

Kim J Dockstader, ISB No. 4207
 Gregory C. Tollefson, ISB No. 5643
 Teresa A. Hill, ISB No. 6175
STOEL RIVES LLP
 101 South Capitol Boulevard, Suite 1900
 Boise, ID 83702-5958
 Telephone: (208) 389-9000
 Fax Number: (208) 389-9014
 kjdockstader@stoel.com
 gctollefson@stoel.com
 tahill@stoel.com

U.S. COURTS
 02 AUG 16 PM 2:44
 REC'D. CLERK
 CAROLYN S. FURKE
 CLERK IDAHO

Attorneys for Defendant

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-EJL

) **AFFIDAVIT OF KIM J DOCKSTADER**
) **IN SUPPORT OF DEFENDANT'S**
) **UNOPPOSED MOTION TO STRIKE**
) **CONSENTS AND DISMISS CLAIMANTS**
) **MICHAEL CARR, MICHELLE**
) **MILLIKEN AND MICHAEL JORDAN**

**AFFIDAVIT OF KIM J DOCKSTADER IN SUPPORT OF DEFENDANT'S
 UNOPPOSED MOTION TO STRIKE CONSENTS AND DISMISS CLAIMANTS
 MICHAEL CARR, MICHELLE MILLIKEN AND MICHAEL JORDAN - 1**

counsel and requested that if Mr. Carr did not want to participate in the lawsuit, he should execute a notice of withdrawal. Attached as Exhibit B is a true and correct copy of the February 4, 2002 letter.

5. On February 21, 2002, Mr. Tollefson sent a follow-up letter to Plaintiffs' counsel regarding Ms. Milliken and Mr. Carr and again requested that counsel obtain notices of withdrawal from these claimants or stipulate to their withdrawal from the suit. Attached as Exhibit C is a true and correct copy of the February 21, 2002 letter.

6. We have been attempting to depose Michael Jordan since January 2002 and have rescheduled his deposition five times. Mr. Jordan was most recently scheduled for deposition on August 6, 2002 but failed to appear at the deposition. Attached as Exhibit D is a true and correct copy of the record reflecting Mr. Jordan's failure to appear on August 6, 2002.

7. On August 12, 2002, I wrote to Plaintiffs' counsel, requesting stipulation to the withdrawal of consents filed by Mr. Jordan, Mr. Carr and Ms. Milliken. Attached as Exhibit E is a true and correct copy of the August 12, 2002 letter.

8. On August 13, 2002, Plaintiffs' counsel responded and indicated that they are unable to obtain withdrawals from the claimants and that they would not stipulate to their withdrawal. Attached as Exhibit F is a true and correct copy of the August 13, 2002 letter. In this letter, Mr. Williams stated that they would not oppose a motion to dismiss the individual claims. *Id.*

9. On August 14, 2002, I informed Plaintiffs' counsel that we would proceed with

**AFFIDAVIT OF KIM J DOCKSTADER IN SUPPORT OF DEFENDANT'S
UNOPPOSED MOTION TO STRIKE CONSENTS AND DISMISS CLAIMANTS
MICHAEL CARR, MICHELLE MILLIKEN AND MICHAEL JORDAN - 3**

filing an unopposed motion to withdrawal Mr. Milliken, Ms. Carr and Mr. Jordan. Attached as Exhibit G is a true and correct copy of the August 14, 2002 letter.

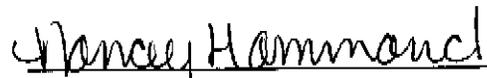
DATED this 16th day of August, 2002.

STOEL RIVES LLP

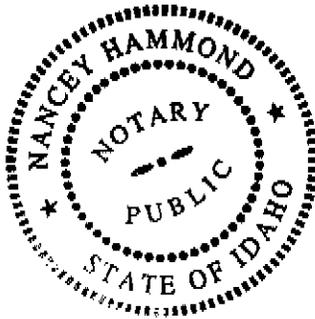


Kim J Dockstader

SUBSCRIBED AND SWORN to before me this 16th day of August, 2002.



