

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MISSOURI  
ST. JOSEPH DIVISION**

TODD SHACKLEFORD and MARTHA	)	
WOOLERY, on behalf of themselves and all	)	
others similarly situated,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 12-cv-4065 FJG
	)	
CARGILL MEAT SOLUTIONS	)	
CORPORATION,	)	
	)	
Defendant.	)	

**SETTLEMENT AGREEMENT**

The parties to the above-captioned civil action, by and through their attorneys, enter into the following Settlement Agreement (the “Agreement”).

**RECITALS**

**WHEREAS**, on March, 8, 2012, plaintiffs Todd Shackleford and Martha Woolery (“Named Plaintiffs”) commenced a lawsuit against Cargill Meat Solutions Corporation (“CMSC”) in the United States District Court for the Western District of Missouri (“Court”), Case No. 12-cv-4065 FJG (the “Litigation”), alleging violations of the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §§ 201, *et seq.* and the Missouri Minimum Wage Law, R.S. Mo. §§ 290.500, *et seq.* (“MMWL”) at CMSC’s California, Missouri turkey processing facility (the “Plant”). In this action, the Named Plaintiffs sought to pursue their FLSA claims as a collective action based on 29 U.S.C. § 216(b) and their state law claims as a class action pursuant to Fed. R. Civ. P. 23;

**WHEREAS**, as of the date of this agreement, the Named Plaintiffs have not moved for certification of a class under Rule 23 and have not moved for conditional certification under 29 U.S.C. § 216(b);

**WHEREAS** since the filing of the Complaint, thirteen (13) individuals who are current or former employees at the Plant have filed a consent to join this case as plaintiffs;

**WHEREAS**, CMSC recognizes that the issues presented by the Litigation are unlikely to be resolved without extensive and costly further litigation that will cause inconvenience, distraction, disruption, delay, and expense disproportionate to the potential benefits of litigation, and CMSC has taken into account the risks and uncertain outcome inherent in any litigation; and

**WHEREAS**, the Plaintiffs recognize the expense and difficulties of continued litigation of claims involving the Plant through trial and subsequent appeals, as well as the risk and uncertainty inherent in any litigation and, further, recognize the uncertainty of the success or failure of their claims.

**NOW, THEREFORE**, in consideration of the promises, waivers, releases, and agreements set forth here, the Parties agree that the above recitals are incorporated in this Agreement, and further agree as follows:

1. **DEFINITIONS.** As used in this Agreement, the following terms shall have the following meanings:

a. **"Claims Administrator"** means Dahl Administration LLC, which is the firm the Parties have agreed upon to administer the terms of this settlement.

b. **"Named Plaintiffs"** means Todd Shackleford and Martha Woolery.

c. **"Plant"** means CMSC's turkey processing facility located in California, Missouri.

d. **"Released Parties"** means (i) CMSC; (ii) past or present subsidiaries, divisions, affiliates, parents, predecessors, successors or assigns of CMSC; and (iii) any past or present officers, directors, managers, partners, principals, agents, employees, shareholders, members, advisors, insurers, attorneys, or representatives of CMSC.

e. **"Relevant Time Period"** means the time period commencing on March 8, 2009 and ending on the date the Court approves the settlement.

f. **“Agreement”** means this Settlement Agreement and all Exhibits attached to it.

g. **“Settlement Class Member”** means all current and former hourly-paid production employees at the Plant. A complete list of Settlement Class Members (the “Eligibility List”), identified by their unique employment identification number, will be attached hereto as Exhibit 1 in accordance with Paragraph 7(A) below.

h. **“Settlement Participants”** means (i) the Named Plaintiffs in the Litigation; (ii) current or former CMSC employees who have already filed a consent to join this case and opted into the Litigation (“Opt Ins”); and (iii) any Settlement Class Members whose names appear on the Eligibility List identified above and to be attached hereto as Exhibit 1 and who elect to participate in this settlement in the manner and pursuant to the procedures set forth in this Agreement, *i.e.*, by submitting a Consent to Join form.

i. **“Settlement Pool A members”** means Settlement Class Members who performed jobs that will be listed on Exhibit 2 during the Relevant Time Period in accordance with Paragraph 7(a) and 8(B) below.

j. **“Settlement Pool B members”** means Settlement Class Members who performed jobs that will be listed on Exhibit 3 during the Relevant Time Period in accordance with Paragraph 7(a) and 8(C) below.

2. **CONDITION PRECEDENT.** The terms of this Agreement will be subject to the approval of the Court and, absent such approval, this Agreement shall be null and void.

