

ORIGINAL

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U.S. COURTS

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

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

Plaintiffs,)

vs.)

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

Defendant.)

Case No. CIV 01-0244-S

AFFIDAVIT OF DANIEL E.
WILLIAMS RE REPLY BRIEF

145

STATE OF IDAHO)
)ss.
County of Ada)

I, DANIEL E. WILLIAMS, 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.

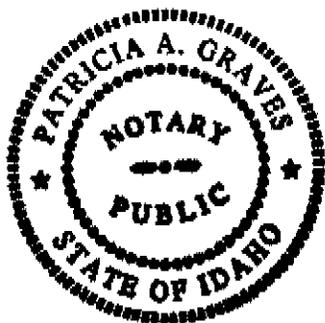
2. Attached hereto and designated as set forth below are true and correct copies of the following documents:

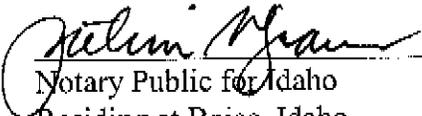
- a. Deposition of Robert Griffard (non-confidential), dated August 30, 2002,
- b. MEI document number M003099,
- c. MEI document number M000499, and
- d. MEI document number M004802.



Daniel E. Williams

Subscribed and sworn to before me this 6th day of September, 2002.





Notary Public for Idaho
Residing at Boise, Idaho
My Commission Expires: 6.21.08

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of September, 2002, a true and correct copy of the foregoing instrument was served upon opposing counsel as indicated below:

Kim J. Dockstader
Gregory C. Tollcfson
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

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

COPY

KIMBERLEY SMITH and MICHAEL)
B. HINKLEY, individually and)
on behalf of those similarly)
situated,)
Plaintiffs,)
vs.) Case No.
MICRON ELECTRONICS, INC., a) CIV 01-0244-S-BLW
Minnesota corporation,)
Defendant.)
_____)

DEPOSITION OF ROBERT GRIFFARD

August 30, 2002

REPORTED BY:

JoAnn Thomas, CSR No. 694, RPR

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Page 1

1 IN THE UNITED STATES DISTRICT COURT
 2 FOR THE DISTRICT OF IDAHO
 3
 4 KIMBERLEY SMITH and MICHAEL)
 5 D. HINKLEY, individually and)
 6 on behalf of those similarly)
 7 situated,)
 8 Plaintiffs,)
 9 vs.) Case No.
 10 MICRON ELECTRONICS, INC., a) CIV 01-0244-S-BLW
 11 Minnesota corporation,)
 12 Defendant.)
 13 _____)

15 DEPOSITION OF ROBERT GRIFFARD
 16 August 30, 2002

19 REPORTED BY:
 20 JoAnn Thomas, CHR No. 694, RPR
 21 Notary Public

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1 THE DEPOSITION OF ROBERT GRIFFARD was
 2 taken on behalf of the Plaintiffs at the offices of
 3 Stoel Rives, LLP, 101 South Capitol Boulevard,
 4 Suite 1900, Boise, Idaho, commencing at 1:45 p.m. on
 5 August 30, 2002, before JoAnn Thomas, Certified
 6 Shorthand Reporter and Notary Public within and for
 7 the State of Idaho, in the above-entitled matter.

APPEARANCES:

9 For Plaintiffs:
 10 Huntley, Park, Thomas, Burkett, Olsen &
 11 Williams, LLP
 12 by MR. WILLIAM H. THOMAS
 13 250 S. 5th Street, Suite 660
 14 Boise, Idaho 83701
 15 For Defendant:
 16 Stoel Rives, LLP
 17 by MR. KIM J. DOCKSTADER and MR. GREG TOLLEFSON
 18 101 South Capitol Boulevard, Suite 1300
 19 Boise, Idaho 83702

20 ALSO PRESENT: Larry Davenport, Videographer

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I N D E X

1		
2	TESTIMONY OF ROBERT GRIFFARD	PAGE
3	Examination by Mr. Thomas	1
4	EXHIBITS	
5	227 - Fourth Amended 30(b)(6) Notice of Taking	4
6	Deposition Duces Tecum, 4 pages	
7	(Exhibit Nos. 228 through 231 are confidential	
8	and bound with the confidential portion of	
9	the deposition transcript.)	
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Page 4

1 (Prior to the deposition, Exhibit
 2 No. 227 was marked for identification.)
 3 THE VIDEOGRAPHER: Beginning video
 4 deposition Tape 1, on the record.

5 MR. THOMAS: Would you swear the
 6 witness, please.

7 ROBERT GRIFFARD,
 8 first duly sworn to tell the truth relating to
 9 said cause, testified as follows:

EXAMINATION

11 QUESTIONS BY MR. THOMAS:

12 Q. Good afternoon, Mr. Griffard.

13 A. Hi.

14 Q. My name is William Thomas, and I'm with
 15 the firm of Huntley, Park, Thomas, Burkett, Olsen &
 16 Williams, and I represent Plaintiffs in this
 17 matter -- Kimberley Smith, Michael Hinkley and
 18 others -- in the matter of Smith vs. Micron
 19 Electronics, Inc., Case No. CIV 01-0244-S-BLW.

20 This deposition is being videotape
 21 recorded by Larry Davenport, who is an associate
 22 with the John Glenn Hall Company, whose business
 23 address is Post Office Box 2683, Boise, Idaho.
 24 Today's date is August 30, 2002. The time is
 25 approximately 1:45 p.m. The location of this

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1 deposition is in Boise, Idaho. The deponent's name
2 is Robert Griffard. Excuse me.

3 Kim, would you identify yourself,
4 please.

5 MR. DOCKSTADER: Kim Dockstader with the
6 law firm of Stoel Rives.

7 MR. THOMAS: Okay. And the witness has
8 already been sworn. The deposition is being taken
9 pursuant to stipulation of counsel and notice.

10 And the only other thing, Kim, I wanted
11 to make sure we got on the record was that this is
12 being taken pursuant to Rule 30(b)(6) of the
13 Federal Rules of Civil Procedure and that
14 Mr. Griffard has been named by Micron Electronics
15 as the person authorized to testify on behalf of
16 Micron Electronics.