Notary Public for Idaho
Residing in: Boise
My Commission Expires: 6/12/03



**AFFIDAVIT OF KIM J DOCKSTADER IN SUPPORT OF DEFENDANT'S
UNOPPOSED MOTION TO STRIKE CONSENTS AND DISMISS CLAIMANTS
MICHAEL CARR, MICHELLE MILLIKEN AND MICHAEL JORDAN - 4**

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of August, 2002, a true and correct copy of the foregoing

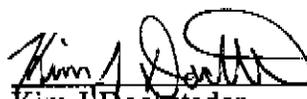
AFFIDAVIT OF KIM J DOCKSTADER IN SUPPORT OF DEFENDANT'S

UNOPPOSED MOTION TO STRIKE CONSENTS AND DISMISS CLAIMANTS

MICHAEL CARR, MICHELLE MILLIKEN AND MICHAEL JORDAN was served on

the following individuals by the manner indicated:

William H. Thomas	[]	By U.S. Mail
Daniel E. Williams	<input checked="" type="checkbox"/>	By Hand Delivery
HUNTLEY, PARK, THOMAS,	[]	By Facsimile
BURKETT, OLSEN & WILLIAMS	[]	By Overnight Delivery
250 S. Fifth Street, Suite 660		
Boise, Idaho 83701-2188		



Kim J Dockstader

**AFFIDAVIT OF KIM J DOCKSTADER IN SUPPORT OF DEFENDANT'S
UNOPPOSED MOTION TO STRIKE CONSENTS AND DISMISS CLAIMANTS
MICHAEL CARR, MICHELLE MILLIKEN AND MICHAEL JORDAN - 5**

EXHIBIT A



101 S. Capital Boulevard, Suite 1900
Boise, Idaho 83702
main 208.389.9000
fax 208.389.9040
www.stoel.com

January 17, 2002

GREG C. TOLLEFSON
Direct Dial
(208) 387-4211
email gctollefson@stoel.com

VIA FACSIMILE (345-7894) & REGULAR MAIL

Christopher F. Huntley
Huntley, Park, Thomas, Burkett,
Olsen & Williams, LLP
250 S. 5th, Suite 660
P.O. Box 2188
Boise, Idaho 83701

Re: Smith et al. v. Micron Electronics, Inc.

Dear Chris:

Based upon the fact that Mr. Moffett's documents were not available for review on January 14, 2002 during his deposition, you agreed to make Mr. Moffett available for an additional half day of deposition. Please let us know if Mr. Moffett is available the afternoon of February 4 or 5, 2002, beginning at 2:00 p.m. Because of the pending February 6, 2002 discovery cut-off date, if we do not hear from you by next Wednesday, January 23, we will proceed with noticing the deposition for one of those dates.

With regard to Michelle Milliken, you informed me on Monday, January 14, 2002, that Ms. Milliken was withdrawing from the lawsuit and that you wanted to call off her deposition which was scheduled for January 15, 2002. You stated that you were unsure at this time whether you would be calling Ms. Milliken as a witness at any point in this lawsuit. I agreed to vacate Ms. Milliken's January 15, 2002 deposition based upon your representation that in the event you determine to call her as a witness, you would agree to allow us to take her deposition regardless of any scheduling orders or any other deadlines or orders in this matter. Therefore, we reserve the right to depose Ms. Milliken.

Oregon
Washington
California
Utah
Idaho



Christopher Huntley
January 17, 2002
Page 2

Please let me know if there is anything inaccurate about my recollection of our conversation.

