

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
HATTIESBURG DIVISION**

JIMMY BELUE, et al. **PLAINTIFFS**

v. **CIVIL ACTION # 2:07cv1004-KS-MTP**

WAYNE FARMS LLC **DEFENDANT**

CONSOLIDATED WITH

ROBERT THOMAS DUNN, et al. **PLAINTIFFS**

v. **CIVIL ACTION #2:07cv1005-KS-MTP**

WAYNE FARMS LLC **DEFENDANT**

MEMORANDUM OPINION AND ORDER

This cause is before the Court on the motion for partial summary judgment [Doc. #43] (October 9, 2008) filed by Defendant Wayne Farms LLC. Defendant contends that seven of the Plaintiffs should be dismissed from this action because their claims for violations of the Fair Labor Standards Act (“FLSA”) are time-barred.¹ *See* 29 U.S.C.S. § 255(a). The Plaintiffs do not oppose the instant motion.

I.

Summary judgment is appropriate when the evidence before the Court shows “that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” FED R. CIV. P. 56(b). A dispute about a material fact is “genuine” if the evidence

¹ The Defendant seeks dismissal of the following Plaintiffs: Traci S. Watkins, McKinley T. Jackson, Alethea Payne, Tammy Renee Richey, Mashika R. Robinson, Constance Vinson, and Baltazar C. Zamarripa.

is such that a reasonable fact finder could render a verdict for the nonmoving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A fact is “material” if proof of its existence or nonexistence would affect the outcome of the lawsuit under applicable law in the case. *Id.* There can be no genuine issue as to a material fact when a party fails “to make a showing sufficient to establish the existence of an element essential to that party’s case, and on which that party will bear the burden of proof at trial.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). This is true “since a complete failure of proof concerning an essential element of the nonmoving party’s case necessarily renders all other facts immaterial.” *Id.* at 323.

“[A] party seeking summary judgment always bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of ‘the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,’ which it believes demonstrate the absence of a genuine issue of material fact.” *Id.* (quoting *Anderson*, 477 U.S. at 247). If the moving party can meet the initial burden, the burden then shifts to the nonmoving party to establish the existence of a genuine issue of material fact for trial. *Norman v. Apache Corp.*, 19 F.3d 1017, 1023 (5th Cir. 1994).

II.

Claims alleging violations of the FLSA are subject to either a two- or a three-year statute of limitations, depending on whether the alleged violations were committed willfully. 29 U.S.C.S. § 255(a); *see also Reich v. Bay, Inc.* 23 F.3d 110, 117 (5th Cir. 1994). The statute is tolled only by the filing of a written consent to sue. 29 U.S.C.S. § 256. An employee who has not filed a written consent to sue within three years after his or her work ended has no timely FLSA claim. *See id.*

Here, the Defendant has met its summary judgment burden by producing copies of Wayne Farms employment records. *See* Exh. 2 [Doc. #43-2] (October 9, 2008). The records establish the dates on which the eighteen Plaintiffs' employment was terminated. *Id.* A review of the record in this case reveals that the seven Plaintiffs did not file notices of written consent to sue until more than three years after their employment with Wayne Farms had ended. *See, e.g.*, [Doc. #5]. Because the Plaintiffs do not oppose the instant motion and have presented no countervailing evidence, the Court finds there to be no genuine issue of material fact and concludes that the Defendant is entitled to judgment as a matter of law with regard to these seven Plaintiffs. As a result, the Defendant's motion for summary judgment should be granted.

III.

IT IS, THEREFORE, ORDERED AND ADJUDGED that the Defendant's motion for summary judgment [Doc. #43] is **granted** and the seven plaintiffs are **dismissed with prejudice**.

SO ORDERED AND ADJUDGED on this, the 17th day of December, 2008.

s/ Keith Starrett
UNITED STATES DISTRICT JUDGE