17 MR. DOCKSTADER: Pursuant to the items
18 identified by prior notice received. And I
19 understand you have an amended notice --

20 MR. THOMAS: Right.

21 MR. DOCKSTADER: -- that was faxed over
22 changing the date and time; also, as clarified,
23 with respect to those items, by a letter dated
24 August 2nd, 2002, to Daniel Williams of your office.

25 MR. THOMAS: Okay. And as far as the

Page 7

1 Q. Okay. Where do you currently reside,
2 sir?

3 A. 4622 North Lancer Avenue, Boise, Idaho,
4 83713.

5 Q. Okay. And are you currently employed?

6 A. Yes.

7 Q. By whom?

8 A. MicronPC, LLC, a Gores Technology
9 company.

10 Q. And that's different from MicronPC,
11 Inc., to your knowledge?

12 A. Yes.

13 Q. Okay. And how does it differ?

14 A. I'm not familiar with the company
15 MicronPC, Inc. The company that I'm employed by is
16 a limited liability corporation that is a wholly
17 owned subsidiary of Gores Technology Group.

18 Q. Okay. And does it have any relationship
19 to Interland, Inc.?

20 A. No, it does not.

21 Q. Okay. At some point in your employment,
22 were you employed by Micron Electronics, Inc.?

23 A. Yes.

24 Q. Okay. From what dates?

25 A. August 1995 until July 2001.

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1 areas of testimony, I think we've agreed that one
2 area will concern Micron's compensation system for
3 employees designated as inside sales
4 representatives during the period January 1, 1997
5 through May 31 of 2001 and Micron's method or
6 methods of calculating non-exempt sales
7 representatives' hourly rate for overtime during
8 the period January 1, 1997 through May 31, 2001.

9 MR. DOCKSTADER: And if I may, Bill, we
10 clarified by letter referenced August 2nd, 2002 to
11 Dan Williams that those two identified matters
12 would specifically be related to Defendant's
13 historical methods and related systems or processes
14 of computing and paying additional overtime
15 compensation to inside sales representatives by
16 reason of inclusion of commission amounts in the
17 representative's regular rate.

18 MR. THOMAS: I believe that's correct.
19 Is there anything further, Kim, that you'd like to
20 add?

21 MR. DOCKSTADER: Not at this time.

22 MR. THOMAS: Okay. Well, Let's begin.

23 Q. Mr. Griffard, would you please state
24 your name and spell it for the record.

25 A. Robert L. Griffard, G-R-I-F-F-A-R-D.

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1 Q. And would you tell me the positions that
2 you've held during those time periods?

3 A. Compensation analyst and compensation
4 manager.

5 Q. Okay. And that was the only position
6 that you held?

7 (Mr. Tollefson joins the deposition.)

8 THE WITNESS: Let me clarify. My title
9 as compensation manager was later changed to
10 manager of compensation and international human
11 resources.

12 Q. (BY MR. THOMAS) Did your job functions
13 change with those title changes?

14 A. Yes, they did.

15 Q. Okay. Can you tell me how they changed?

16 A. When I was initially hired, I was hired
17 as a compensation analyst. The areas of
18 responsibility were compensation programs such as
19 salary administration, job and position evaluation,
20 survey -- running -- conducting surveys, analysis
21 of surveys, presentation of merit increase
22 programs, cost programs, conducting those merit
23 increase programs, and responsibility for the
24 administration of profit sharing and the company's
25 pay for performance, PFP, program.

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1 Q. Did you perform all of the functions
2 that you've just listed on behalf of Micron
3 Electronics --

4 MR. DOCKSTADER: Object to the form.

5 Q. (BY MR. THOMAS) -- or were there other
6 subsidiaries that you also performed those
7 functions for?

8 A. Yes. I was employed by Micron
9 Electronics, and I performed those functions for
10 Micron Electronics and its subsidiary companies.

11 Q. And which subsidiaries did you perform
12 those for?

13 A. One company called Micron Custom
14 Manufacturing Services, MCMS. Micron Computer
15 Commercial Sales, I believe, is the correct title
16 for MCCS, which handled corporate sales.

17 Q. Excuse me for interrupting you. Could
18 that be Micron Commercial Computer Systems?

19 A. Yes.

20 Q. Okay.

21 A. And Micron Government Computer Systems,
22 MGCS, and Micron Personal Computer, MPC. The --
23 no, I think that's it.

24 Q. Okay. There are no other subsidiaries
25 that you performed those identified activities for?

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1 MR. DOCKSTADER: Object to the form.

2 THE WITNESS: During that time period.

3 Q. (BY MR. THOMAS) I'm talking about --
4 and for the sake of the deposition, I've referred
5 to a specific time frame; basically from January 1,
6 1997 through May 31, 2001. So all of my questions
7 are going to be directed to that particular time
8 frame, okay?

9 A. Yes.

10 MR. DOCKSTADER: And, actually, if I
11 could clarify, Counsel, I think the notice
12 reflected June 1 of 1998 through May 31 of 2001, if
13 that's the time period that you're referencing.

14 MR. THOMAS: No. Actually, it said
15 January 1, 1997.

16 MR. DOCKSTADER: That may be the revised
17 one that I haven't seen yet.

18 MR. THOMAS: Okay.

19 MR. DOCKSTADER: But in terms of the
20 time period for the witness, if you're saying you
21 want him to refer to that time period --

22 MR. THOMAS: That's -- for our purposes,
23 that's what I'm referring to, is just that time
24 period, so I don't have to say "during" -- spell
25 out a particular time frame for each question.

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1 MR. DOCKSTADER: Okay.

2 MR. THOMAS: Okay.

3 THE WITNESS: There was --

4 Q. (BY MR. THOMAS) The time frame is
5 January 1, 1997 through May 31, 2002.

6 A. Yes. Then there was one other
7 subsidiary that came on later there, and if I
8 recall correctly, it was Micron Japan.

9 Q. Okay.

10 MR. DOCKSTADER: I would object just to
11 the form of that question. It's a little late, but
12 you said "2002," and I think you meant 2001 again.