Very truly yours,

Dictated and sent without
signature to avoid delay

Greg C. Tollefson

EXHIBIT B



101 S. Capitol Boulevard, Su
Boise, Idaho 83702
main 208 389-9000
fax 208 389-9040
www.stoel.com

February 4, 2002

KIM J DOCKSTADER
Direct Dial
(208) 387-4287
email kjdockstader@stoel.com

VIA REGULAR MAIL & FACSIMILE 345-7894

William H. Thomas
Daniel E. Williams
Christopher Huntley
Huntley, Park, Thomas, Burkett,
Olsen & Williams
250 S. Fifth St., Suite 660
P.O. Box 2188
Boise, ID 83701

Re: *Smith, et al. v. Micron Electronics, Inc.*

Dear Bill, Dan and Chris:

We received a call from your office today indicating you have once again not been able to make contact with Michael Carr and that he will not be available for his deposition which was rescheduled for February 5, 2002 at 9:00 a.m. Please be advised we will not agree to reschedule Mr. Carr's deposition. If he does not want to participate or show up for his deposition, he needs to execute a notice of withdrawal of consent to join collective action or face dismissal (involuntary or otherwise) from the case.

Very truly yours,

A handwritten signature in cursive script that reads "Kim J. Dockstader".
Kim J Dockstader

EXHIBIT C



801 S. Capital Boulevard, Suite 1900
Boise, Idaho 83702
main 208.389.9000
fax 208.389.9040
www.stoel.com

February 21, 2002

GREGORY C. TOLLEFSON
Direct Dial
(208) 387-4211
email gctollefson@stoel.com

William H. Thomas
Daniel E. Williams
Christopher F. Huntley
Huntley, Park, Thomas, Burkett,
Olsen & Williams
250 S. Fifth St., Suite 660
P.O. Box 2188
Boise, ID 83701

Re: *Smith, et al. v. Micron Electronics, Inc.*

Gentlemen:

We have not received a response concerning two of the claimants in this case, Michael Carr and Michelle Milliken.

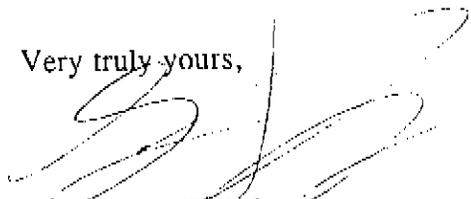
With regard to Mr. Carr, you will recall that he would not show up for his deposition, and you informed us that you cannot contact him. Please see Kim's February 4, 2002 letter to you on this issue.

With regard to Ms. Milliken, on January 17, 2002, you were sent a letter verifying my conversation with Chris Huntley, in which he informed me that Ms. Milliken was withdrawing from the lawsuit. Please also see my follow-up letter of February 6, 2002.

Please let us know if you are unable to obtain notices of withdrawal of consent from Mr. Carr or Ms. Milliken. If that is the case, we can stipulate to dismissal.

Regardless, I would hope that we can resolve this without involving the Court.

Very truly yours,



Gregory C. Tollefson

EXHIBIT D

Copy

In the United States District Court
for the District of Idaho

KIMBERLEY SMITH and MICHAEL B. HINKLEY,)
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

In the Matter of the Deposition of Michael Jordan

August 6, 2002

Reported by
Kimberly R. Saunders, RPR
CSR No. 703

THE REALTIME COURT REPORTERS
TUCKER
AND ASSOCIATES, LLC

208-345-3704 • 1-800-424-2354

Fax 208-345-3713

605 WEST FORT STREET

P.O. BOX 1625 • BOISE, ID 83701

Home Page: <http://www.tuckercourtreporters.com>

E-Mail: tucker@tuckercourtreporters.com

1 BOISE, IDAHO

2 Tuesday, August 6, 2002, 9:05 a.m.

3

4 MR. DOCKSTADER: Let's go on the record. Let
5 the record reflect that this is the time and the
6 place noticed for the deposition of Michael Jordan
7 in the case of Kimberly Smith et al. versus Micron
8 Electronics, Inc. Today is August 6, 2002. It's
9 approximately 9:05 a.m.

10 For the record, shortly before 9 a.m. I
11 received a message from Dan Williams' office
12 indicating that Mr. Jordan may not be in attendance
13 at a deposition today. It was requested that I go
14 on the record to reflect the starting of the
15 deposition. And I indicated to Mr. Williams'
16 office that I would give some time for Mr. Jordan
17 to show up. And if he did not show up, that I
18 would contact Mr. Williams for purposes of getting
19 on a conference call to put whatever we needed to
20 put on the record in terms of this particular
21 deposition. We'll go off the record now.

