

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

JIMMY BELUE, ET AL.	§		PLAINTIFFS
	§		
VS.	§	CASE NO. 2:07CV1004-KS-MTP	
	§		
WAYNE FARMS LLC	§		DEFENDANT
	§		
<u>CONSOLIDATED WITH</u>	§		
	§		
ROBERT THOMAS DUNN, ET AL.	§		PLAINTIFFS
	§		
VS.	§	CASE NO. 2:07CV1005-MTP	
	§		
WAYNE FARMS LLC	§		DEFENDANT

DEFENDANT’S MOTION FOR PARTIAL SUMMARY JUDGMENT (TIME BAR)

COMES NOW Wayne Farms LLC, moving the Court to enter partial summary judgment dismissing with prejudice 7 (7.5%) of our 93 Plaintiffs because their claims are time-barred even under the FLSA’s three year bar for willful violations. In support of this Motion, Wayne Farms would show:

1. If Plaintiffs were able to prove willful FLSA violations, the applicable statute of limitations would be three years. 29 U.S.C. § 255.
2. The statute is tolled only by the filing of a written consent to sue. A consent filed after the complaint does not relate back to the complaint’s filing date. Therefore, a former employee who does not file a consent within three years after his work ended has no timely FLSA claim.
3. The employment termination dates set forth in the following table are drawn from employment records that Wayne Farms has produced to Plaintiffs, and that are stipulated to be authentic. See Business Records Stipulation, Doc. 25, 2:07md1872. They cannot be genuinely

disputed. The summary's accuracy is attested by Exhibit 1 to this Motion, which also explains why Wayne Farms has no records for some former employees terminated long ago.

4. The first page of each Plaintiff's hours and earnings report from the Wayne Farms' payroll system is attached collectively as Exhibit 2. The report shows the termination date of each Plaintiff.

5. The consent filing dates set forth in the table below are drawn from the Court's records, as shown by the document citations. The Court may take judicial notice of its own records. These dates are not subject to genuine dispute.

6. These Plaintiffs should be dismissed, based on these genuinely undisputed facts:

	<u>Name</u>	<u>Terminated</u>	<u>Consent Filed</u>
1	Burse, Traci S. Watkins	8/16/2004 (Ex. 2, p. 1)	9/30/07 (Doc. 76-2, p. 9 filed in N.D. Ala. 4:06cv2095)
2	Jackson, McKinley T.	7/29/1996 ¹ (Ex. 2, p. 2)	3/5/07 (Doc. 34, p. 4 filed in N.D. Ala. 4:06cv2095)
3	Payne, Alethea	No employment record (Ex. 2, p. 3)	3/5/07 (Doc. 34, p. 5 filed in N.D. Ala. 4:06cv2095) ²
4	Richey, Tammy Renee	No employment record (Ex. 2, p. 4)	10/18/06 (Doc. 1-2, p. 18 filed in N.D. Ala. 4:06cv2095)
5	Robinson, Mashika R.	7/19/2004 (Ex. 2, p. 5)	9/13/07 (Doc. 75-2, p. 35 filed in N.D. Ala. 4:06cv2095)
6	Vinson, Constance	3/25/2003 (Ex. 2, p. 6)	10/18/06 (Doc. 1-2, p. 20 filed in N.D. Ala. 4:06cv2095)
7	Zamarripa, Baltazar C.	4/6/2004 (Ex. 2, p. 7)	11/20/07 (Doc. 5, p. 21 filed in S.D. Miss. 2:07cv1004)

¹ As noted in Exhibit 1, it is possible that Wayne Farms has no record because the Plaintiff worked for Wayne Farms so long ago that the relevant employment record is no longer available. This motion assumes this explanation for the lack of an employment record, rather than mis-representation of prior employment.

² Her consent indicates that she worked for Tyson Foods in Albertville, AL, and not Wayne Farms.

7. On June 9, 2008, in accordance with Pretrial Order No. 2, paragraph 7, defense counsel sent Plaintiffs' counsel a list of Plaintiffs whose claims defense counsel believed should be dismissed in the form of a dismissal spreadsheet. Each of the Plaintiffs listed in this Motion was designated as a requested dismissal, for the reason underlying this Motion – time-bar.

8. Plaintiffs were required to respond, in writing, by August 1, 2008; the Court granted them a final extension until October 1, 2008. See Doc. 35 in 2:07md1872.

9. Plaintiffs did not respond to the dismissal requests in writing. They disclosed no reason for rejecting dismissal. They identified no documents supporting their position. In short, they ignored these commands of Pretrial Order No. 2, paragraph 7.

10. Federal Rule of Civil Procedure Rule 16(f)(1)(C) states that the Court may issue any just orders, including those authorized by Rule 37(b)(2)(A)(ii)-(vii), if a party or its attorney fails to obey a scheduling order or other pretrial order. Wayne Farms asks the Court to prohibit these disobedient Plaintiffs from opposing the factual assertions of this Motion as authorized by Rule 37(b)(2)(A)(ii).

WHEREFORE, Wayne Farms LLC moves the Court to enter partial summary judgment dismissing these 7 Plaintiffs from these actions, with prejudice, taxing to them all related costs.

Respectfully submitted this the 9th day of October, 2008.

WAYNE FARMS LLC

BY: BALCH & BINGHAM LLP

s/Anne Harlan Latino

Anne Harlan Latino (102807)

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CERTIFICATE OF SERVICE

I hereby certify that on October 9, 2008, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

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