13 MR. THOMAS: I meant 2001.

14 MR. DOCKSTADER: Thank you.

15 MR. THOMAS: I did indeed. So that's
16 the reason we're going to have to keep repeating
17 these.

18 Q. Okay. Then your job as compensation
19 manager -- I think you said your title changed.

20 A. Yes.

21 Q. Refresh my memory: What did it change
22 to, again?

23 A. Manager of compensation and
24 international human resources.

25 Q. And when did that change occur?

Page 12

1 A. I believe that was approximately January
2 of '97.

3 Q. 1997?

4 A. Yes.

5 Q. And the position that you described
6 before that had been before 1997?

7 A. Correct.

8 Q. Okay. And how did your job duties
9 change in January of 1997?

10 A. All of the things that I'd been doing
11 prior to that continued. And the additional
12 responsibilities included providing services to
13 MEI's client companies with respect to sales
14 compensation.

15 Q. Now, did the title "manager" include
16 managing other people, other employees?

17 A. At that time it did not.

18 Q. Okay. After 1997, did you manage any
19 employees?

20 A. Yes.

21 Q. What was the range of the number of
22 employees that you managed?

23 A. One to two.

24 Q. And do you recall the names of the
25 various people that you managed?

Page 13

- 1 A. Yes.
- 2 Q. Who were they?
- 3 A. Gabe Weske --
- 4 Q. And --
- 5 A. -- and Farah --
- 6 Q. F-A-R-A-H?
- 7 A. Yes -- Pippenger, P-I-P-P-E-N-G-E-R.
- 8 MR. DOCKSTADER: You need to speak up a
- 9 little bit, Robert.
- 10 THE WITNESS: Yeah. I realize I'm
- 11 trailing off here.
- 12 Q. (BY MR. THOMAS) What was Mr. Weske's
- 13 position?
- 14 A. When Gabe was hired, his position was --
- 15 I believe the exact title for it was sales
- 16 incentive -- sales program coordinator.
- 17 Q. Okay. Did his position change?
- 18 A. Yes.
- 19 Q. How did it change?
- 20 A. Later he was promoted to sales
- 21 compensation analyst, and later than that his title
- 22 was changed to sales compensation manager.
- 23 Q. And by which company was he employed?
- 24 A. Micron Electronics.
- 25 Q. Farah Pippenger, what position did she

Page 14

- 1 hold?
- 2 A. Sales compensation analyst.
- 3 Q. I'm sorry; I couldn't hear you.
- 4 A. Sales compensation analyst.
- 5 Q. And what company was she employed by?
- 6 A. Micron Electronics.
- 7 Q. Who was your immediate supervisor during
- 8 the time period we've talked about?
- 9 A. Initially, it was the vice president of
- 10 administration for Micron Electronics.
- 11 Q. Who was that?
- 12 A. Joann Pfeifer.
- 13 Q. How do you spell her last name?
- 14 A. P-F-E-I-F-E-R.
- 15 Q. And how long did you report to her?
- 16 A. Approximately four years.
- 17 Q. Okay. Then who did you report to?
- 18 A. Bill McBride.
- 19 Q. And what was his title?
- 20 A. Director of compensation and benefits.
- 21 Q. For which entity?
- 22 A. Micron Electronics.
- 23 Q. Did Micron Government Computer Systems
- 24 have any kind of compensation position?
- 25 MR. DOCKSTADER: Object to the form.

Page 15

- 1 THE WITNESS: No.
- 2 Q. (BY MR. THOMAS) Did Micron Commercial
- 3 Computer Systems have any position dealing with
- 4 compensation?
- 5 MR. DOCKSTADER: Object to the form.
- 6 THE WITNESS: No.
- 7 Q. (BY MR. THOMAS) How about MicronPC,
- 8 Inc.; did it have any compensation position?
- 9 MR. DOCKSTADER: Object to the form.
- 10 THE WITNESS: No.
- 11 Q. (BY MR. THOMAS) Briefly summarize your
- 12 schooling, your education from high school on.
- 13 A. High school graduate, Highland High
- 14 School, Pocatello, Idaho; college graduate,
- 15 Bachelor of Arts, Brigham Young University.
- 16 Q. When did you graduate from BYU?
- 17 A. 1974.
- 18 Q. Any degrees beyond your bachelor's?
- 19 A. No.
- 20 Q. Okay. What was your major at BYU?
- 21 A. Chinese.
- 22 Q. How did you get into compensation?
- 23 A. The first position that I had, the
- 24 professional position following the completion of
- 25 my degree, was with Morrison Knudsen. I was hired

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- 1 into a management training program. As part of
- 2 that program, I was to spend approximately two
- 3 years rotating from one department to another. One
- 4 of those departments was human resources. And
- 5 during the time that I was there, I participated in
- 6 the development of a bid on a project in Saudi
- 7 Arabia and actually wrote the human resources
- 8 portion of that project, to include all aspects of
- 9 human resources.
- 10 Following award of that project, I was
- 11 asked to join the subsidiary that was created to
- 12 manage that project and was promoted to the
- 13 position of supervisor of personnel relocations.
- 14 Q. When did that occur?
- 15 A. That occurred in August '77. And then
- 16 that entailed a move to the Washington, D.C. area,
- 17 where the headquarters of that company was set up.
- 18 While I was there, there was no compensation person
- 19 within the human resources department. Those
- 20 duties fell back to me, and I performed those
- 21 duties.
- 22 I was there approximately one year
- 23 working on that project and working back and forth
- 24 in Saudi Arabia and through other contacts had
- 25 companies contact me, given my expertise in

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1 international HR specific to projects in the Mid
2 East. One of those contacts resulted in a job
3 offer from Litton Industries --
4 Q. "Litton"?
5 A. Litton.
6 Q. L-I-T-T-O-N?
7 A. L-I-T-I'-O-N.
8 Q. Okay.
9 A. -- in Southern California to accept a
10 position with them as a compensation analyst with
11 responsibilities for U.S. domestic compensation and
12 responsibilities for development of their
13 international human resources function.
14 Q. Did you accept the job?
15 A. I accepted the job as the compensation
16 analyst and six months later was promoted to
17 manager of compensation and benefits.
18 Q. For the whole company or for a division?
19 A. For -- it was a division of Litton
20 Industries called Litton Data Command Control
21 Systems.
22 Q. And where was that company located?
23 A. Calabasas, California.
24 Following that, I was slated to be the
25 human resources manager in Saudi Arabia. And while