3. **WAIVER AND RELEASE.** In consideration for the benefits described in this Agreement, each Settlement Participant will compromise, settle, waive, release, discharge, and dismiss with prejudice all claims, rights, contract violations, or causes of action arising out of or relating to any alleged violation of the Fair Labor Standards Act, 29 U.S.C. §201, *et seq.*; the Missouri Minimum Wage Law, R.S. Mo. §§ 290.500, *et seq.*; breach of contract, unjust enrichment; or any other federal, state or local law, statute, or regulation concerning unpaid

wages, overtime wages, or the computation or payment of wages or overtime compensation for work performed by Settlement Participants at the Plant, whether now known or unknown, that have been, or could have been asserted in this action, in any action in any court of competent jurisdiction, or in any federal or state agency administrative proceeding, by any Settlement Participant against the Released Parties, which claims, rights, contract violations, or causes of action are in connection with, arose out of, or will arise out of or relate to any of the allegations or claims that have been, or could have been asserted in the Litigation (“Settled Claims”). The foregoing Waiver and Release of Settled Claims is effective as to Settlement Participants from March 08, 2009 through and including the date the Court approves the Settlement.

**4. GENERAL RELEASE BY NAMED PLAINTIFFS.** In addition to releasing the claims set forth in Paragraph 3 above, the Named Plaintiffs, Todd Shackleford and Martha Woolery, on their own behalf and on behalf of their successors, assigns, agents, heirs and attorneys, release and forever discharge the Released Parties from and for all actions, causes of action, suits, controversies, claims and demands whatsoever which they now have, or ever have had, known or unknown, arising from any matter whatsoever, at the present time or at any time prior to the Court’s approval of this Agreement, including, but not limited to: (1) any and all claims under the Americans With Disabilities Act, Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1866, the Age Discrimination in Employment Act, the Missouri Human Rights Act and any other statute, law, order, ordinance, regulation or enactment of any type; (2) any and all claims for breach of an express or implied contract, including, but not limited to, retaliatory discharge, wrongful discharge and/or any other tort or common law cause of action, and (3) any and all claims for attorneys’ fees or costs (collectively, with paragraph 3 above, the “Named Plaintiffs’ Settled Claims”). The foregoing General Release of Named Plaintiffs’ Settled Claims is effective through and including the date the Court approves the Settlement.

5. **CONSIDERATION.** In consideration for the full settlement, waiver, release, discharge, satisfaction, and compromise of the Settled Claims and Named Plaintiffs' Settled Claims, CMSC agrees that it will create a gross settlement fund of \$188,000.00, to be distributed as follows: (a) to Settlement Participants in the manner and pursuant to the procedures set forth in this Agreement; (b) for reasonable attorney's fees and litigation costs to counsel for the Plaintiffs in the aggregate amount of \$47,000; (c) to the Claims Administrator in the amount of \$6,000 toward the costs of the administration of this settlement with any additional expense to be paid by CMSC in addition to the gross settlement fund; and, (e) to each of the Named Plaintiffs as service awards in the amount of \$2,500 each.

6. **PLAINTIFFS' COUNSEL.** Attorneys Michael F. Brady and Mark A. Kistler of Brady & Associates will serve as Plaintiffs' Counsel for purposes of this settlement.

7. **NOTICE OF SETTLEMENT AND ELIGIBILITY REQUIREMENTS TO PARTICIPATE IN SETTLEMENT PROCEEDS.**

A. **Eligibility List.** Within sixty (60) days after this Agreement has been approved by the Court, CMSC shall provide Plaintiffs' Counsel and the Claims Administrator with an Eligibility List which shall identify all Settlement Class Members as defined in Paragraph 1 above. Plaintiffs' Counsel shall have seven (7) days to review the Eligibility List, after which it shall become final. In the event that Plaintiffs' Counsel identifies what they believe to be an error or discrepancy in the Eligibility List during the seven-day review period, the Parties agree to meet and confer in good faith in order to resolve the dispute. In the unlikely event of an unresolved dispute, the Court retains jurisdiction pursuant to Paragraph 15 of this Agreement to resolve the dispute. Once the Eligibility List has been finalized, it shall be used by the Claims Administrator when mailing Notice of Settlement and Consent to Join forms to the Settlement Class Members.