22 (Off the record.)

23 (Exhibit No. *-192 marked.)

24 MR. DOCKSTADER: Going back on the record,
25 it's approximately 9:33 a.m. We have marked as

1 Exhibit *-192 the Fifth Amended Notice of
2 Deposition Duces Tecum of Michael Jordan. Let the
3 record reflect that Mr. Jordan has not appeared for
4 his deposition here today. We have, as I had
5 indicated earlier on the record, got Dan Williams
6 on the phone here on a conference call, and I
7 believe Mr. Williams wanted to put something on the
8 record.

9 MR. WILLIAMS: Yes. Thanks Kim. Just for
10 the record, we have attempted to contact Mr. Jordan
11 multiple times, both by telephone message, where
12 we, in fact, got his telephone message service with
13 his voice on it, and by letter. And for many
14 months during which time we've tried to set his
15 deposition multiple times he has not responded to
16 us.

17 MR. DOCKSTADER: Is that it, Dan?

18 MR. WILLIAMS: That's it.

19 MR. DOCKSTADER: Okay. We will conclude the
20 deposition for today's date. Thank you very much.

21

22 (The deposition concluded at 9:40 a.m.)

23

24

-00000-

25

EXHIBIT E



101 S. Capitol Boulevard, Suite 1900
Boise, Idaho 83702
main 208.389.9000
fax 208.389.9040
www.stoel.com

August 12, 2002

KIM J DOCKSTADER
Direct Dial
(208) 387-4287
email kjdockstader@stoel.com

VIA MAIL & FACSIMILE (345-7894)

William H. Thomas
Daniel E. Williams
Christopher F. Huntley
Huntley, Park, Thomas, Burkett,
Olsen & Williams
250 S. Fifth St., Suite 660
P.O. Box 2188
Boise, ID 83701

Re: *Smith, et al. v. Micron Electronics, Inc.*

Gentlemen:

This letter is in follow up to previous communications regarding the withdrawals or dismissals of claimants Michael Carr and Michelle Milliken. In addition, we request that you stipulate to the withdrawal and dismissal of claimant Michael Jordan.

With regard to Mr. Carr, you will recall that he refused to show up for his deposition, scheduled February 5, 2002 at 9:00 a.m. You have informed us that you were unable to contact him. (See February 4, 2002 and February 21, 2002 and March 6, 2002 letters.) We have requested your cooperation in obtaining a withdrawal on behalf of Mr. Carr no less than three times and have received no response. *Id.*

With regard to Ms. Milliken, on January 17, 2002, you were sent a letter concerning a conversation with Chris Huntley, in which Chris informed us that Ms. Milliken wanted to call off her deposition, scheduled for January 15, 2002, and that she was withdrawing from the lawsuit. (See also February 6, 2002, February 21, 2002 and March 6, 2002 letters.) We have requested your cooperation in obtaining a withdrawal by Ms. Milliken no less than three times, again, with no response.

Finally, we have been attempting to depose Mr. Jordan for the past eight months and have scheduled and rescheduled his deposition several times. As you are aware, Mr. Jordan did not show up at his deposition scheduled on August 6, 2002 at 9:00 a.m.

William H. Thomas
Daniel E. Williams
Christopher F. Huntley
August 12, 2002
Page 2

We have requested withdrawals from Ms. Milliken and Mr. Carr on numerous occasions and have received no response. In addition, we have been more than patient in attempting to depose Mr. Jordan. Because of their failures to comply with discovery and failures to appear at depositions, we request plaintiffs' immediate cooperation in stipulating to the withdrawal of consents filed on behalf of each of these individuals, and their dismissals from this action.

We ask that you confirm plaintiffs' agreement to stipulate to this relief no later than close of business on August 14, 2002. Upon receipt of your written confirmation to such a stipulation, we will prepare and forward a proposed Stipulation for Withdrawal and Dismissal for your signature and subsequent filing with the Court. However, if we do not receive a response from you by that date and time, we will have no choice but to prepare and file a motion seeking appropriate relief with the Court. If forced to proceed by motion, we will seek an award of costs and attorneys' fees, and any other sanctions as may be appropriate.