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1 waiting for visas to come through for me and my
2 family, I was offered a job by Bank of America to
3 be the manager of compensation benefits for their
4 Asian division headquartered in Tokyo, Japan.
5 I accepted that offer and in May of 1980
6 moved to Tokyo, Japan and assumed that function
7 there, manager of compensation and benefits, for
8 all of their Asian operations, which included 15
9 countries: China, South Korea, Hong Kong, Thailand,
10 Singapore, Malaysia, Indonesia, the Philippines,
11 Shri Lanka, India and Australia.
12 Q. Okay.
13 A. And I functioned in that position for
14 approximately five years during --
15 Q. Living in Tokyo?
16 A. Living in Tokyo and traveling to all of
17 the locations where we had people.
18 My responsibilities included everything
19 related to compensation for U.S. employees located
20 in the Asian division, expatriate compensation, and
21 all of the pay program developments associated with
22 that. It also included the development of all
23 compensation programs in all of our locations,
24 which necessitated working through our local
25 country human resources managers.

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1 As those managers were fairly junior in
2 their responsibility, I worked with local
3 management to identify replacements in most cases
4 and hired qualified human resources professionals
5 from the local market. I then worked with them to
6 train them in compensation issues, compensation
7 skills and techniques that would be applicable to
8 their operations, to the point where I would put on
9 periodic seminars and meet with all of the human
10 resources managers in Asia and teach a one-day
11 course to them in compensation.
12 Q. That was all while you were at B of A?
13 A. That was while I was assigned to the
14 Asian division --
15 Q. Okay.
16 A. -- of Bank of America. I returned, took
17 a job transfer from Tokyo to San Francisco in July
18 1985 and became the manager of compensation for the
19 world banking division, which included
20 responsibilities for Asia division, Latin American
21 division, European and African divisions, and in
22 addition to that, to all of the non-California
23 banking operations, such as the adjunct offices
24 around the U.S.; and in that capacity would then
25 review and direct all the activities of

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1 compensation managers in each of those divisions.
2 And while there, I developed a different
3 approach to variable compensation incentive
4 commission programs, and those -- that different
5 approach was adopted division-wide and was viewed
6 by corporate as being appropriate for the rest of
7 the company.
8 I was then transferred to corporate
9 headquarters for Bank of America with
10 responsibility to develop and oversee all of their
11 incentive and commission plans. My title was
12 changed to senior compensation consultant. I
13 handled -- personally handled half of the bank's
14 incentive programs, which amounted to approximately
15 \$25 million a year in annual expenditures, and
16 covered programs for money market traders, foreign
17 exchange traders, commercial bankers, middle market
18 bankers, basically everything except the retail
19 banking operation in California. As that expanded,
20 we transferred other compensation people
21 specifically to -- under my responsibility, to
22 train as consultants to do different portions of
23 the bank.
24 Having done that for three years and
25 turned that variable pay program into a success, I

Page 21

1 was asked to take the position of manager of
2 compensation for the commercial and corporate
3 banking headquartered in San Francisco, and I held
4 that --

5 Q. Okay. Let me just stop you right there.

6 Before you made that change to manager
7 of comp for the commercial and corporate banking,
8 how many employees did you have that you
9 supervised?

10 A. Two.

11 Q. So you handled all that stuff that you
12 just described with two employees?

13 A. Yes.

14 Q. Okay. Please continue.

15 A. The manager of compensation, I believe
16 it was -- specifically, the title was manager of
17 compensation services. And we had responsibility
18 for the corporate, commercial and merchant banking
19 activities for the bank. I had a staff of -- I
20 believe it was three, possibly four at times -- of
21 other compensation analysts that assisted me with
22 that and in that role was responsible for all
23 aspects of compensation.

24 Q. Tell me, what year did you take on those
25 duties?

Page 22

1 A. I believe that was approximately 1990,
2 possibly '89.

3 Q. Okay. Continue, please.

4 A. And I left Bank of America in March of
5 '92 to move back to Boise, which I considered my
6 home and --

7 Q. Was that the reason for your leaving B
8 of A?

9 A. Yes. It was precipitated by -- my
10 children were getting older, and I wanted to raise
11 them here rather than in the San Francisco Bay
12 Area.

13 Q. Okay.

14 A. And I purchased a franchise here, which
15 I developed and ran for two years.

16 Q. And what franchise was that?

17 A. It was a Mailboxes, Et Cetera franchise.

18 Q. You managed it for two years. What
19 happened to that entity?

20 A. I sold it. After I got it up and
21 running and profitable, I sold it.

22 Q. What year was that?

23 A. '94.

24 Q. And following Mailboxes, Et Cetera, what
25 next position did you have?

Page 23

1 A. I went to work as a compensation analyst
2 for West One Bank in January '95. In May 1995,
3 West One Bank was bought out by U.S. Bank. I was
4 asked to be the compensation liaison to merge the
5 compensation programs between West One Bank and
6 U.S. Bank and spent the summer of 1995 flying from
7 Boise to Portland every week. I'd leave here
8 Monday morning, spend the week there, come back
9 Friday night, and merged the two compensation
10 programs. They offered me a job in Portland to
11 stay there, but --

12 Q. "They" being U.S.?

13 A. Correct.

14 Q. Okay.

15 A. And -- but as my objective had been to
16 relocate my family to Boise, I looked for other
17 employment and was offered and accepted the
18 position with Micron Electronics.

19 Q. When you were with West One, you were in
20 this building?

21 A. Yes.

22 Q. We all have a history.

23 A. Seventh floor.

24 Q. I have a lot of friends that went
25 through that merger.

Page 24

1 A. Oh, yes.

2 Q. I'll talk about it afterwards.

3 Do you recall attending any specific
4 training seminars or attending any -- taking any
5 schooling or classes on the Fair Labor Standards
6 Act?

7 A. Yes.

8 Q. Can you tell me which ones you took?

9 A. Some of them go back quite a ways. I
10 don't remember the specific --

11 Q. As best as you can recall.

12 A. Yes. I have always been a member of the
13 American Compensation Association and have
14 participated in training and certification programs
15 that they have. I've taken a number of their
16 courses, the basic compensation courses, which
17 cover regulatory requirements. The Fair Labor
18 Standards Act, Executive Order 11246, Title VII
19 requirements, local state labor law requirements
20 were all part of those classes.