**B. Notice of Settlement to Individuals Whose Names Appear on the Eligibility List.** Within thirty (30) days of the finalization of the Eligibility List, the Claims Administrator has agreed to perform the following steps to effectuate notice of the settlement to the Settlement Class Members listed on Exhibit 1:

1. process all of the addresses on the Eligibility List through the National Change of Address Database maintained by the United States Postal Service to ensure the most reliable addresses are used to mail the Notice of Settlement;

2. mail to Settlement Class Members the following: (i) a document entitled “Notice of Settlement,” substantially in the form attached hereto as Exhibit 4; (ii) a document entitled “Computation of Your Settlement Share,” substantially in the form attached hereto as Exhibit 5; and (iii) a “Consent to Join” substantially in the form attached hereto as Exhibit 6;

3. mail to Named Plaintiffs and Opt Ins the following: (i) a document entitled “Notice of Settlement,” substantially in the form attached hereto as Exhibit 4 and (ii) a document entitled “Computation of Your Settlement Share,” substantially in the form attached hereto as Exhibit 5;

4. perform an address skip trace on all Notices that are returned as “undeliverable” and for which no forwarding address is provided by the U.S. Postal Service;

5. re-mail, within 60 days of the finalization of the Eligibility List, the Notice of Settlement to the updated address obtained through the address tracing process; and

6. establish and maintain a toll-free telephone service, which individuals on the Eligibility List can use to ask questions, provide updated information or current mailing addresses.

8. **COMPUTATION OF SETTLEMENT SHARES AND ALLOCATION OF BACK PAY POOLS.**

A. **Allocation of Settlement Amounts to Back Pay Pools.** The total net amount of settlement funds available to Settlement Class Members shall be \$130,000.00, which is the amount remaining after deducting the service awards to the Named Plaintiffs (\$5,000), costs of claims administration (\$6,000), and attorneys' fees and costs (\$47,000) from the gross settlement amount of \$188,000.00. Such net amount of settlement funds shall be allocated to Settlement Class Members based on the number of weeks each Settlement Class Member was employed during the Relevant Time Period in performing Pool A and/or Pool B work. The total net amount of settlement funds shall be allocated to Settlement Class Members in a ratio of thirty-one and sixty-nine hundredths percent (31.69%) for Pool A and sixty-eight and thirty-one hundredths percent (68.31%) per week for Pool B.

B. **Settlement Funds for Pool A.** The net settlement funds allocated for Pool A positions shall be \$41,197.00. As described above, notice packages distributed to eligible Settlement Class Members will be accompanied by a "Computation of Your Settlement Share" form, in the form set forth in Exhibit 5, which will state the gross amount each individual is eligible to receive from the proceeds of the Pool A fund if he/she becomes a Settlement Participant. Each Settlement Class Member will be entitled to a *pro rata* share of the Pool A fund based on the percentage of time, measured in calendar weeks, rounded up to the nearest full week, that he or she performed work in a Pool A position at the Plant during the Relevant Time Period. For example, a Settlement Class Participant who was employed in a Pool A position for the entire relevant time period would receive a gross settlement award of approximately \$686.62. In the event of a dispute about time worked or jobs occupied by any Settlement Class Member, CMSC's personnel and payroll records will control. Fifty percent of each Settlement Participant's Settlement Award will be allocated as W-2 income and subject to withholdings

required by law; the remaining fifty percent will be allocated as non-W-2 income. Settlement Participants shall be solely and legally responsible to pay any and all applicable taxes on the portion of the settlement allocated as non-W-2 income.

**C. Settlement Funds for Pool B.** The net settlement funds allocated for Pool B positions shall be \$88,803.00. As described above, notice packages distributed to eligible Settlement Class Members will be accompanied by a “Computation of Your Settlement Share” form, in the form set forth in Exhibit 5, which will state the gross amount each individual is eligible to receive from the proceeds of the Pool B fund if he/she becomes a Settlement Participant. Each Settlement Class Member will be entitled to a *pro rata* share of the Pool B fund based on the percentage of time, measured in calendar weeks, rounded up to the nearest full week, that he or she performed work in a Pool B position at the Plant during the Relevant Time Period. For example, a Settlement Class Participant who was employed in a Pool B position for the entire relevant time period would receive a gross settlement award of approximately \$370.01. In the event of a dispute about time worked or jobs occupied by any Settlement Class Member, CMSC’s personnel and payroll records will control. Fifty percent of each Settlement Participant’s Settlement Award will be allocated as W-2 income and subject to withholdings required by law; the remaining fifty percent will be allocated as non-W-2 income. Settlement Participants shall be solely and legally responsible to pay any and all applicable taxes on the portion of the settlement allocated as non-W-2 income.

**9. OPT IN PERIOD.** To ensure that all individuals whose names appear on the Eligibility List are given an opportunity to become Settlement Participants, the parties agree that Settlement Class Members, other than the Named Plaintiffs and the Opt Ins who have already done so, may file consents to become Settlement Participants for a period of sixty (60) days following the date the Claims Administrator mails the Notice of Settlement to Settlement Class Members.



**10. PAYMENT OF SETTLEMENT PROCEEDS.** Within 180 days of the finalization of the Eligibility List, the Claims Administrator will deliver or mail a check to each Settlement Participant in the amount of his/her Settlement Award, as described in paragraph 8 above, less any amounts withheld for state, federal and/or local income and employment taxes.

