasonable attorney fees in defending this frivolous motion.

DATED this 3rd day of September, 2004.

HUNTLEY PARK, LLP

A handwritten signature in black ink, appearing to read "Daniel E. Williams", written over a horizontal line.

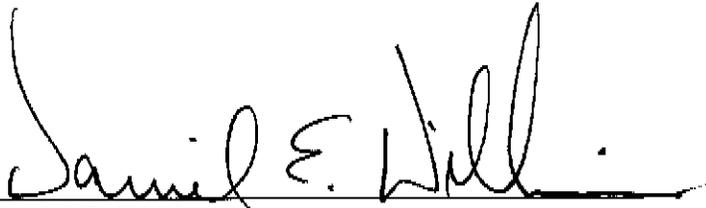
Daniel E. Williams
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of September, 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


Daniel E. Williams