21 In addition, I have participated in
22 various conferences over the last 20 years or so
23 that have been in compensation and classes such as
24 those put on by the consulting firms, classes
25 specific to sales compensation design and

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1 administration sales -- or, rather, compensation
2 communication and quantitative analysis and
3 compensation in accounting for nonaccounting
4 professionals.

5 Q. We need to let -- "compensation
6 communication," what do you mean?

7 A. In the change of compensation
8 programs -- and occasionally not just in the change
9 of those programs, but sometimes in an effort to
10 increase the understanding of those programs
11 amongst employees, there are certain techniques,
12 processes to follow to communicate the meaning and
13 the benefit of those programs. Some of that is
14 through the proper construction of policies; some
15 of that is through setting up somewhat informal
16 training programs; and a great deal of it is
17 centered around making compensation part of
18 supervisory management skills, especially in new
19 supervisors' classes.

20 Most companies will have a supervisory
21 training 101, which would be a two- or three-day
22 program, and I would typically participate in that
23 for a half a day, talking specifically about
24 compensation programs.

25 Q. Okay. Did you ever put on any training

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1 what the theory behind performance-based increases
2 is; how do you factor in employees at different pay
3 levels with similar performance levels; how do you
4 factor in employees at similar pay levels at
5 different performance levels; how do you utilize
6 performance-increase budgets for your staff; and
7 how do you then communicate those decisions back to
8 the employees, telling them what their performance
9 was and what their reward was as a result of that
10 performance.

11 Q. Now, the information that you've just
12 described, would that be in all the seminars, or is
13 that just kind of a general flavor of the seminars
14 collectively?

15 A. The latter, kind of a general flavor of
16 the seminars. There were other ad hoc, not
17 necessarily seminars but meetings that we would
18 hold. If we had heard there was a specific issue
19 or a concern, then we would get together with the
20 managers and say, "What's the best way to address
21 this? Should we meet with some of your employees?
22 Should we go over it with you and have you
23 communicate to other employees, or should we get
24 all of the employees together and talk about it in
25 general?"

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1 seminars like that for supervisors while you were
2 at Micron Electronics?

3 A. Yes.

4 Q. Okay. How many did you put on?

5 A. I don't know the specific number. There
6 was a period of time when we were in a growth mode
7 that we would schedule approximately two classes a
8 month, and I would participate in each of those. I
9 don't remember exactly how many months that ran.
10 It seems like it was approximately a year or a
11 little over a year.

12 Q. What time frame are we talking about
13 here?

14 A. Oh, '99, along in that time period, give
15 or take a little.

16 Q. Had you put on any seminars before 1999?

17 A. Yes.

18 Q. Okay. Just generally tell me what kinds
19 of seminars you put on. And I'm talking about for
20 supervisors.

21 A. Specifically for supervisors, you mean?

22 Q. Right.

23 A. How to take the results from performance
24 appraisals and utilize the output of a performance
25 appraisal in the determination of pay increases;

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1 Q. When did you first learn about the
2 lawsuit that we're involved in here?

3 A. I don't recall.

4 Q. Any idea?

5 A. Somewhere around the second quarter of
6 2001.

7 Q. When did you first become aware that you
8 might be a witness?

9 A. I don't recall that specific time
10 either.

11 Q. Do you have a general idea?

12 A. Fall 2001.

13 Q. Who first told you you might be a
14 witness?

15 A. I'm trying to think. I believe it was
16 my immediate supervisor, my boss at that time.

17 Q. Who was that?

18 A. Susan Bundgard.

19 Q. I'm sorry?

20 A. Susan Bundgard, B-U-N-D-G-A-R-D.

21 Q. And what's her position?

22 A. Vice president, human resources,
23 MicronPC, LLC.

24 Q. And just for the sake of the record,
25 that's the Gores company, right?

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- 1 A. Correct.
- 2 Q. I'll keep these things straight.
- 3 What did Susan tell you about the fact
- 4 that you might become a witness in this?
- 5 A. If I recall correctly, what she had
- 6 indicated was that Interland was in the process of
- 7 gathering some information, and they might call
- 8 upon me to assist in gathering some information and
- 9 that it was unknown at that time what that might
- 10 lead to in involvement, both from a timing
- 11 standpoint and also in a personal appearances
- 12 standpoint.
- 13 Q. Okay. Anything else?
- 14 A. No.
- 15 Q. Was the context of this information a
- 16 visit to her office, or did she come to your
- 17 office, or how did that occur?
- 18 A. I think it was during a regularly
- 19 scheduled meeting I had with her that she
- 20 mentioned, "Oh, by the way..."
- 21 Q. Once you were given that information,
- 22 did you do anything? Did you look for documents?
- 23 Did you try to gather any information?
- 24 A. No, I did not.
- 25 Q. Once you had that information, did you

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- 1 talk to any of the people who had been your direct
- 2 reports, Ms. Pippenger, Mr. Weske?
- 3 A. Mr. Weske, no. He was not there at that
- 4 time. Ms. Pippenger worked for me, and I was aware
- 5 that she had been told the same information.
- 6 Q. Okay.
- 7 A. And so my comment to her was, "We'll
- 8 need to make sure that we can still get our jobs
- 9 done here first."
- 10 MR. THOMAS: McCauley was our last
- 11 witness, was he not? Let's go off the record a
- 12 second.
- 13 THE VIDEOGRAPHER: Off the record.
- 14 (Discussion held off the record and
- 15 recess taken from 2:27 p.m. to 2:38.)
- 16 (Mr. Tollefson is not present.)
- 17 (Deposition Exhibit No. 227 was marked
- 18 for identification.)
- 19 Q. (BY MR. THOMAS) Okay. We're back on
- 20 the record, and you realize that you're still under
- 21 oath, sir?
- 22 A. Yes.
- 23 Q. Okay. Handing you what's been marked as
- 24 Plaintiff's Exhibit 227, can you take a look at
- 25 that, please.

