

**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

CONSOLIDATED WITH

ROBERT THOMAS DUNN, ET AL. PLAINTIFFS

VS. CASE NO. 2:07CV1005-MTP

WAYNE FARMS LLC DEFENDANT

DEFENDANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT (QA)

COMES NOW Wayne Farms LLC, moving the Court to enter partial summary judgment dismissing from this overtime suit three (3) Plaintiffs who have worked only as Quality Assurance ("QA") employees at Defendant's Albertville plant, because QA employees perform the disputed tasks during paid shift time. In support of this Motion, Wayne Farms would show:

1. Some of our Plaintiffs are Albertville, Alabama processing line employees who dispute the FLSA compliance of a particular pay practice. Wayne Farms pays them in two ways for each shift. First, a master time card serves as a proxy for the individual card of each employee assigned to a particular processing line segment. The card is swiped when the line is scheduled to start, and is swiped when it stops. Wayne Farms adds to that time 6 daily minutes, called "Personal Time," in recognition of things done by employees before and after their work on the line – e.g., putting things on and walking to the line, walking away from the line and taking things off. Focusing only on the master time card's use, Plaintiffs claim that Wayne Farms has not paid them at all for time spent in off-line tasks.

2. This Motion targets three Plaintiffs who have not been subject to the contested pay practice, because they have not been processing line workers in any contestable work week.¹ They were quality assurance employees, as shown below.

Table 1: Quality Assurance Plaintiffs

	Name	Positions Held During 3 Years Before Consent Filing	Consent Filing Data²
1	Hicks, Margaretta M.	QA 7/21/99 – present Produced Docs. 4 - ALB010712 - ALB010715 5 - ALB012108 - ALB012111	Doc. # 5, at page 16 filed on 11/20/07 in S.D. Miss. 2:07cv01004
2	Whiteside, Denise	QA 7/21/99 – present Produced Docs. 3 - ALB008078 - ALB008081 4 - ALB010863 - ALB010866 5 - ALB012259 - ALB012262	Doc. # 75-2, at page 45 filed on 9/13/07 in N.D. Ala. 4:06cv02095
3	Woods, Vickie L.	QA 5/30/00 – present Produced Docs. 4 - ALB010871 - ALB010874 5 - ALB012267 - ALB012270	Doc. # 5, at page 19 filed on 11/20/07 in S.D. Miss. 2:07cv01004

See Declaration of Connie Blevins, Human Resources Manager, attached hereto as Exhibit 1.

¹This Motion assumes, solely for purposes of this argument, that each Plaintiff could prove that any FLSA violation was willful, so as to extend the limitations period from 2 to 3 years under 29 U.S.C. § 255.

² Some of the consents were originally filed in the Northern District of Alabama in case 4:06cv2095. That case was transferred to the Southern District of Mississippi, 2:07cv1004, on 11/20/07. See Doc. 4 in 2:07cv1004: "Case transferred in from District of Alabama Northern; Case Number 4:06-cv-02095. Original file with documents numbered 1 - 84, certified copy of transfer order and docket sheet received." Wayne Farms asks the Court to take judicial notice of the facts in this column, since they appear at the cited places in the Court's records.

3. These QA employees were not paid in the way described in the Amended Complaint during the weeks in question. *See* Ryan Harper's Declaration, attached hereto as Exhibit 2. None was paid by master card. Each was expected to report to the QA office by shift start time, swiping her timecard in the card reader that is just around the corner from the office door. *Id.* Each was permitted to gather her things, acquire any additional needed items (sleeves, if needed), put on what she was required to wear on the plant floor, and walk out to the plant floor, on paid shift time. *Id.* A reasonable number of minutes have been allowed for the QA workers to get to wherever they are sent on the plant floor; their presence on the plant floor is not a requirement for the start of production. On most occasions, they were provided no less than 5 minutes and no more than 15 minutes. *Id.* Consequently, they have been paid already for all the activities cited in the First Amended Complaint. *See* Exhibit 2.

4. The facts stated in the preceding paragraphs are beyond genuine dispute and they support the finding that Wayne Farms has not required QA workers to don, doff and walk to and from assigned work areas outside the hours captured by a master time card. That finding compels the conclusion that Wayne Farms is entitled to partial summary judgment dismissing all claims for weeks the Plaintiffs spent as quality assurance employees.

5. In support of this motion, Wayne Farms relies on its concurrently filed Memorandum and on these attached exhibits:

Exhibit 1 – Declaration of Human Resource Manager, Connie Blevins;

Exhibit 2 – Declaration of Quality Assurance Manager, Ryan Harper.

Exhibit 3 – Business records previously produced showing each employee's tenure at Quality Assurance Department.

WHEREFORE, PREMISES CONSIDERED, Wayne Farms LLC respectfully requests entry of partial summary judgment dismissing with prejudice the claims made by these three Plaintiffs, taxing to them all related costs.

Respectfully submitted this the 24th day of November, 2008.

WAYNE FARMS LLC
BY: BALCH & BINGHAM LLP

s/ R. Pepper Crutcher, Jr.
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CERTIFICATE OF SERVICE

I hereby certify that on November 24, 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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