Very truly yours,


Kim J. Dockstader

EXHIBIT F

00710704 12:00 PM 0000000000
Robert C. Huntley
William H. Thomas
F. Michael Burkett
Steven L. Olson
Daniel E. Williams

**HUNTLEY, PARK,
THOMAS, BURKETT,
OLSEN & WILLIAMS, LLP**

ATTORNEYS & COUNSELORS AT LAW

Christopher F. Huntley
Chris Kronberg
Of Counsel:
W. Anthony Park
Larry L. Goins

August 13, 2002

AUG 13 2002

VIA FACSIMILE: 389-9040

Kim J. Dockstader
Stoel Rives LLP
101 S. Capitol Blvd., Suite 1900
Boise, ID 83702

Re: Smith, et al., v. Micron Electronics, Inc.

Dear Kim:

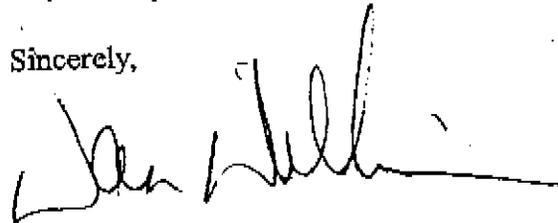
I am writing in response to your letter of August 12, 2002, regarding Michael Carr, Michelle Milliken and Michael Jordan.

In your letter you acknowledge that we have discussed this matter many times and we have told you that these individuals were not cooperating and would not return our many phone and e-mail messages regarding their depositions. If they will not respond to us, I am not sure how you can expect us to obtain a withdrawal from them, no matter how many times you ask for it. Every time you have sent a withdrawal form, we have sent it to these three people.

What we have done in similar circumstances is have you file a motion to dismiss the individual claims. In response, we will not oppose your motion, but will simply relate to the Court that these individuals would not cooperate and respond to our many inquiries of them. In that way, the Court will dismiss their individual claims, but we are not placed in the untenable position of stipulating to their withdrawal.

I cannot imagine that such a simple motion will cause you more expense than preparing a Stipulation, so I suggest that your threat of costs, attorney fees and sanctions is inappropriate.

Sincerely,



Daniel E. Williams

DEW:g

EXHIBIT G



101 S. Capitol Boulevard, Suite 1900
Boise, Idaho 83702
main 208.389.9000
fax 208.389.9040
www.stoel.com

August 14, 2002

KIM J DOCKSTADER
Direct Dial
(208) 387-4287
email kjdockstader@stoel.com

VIA MAIL & FACSIMILE (345-7894)

Daniel E. Williams
Huntley, Park, Thomas, Burkett,
Olsen & Williams
250 S. Fifth St., Suite 660
Boise, ID 83701

Re: *Smith, et al. v. Micron Electronics, Inc.*

Dear Dan:

We are in receipt of your August 13, 2002 letter refusing our request for a stipulated withdrawal and dismissal of the consents filed on behalf of Michael Carr, Michelle Milliken and Michael Jordan. We did not intend to place you in an "untenable position." To the contrary, we proposed an expedient and cost-effective resolution.

Each claimant's "Consent to Join Collective Action" states that plaintiffs are designated as agents "to make decisions on my behalf concerning the litigation [and] the method and manner of conducting this litigation." We naturally assumed that this extended to authority to sign a stipulation on an issue over which there is no dispute - the withdrawal of the consents and dismissal of these claimants.

We will proceed with filing an unopposed motion on this issue. Contrary to your assertion, we did not threaten costs, fees or sanctions. However, it is apparent these claimants were not interested in pursuing this action, have not been cooperative, and have increased the costs associated with this litigation. We will therefore reserve our right to seek costs and attorney's fees, and any other sanctions as may be appropriate.

Very truly yours,

A handwritten signature in black ink that reads "Kim J. Dockstader". The signature is written in a cursive, flowing style.

Kim J Dockstader

Oregon
Washington
California
Utah
Idaho