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- 1 (Pause in the proceedings.)
- 2 THE WITNESS: Okay.
- 3 Q. (BY MR. THOMAS) Have you seen that
- 4 document before?
- 5 A. I'm not sure it is the same document, a
- 6 copy of which I was given, that stipulated the
- 7 requirements of the 30(b)(6). This section does
- 8 look the same to me. The dates, time, of course,
- 9 were changed from the last one I've seen.
- 10 Q. This document was given to you by
- 11 Counsel?
- 12 A. Yes.
- 13 MR. DOCKSTADER: Counsel, I will
- 14 represent for the record that I think before the
- 15 deposition, we indicated we had not received the
- 16 Fourth Amended Notice. I did check. We have not
- 17 received service of a Fourth Amended Notice, but
- 18 I'll take your representation that it was sent to
- 19 us and only the date and time was changed. I'll
- 20 note for the record that this particular exhibit is
- 21 not signed. And I did check, and we didn't get an
- 22 amended notice by fax or otherwise.
- 23 MR. THOMAS: Okay.
- 24 MR. DOCKSTADER: We did get the Third
- 25 Amended Notice, and we provided a copy of that, and

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- 1 that may be what the witness is referring to --
- 2 MR. THOMAS: Oh, okay.
- 3 MR. DOCKSTADER: -- just to speed things
- 4 up.
- 5 MR. THOMAS: Great.
- 6 Q. When you were referring to a section of
- 7 the Notice of Deposition, you were referring to
- 8 some single-spaced type on page 2?
- 9 A. Yes.
- 10 Q. And in particular, where it says you are
- 11 further notified that you will be required to
- 12 bring -- produce the following documents, were you
- 13 referring to that area?
- 14 A. Yes.
- 15 Q. Okay. Have you brought any documents
- 16 today?
- 17 A. I did bring my resume, yes.
- 18 Q. Okay.
- 19 MR. DOCKSTADER: Do you want this,
- 20 Counsel?
- 21 MR. THOMAS: Yes.
- 22 (Mr. Tollefson rejoins the deposition.)
- 23 Q. (BY MR. THOMAS) Okay. You brought this
- 24 in response to item No. 2 on page 2?
- 25 A. Yes.

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1 Q. Okay. What documents did you review in
 2 preparation for the deposition?
 3 A. I reviewed my affidavit and attachments
 4 to that. I reviewed the affidavit of Farah
 5 Pippenger, the affidavit of Gabe Weske. I reviewed
 6 portions of the Fair Labor Standards Act.
 7 Q. What portions of the Fair Labor
 8 Standards Act did you review?
 9 A. Part 778.
 10 Q. Subpart?
 11 A. Several subparts there.
 12 Q. Which ones?
 13 A. I don't recall what the numbers were on
 14 those subparts. There was an introduction portion,
 15 a portion dealing with commissions, allocation
 16 methodologies and payment time frames.
 17 Q. Okay. When did you review -- I take it
 18 what you're referring to is the Code of Federal
 19 Regulations, Part 778.
 20 A. Yes, that's correct.
 21 Q. Did you actually review the actual Fair
 22 Labor Standards Act itself?
 23 A. In entirety, no.
 24 Q. Okay. So you reviewed the CFRs that
 25 dealt with commissions?

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1 A. Yes.
 2 Q. Okay. Anything else that you reviewed?
 3 A. No, not that I recall.
 4 Q. Did you review any of the underlying
 5 documents, the original source documents that you
 6 used to make any computations or that you used to
 7 formulate your affidavit?
 8 A. The attachments to my affidavit, I did
 9 review those.
 10 Q. How about any underlying documents or
 11 supporting documents?
 12 MR. DOCKSTADER: Object to the form.
 13 THE WITNESS: No.
 14 Q. (BY MR. THOMAS) Okay. Did you review,
 15 as in No. 7 here at the bottom, "Any and all
 16 documents setting forth the policies, procedures,
 17 or practices which purported to guide the methods
 18 of calculating non-exempt sales representatives'
 19 hourly rate for overtime during the relevant time"?
 20 MR. DOCKSTADER: Object to the form.
 21 THE WITNESS: No.
 22 Q. (BY MR. THOMAS) Do you know of any
 23 documents which you've seen that might fit that
 24 description?
 25 MR. DOCKSTADER: Object to the form.

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1 THE WITNESS: The only thing that seemed
 2 to fit my understanding of this paragraph 7 is the
 3 methodology displayed in one of the exhibits to my
 4 affidavit.
 5 (The remainder of the deposition is
 6 confidential and bound separately.)
 7 (Signature requested.)
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1 CERTIFICATE OF WITNESS
 2 I, ROBERT GRIFFARD, being first duly sworn,
 3 depose and say:
 4 That I am the witness named in the foregoing
 5 deposition; that I have read said deposition and
 6 know the contents thereof; that the questions
 7 contained therein were propounded to me; and that
 8 the answers as contained therein are true and
 9 correct, except for any changes that I may have
 10 listed on the Change Sheet attached hereto.
 11 DATED this ____ day of _____, 2002.
 12
 13
 14 _____
 15 ROBERT GRIFFARD
 16 SUBSCRIBED AND SWORN to before me this ____
 17 day of _____, 2002.
 18
 19 _____
 20 NAME OF NOTARY PUBLIC
 21 NOTARY PUBLIC FOR _____
 22 RESIDING AT _____
 23 MY COMMISSION EXPIRES _____
 24
 25

REPORTER'S CERTIFICATE

I, JOANN THOMAS, CSR No. 694, Certified Shorthand Reporter and Registered Professional Reporter, certify;

That the foregoing proceedings were taken before me at the time and place therein set forth, at which time the witness was put under oath by me;

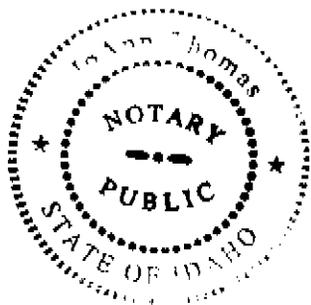
That the testimony and all objections made were recorded stenographically by me and were thereafter transcribed by me, or under my direction;

That the foregoing is a true and correct record of all testimony given, to the best of my ability;

I further certify that I am not a relative or employee of any attorney or party, nor am I financially interested in the action.

IN WITNESS WHEREOF, I set my hand and seal this 31st day of August, 2002.

Joann Thomas



JOANN THOMAS, CSR, RPR

Notary Public

Boise, Idaho

My Commission expires September 12, 2006

11: **Concordance Report**
 Unique Words: **882**
 Total Occurrences: **2,189**
 Noise Words: **384**
 Total Words in File: **5,360**
 Single File Concordance
 Case Insensitive
 Noise Word List(s):
NOISE.NOI
 Cover Pages = **3**
 Includes **ALL** Text
 Occurrences
 Dates **ON**
 Includes Pure Numbers
 Possessive Forms **ON**
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Timesheet History
501389 25547 37038 24314 18980

A		B		C		D		E		F		G		H		I		J		K		L		M	
Run Date: 05-JUL-01		Employee Time Sheet		Beginning Date Worked: 01-JAN-2000		End Date Worked: 30-JUN-2001																			
Full Name	Employee Number	Week Start Date	Date Worked	Element Name	Day Of Week	Hours SUM	Supervisor Emp Number	Time In	Time Out	Company															
332	501389	8-Oct-00	13-Oct-00		FRI	10.5	18882	08:00:00	08:30:00	MicronPC, LLC															
333	501389	15-Oct-00	20-Oct-00		FRI	9.25	18882	08:25:00	05:40:00	MicronPC, LLC															
334	501389	5-Nov-00	10-Nov-00		FRI	12.5	18882	08:00:00	08:30:00	MicronPC, LLC															
335	501389	5-Nov-00	9-Nov-00		THU	9.25	18882	11:30:00	08:45:00	MicronPC, LLC															
336	501389	12-Nov-00	16-Nov-00		THU	1.75	18882	04:30:00	06:15:00	MicronPC, LLC															
337	501389	12-Nov-00	17-Nov-00		FRI	12.75	18882	08:00:00	07:00:00	MicronPC, LLC															
338	501389	26-Nov-00	1-Dec-00		FRI	10.75	18882	08:00:00	06:45:00	MicronPC, LLC															
339	501389	3-Dec-00	8-Dec-00		FRI	10.25	18882	11:00:00	09:15:00	MicronPC, LLC															
340	501389	3-Dec-00	7-Dec-00		THU	2	18882	04:00:00	06:00:00	MicronPC, LLC															
341	501389	31-Dec-00	5-Jan-01		FRI	5.25	18882	12:15:00	05:30:00	MicronPC, LLC															
342	501389	21-Jan-01	28-Jan-01		FRI	6.75	18882	11:30:00	05:15:00	MicronPC, LLC															
343	501389	4-Feb-01	9-Feb-01		FRI	2.25	18882	08:00:00	07:15:00	MicronPC, LLC															
344	501389	11-Feb-01	15-Feb-01		THU	12	18882	08:00:00	08:00:00	MicronPC, LLC															
345	501389	11-Feb-01	16-Feb-01		FRI	6	18882	11:00:00	05:00:00	MicronPC, LLC															
346	501389	25-Feb-01	2-Mar-01		FRI	2.25	18882	04:30:00	06:45:00	MicronPC, LLC															
347	501389	4-Mar-01	8-Mar-01		THU	9.5	18982	08:00:00	05:30:00	MicronPC, LLC															
348	501389	4-Mar-01	9-Mar-01		FRI	7	18882	09:30:00	04:30:00	MicronPC, LLC															
349	501389	18-Mar-01	23-Mar-01		FRI	0.5	502257	06:57:00	06:27:00	MicronPC, LLC															
350	501389	25-Mar-01	30-Mar-01		FRI	7.45	502257	09:15:00	04:46:00	MicronPC, LLC															
351	501389	1-Apr-01	6-Apr-01		FRI	3	502257	01:00:00	04:00:00	MicronPC, LLC															
352	501389	6-May-01	11-May-01		FRI	2.5	502257	01:45:00	04:15:00	MicronPC, LLC															
353	501389	13-May-01	18-May-01		FRI						Element Total: 165.400														
354	501389	30-Jul-00	31-Jul-00	Scheduled No Pay	MON		1	18882	08:00:00	09:00:00	MicronPC, LLC														
355	501389	30-Jul-00	1-Aug-00		TUE		8	18882	08:00:00	09:00:00	MicronPC, LLC														
356	501389	30-Jul-00	2-Aug-00		WED		8	18882	08:00:00	09:00:00	MicronPC, LLC														
357	501389	30-Jul-00	3-Aug-00		THU		8	18882	08:00:00	09:00:00	MicronPC, LLC														
358	501389	30-Jul-00	4-Aug-00		FRI		8	18882	08:00:00	09:00:00	MicronPC, LLC														
359	501389	6-Aug-00	8-Aug-00		TUE		8	18882	08:00:00	09:00:00	MicronPC, LLC														
360	501389	6-Aug-00	9-Aug-00		WED		8	18882	08:00:00	09:00:00	MicronPC, LLC														
361	501389	6-Aug-00	10-Aug-00		THU		8	18882	08:00:00	09:00:00	MicronPC, LLC														
362	501389	29-Oct-00	2-Nov-00		THU		8	18882	08:00:00	09:00:00	MicronPC, LLC														
363	501389	29-Oct-00	3-Nov-00		FRI		8	18882	08:00:00	09:00:00	MicronPC, LLC														
364	501389	29-Oct-00	18-Jan-01		THU		8	18882	08:00:00	09:00:00	MicronPC, LLC														
365	501389	14-Jan-01	1-Feb-01		THU		8	18882	08:00:00	09:00:00	MicronPC, LLC														
366	501389	28-Jan-01	1-Feb-01		THU		8	18882	08:00:00	09:00:00	MicronPC, LLC														
367	501389	3-Sep-00	4-Sep-00	TOP Holiday Pay	MON		8	18882			Element Total: 893.000														
368	501389	19-Nov-00	23-Nov-00		THU		8	18882			MicronPC, LLC														
369	501389	24-Dec-00	24-Dec-00		SUN		8	18882			MicronPC, LLC														
370	501389	24-Dec-00	25-Dec-00		MON		8	18882			MicronPC, LLC														
371	501389	31-Dec-00	1-Jan-01		MON		8	18882			MicronPC, LLC														
372	501389	31-Dec-00	1-Jan-01		MON		8	18882			MicronPC, LLC														

19549	John Seale	SEPT 1999 INC	\$1,607.57	\$0	\$4	\$3	\$18	\$0	\$25	\$1,192
19549	John Seale	SEPT 2000 INC	\$5,000	\$0	\$0	\$0	\$0	\$0	\$0	\$5
501389	Kim Smith	APR 2001 INC	\$51,115	\$0	\$0	\$0	\$0	\$0	\$0	\$5
501389	Kim Smith	AUG 2000 INC	\$1,500.00	\$0	\$9	\$17	\$12	\$0	\$38	\$1,538
501389	Kim Smith	DEC 2000 INC	\$2,581.02	\$82	\$0	\$0	\$0	\$11	\$93	\$2,474
501389	Kim Smith	FEB 2001 INC	\$2,034.49	\$37	\$14	\$0	\$33	\$0	\$83	\$2,118
501389	Kim Smith	JAN 2001 INC	\$5,043.27	\$4	\$0	\$0	\$9	\$0	\$12	\$617
501389	Kim Smith	MAR 2001 INC	\$1,321.55	\$30	\$0	\$20	\$2	\$21	\$72	\$1,394
501389	Kim Smith	MAY 2001 INC	\$0.00	\$0	\$0	\$0	\$0	\$0	\$0	\$0
501389	Kim Smith	NOV 2000 INC	\$1,505.00	\$35	\$49	\$45	\$0	\$0	\$130	\$1,584
501389	Kim Smith	OCT 2000 INC	\$1,600.00	\$44	\$40	\$0	\$0	\$0	\$84	\$1,684
501389	Kim Smith	SEPT 2000 INC	\$1,500.00	\$10	\$0	\$4	\$0	\$0	\$13	\$1,513
19740	Kip Derouen	AUG 2000 INC	\$120.00	\$1	\$0	\$0	\$2	\$0	\$3	\$123
19740	Kip Derouen	AUGUST INC 1999	\$5,842.75	\$45	\$188	\$100	\$0	\$0	\$283	\$10,226
19740	Kip Derouen	DEC INC 1998	\$1,000.00	\$4	\$10	\$0	\$0	\$0	\$14	\$1,014
19740	Kip Derouen	JAN 2000 INC	\$314.50	\$0	\$0	\$4	\$5	\$0	\$9	\$323
19740	Kip Derouen	JULY INC 1998	\$1,650.55	\$0	\$19	\$33	\$23	\$0	\$74	\$1,725
19740	Kip Derouen	JUNE INC 2000	\$2,046.04	\$0	\$266	\$266	\$119	\$0	\$651	\$2,697
19740	Kip Derouen	JUNE INC 1999	\$2,693.47	\$30	\$0	\$43	\$27	\$0	\$100	\$2,793
19740	Kip Derouen	JUNE INC 2000	\$0.00	\$0	\$0	\$0	\$0	\$0	\$0	\$0
19740	Kip Derouen	MAR 2000 INC	\$4,012.80	\$45	\$93	\$0	\$104	\$0	\$241	\$4,350
19740	Kip Derouen	MAY INC 2000	\$5,457.15	\$0	\$0	\$73	\$73	\$0	\$147	\$5,623
19740	Kip Derouen	NOV 2000 INC	\$4,285.28	\$116	\$111	\$111	\$0	\$0	\$338	\$4,623
19740	Kip Derouen	NOV INC 1999	\$5,550.93	\$48	\$34	\$0	\$0	\$0	\$83	\$5,633
19740	Kip Derouen	OCT 2000 INC	\$5,852.80	\$216	\$268	\$143	\$222	\$0	\$547	\$6,370
19740	Kip Derouen	OCT INC 1999	\$2,224.85	\$81	\$58	\$0	\$0	\$0	\$139	\$2,364
19740	Kip Derouen	SEPT 1999 INC	\$1,643.37	\$11	\$0	\$17	\$60	\$0	\$88	\$1,731
19740	Kip Derouen	SEPT 2000 INC	\$1,700.04	\$24	\$0	\$2	\$0	\$60	\$96	\$1,792
24314	Kurt Swanson	APR 2001 INC	\$2,600.00	\$0	\$0	\$0	\$0	\$0	\$0	\$0
24314	Kurt Swanson	AUG 2000 INC	\$6,600.91	\$0	\$0	\$0	\$0	\$0	\$0	\$0
24314	Kurt Swanson	DEC 2000 INC	\$458.63	\$0	\$0	\$0	\$0	\$0	\$0	\$0
24314	Kurt Swanson	DEC INC 1999	\$125.00	\$0	\$0	\$0	\$0	\$0	\$0	\$0
24314	Kurt Swanson	FEB 2001 INC	\$1,216.68	\$0	\$0	\$0	\$0	\$0	\$0	\$0
24314	Kurt Swanson	JAN 2000 INC	\$49.60	\$0	\$0	\$0	\$0	\$0	\$0	\$0
24314	Kurt Swanson	JAN 2001 INC	\$2,934.72	\$0	\$0	\$1	\$0	\$0	\$1	\$2,935
24314	Kurt Swanson	JULY INC 2000	\$5,347.48	\$0	\$0	\$0	\$0	\$0	\$0	\$0
24314	Kurt Swanson	JUNE INC 2000	\$2,443.77	\$0	\$0	\$0	\$0	\$0	\$0	\$0
24314	Kurt Swanson	MAR 2001 INC	\$1,551.50	\$0	\$0	\$0	\$0	\$0	\$0	\$0
24314	Kurt Swanson	MAY 2001 INC	\$2,300.00	\$0	\$0	\$0	\$0	\$0	\$0	\$0
24314	Kurt Swanson	MAY INC 2000	\$2,585.93	\$0	\$0	\$0	\$0	\$0	\$0	\$0
24314	Kurt Swanson	NOV 2000 INC	\$4,339.17	\$0	\$0	\$0	\$0	\$0	\$0	\$0
24314	Kurt Swanson	NOV INC 1999	\$2,053.85	\$29	\$69	\$0	\$0	\$0	\$86	\$2,149