**11. SETTLEMENT CHECKS.** Checks issued to Settlement Participants will be made payable to the Settlement Participant. The settlement checks shall include the following release language on the back of each settlement check:

My signature or negotiation of this check constitutes a full and complete release of Cargill Meat Solutions Corporation, its subsidiaries, divisions, affiliates, parents, predecessors, successors or assigns; and any officers, directors, managers, partners, principals, agents, employees, shareholders, insurers, attorneys, or representatives thereof by me for any and all claims I agreed to settle by submitting a claim form to participate in the Settlement Agreement from March 8, 2009 up to and including the date of Court approval of the settlement, as well as my acknowledgment that I accept this check as payment in full for all Fair Labor Standards Act and Missouri Minimum Wage Law claims alleged on my behalf in the lawsuit covered by the Settlement Agreement.

Each settlement check also will bear a legend directing the payer's bank not to accept the settlement check for payment if: (a) the Settlement Participant cannot show proper identification; (b) the settlement check is unsigned; or (c) the waiver warning, or any part of it, has been altered or deleted.

**12. UNCLAIMED SETTLEMENT PROCEEDS.** Should there remain any residue from the gross settlement pool after all payments are made under this Agreement because, for example, Settlement Class Members either fail to opt in to the settlement or do not cash their checks within ninety (90) days following the most recent mailing or providing of settlement checks, or due to the Claims Administrator's inability to locate a Settlement Class Member, the unclaimed amounts will be retained by CMSC.

By failing timely to cash their checks, the Settlement Participants will be deemed to have waived irrevocably any rights in or claim to their Settlement Award. The settlement checks will be printed to so advise Settlement Participants.

**13. DISTRIBUTION AND ALLOCATION OF ATTORNEY FEES AND COSTS.** CMSC agrees not to object to Plaintiffs' Counsel's request for attorneys' fees and costs up to and including 25% of the gross settlement amount. Within twenty-one (21) days after the Court grants Plaintiffs' Counsel's request for fees, the Claims Administrator (or, as appropriate, directly by CMSC) shall distribute the total amount of attorney fees and costs approved by the Court to Plaintiffs' Counsel pursuant to Plaintiffs' Counsel's written instructions. It is agreed and understood between the parties that such sum covers the entirety of Plaintiffs' attorneys' fees and costs expended in furtherance of or related to any of the Settled Claims involving current or former employees at the Plant. Plaintiffs' Counsel shall be solely and legally responsible to pay any and all applicable taxes on the payment made to Plaintiffs' Counsel. Plaintiffs' Counsel agrees to indemnify and hold harmless CMSC from any claim or liability for taxes, penalties or interest for which Plaintiffs' Counsel is responsible as a result of the specific payment made to them. The payment to Settlement Participants of proceeds from either Back Pay Pool, as described in this Agreement, is not contingent upon Plaintiffs' Counsel's receipt of the entire payment described in this paragraph, and the Court's disapproval of any portion of the payment to Plaintiffs' Counsel shall not be grounds for voiding other provisions of this Agreement.

**14. SERVICE AWARD FOR REPRESENTATIVE PLAINTIFFS.** Subject to Court approval, a service award in the amount of two thousand five hundred dollars (\$2,500.00) will be paid to each of the Named Plaintiffs for their efforts in bringing and prosecuting this matter. The Claims Administrator will issue a Form 1099 for the amount of the service awards.

**15. RETENTION OF JURISDICTION FOR DISPUTE RESOLUTION.** Unless otherwise ordered, the Court shall retain jurisdiction over the Parties and, if necessary, shall adjudicate any disputes involving the application or interpretation of the terms and provisions of this Agreement.

16. **FINAL JUDGMENT AND ORDERS OF DISMISSAL.** As soon as practicable after the issuance of the settlement checks, unless such time is extended by agreement of the parties or by the Court, the Claims Administrator will certify, upon the Court's request, that all amounts under the settlement, less any amounts withheld or required to be deducted by law, have been paid, and the parties jointly will move the Court for entry of an Order of Dismissal of all claims involving the Plant, with prejudice, unless the Court has previously entered such an Order.

17. **NON-ADMISSION.** Whether or not this Agreement becomes effective, neither this Agreement nor any exhibit, document, or instrument delivered hereunder, nor any statements, negotiations, transactions, or proceedings in connection therewith, in any event may be construed as, or deemed to be, or offered in this or any other action or proceeding as evidence of, *inter alia*, (a) Plaintiffs' valuation of the damages recoverable at trial; (b) an admission or concession on the part of CMSC of any liability or wrongdoing; or (c) an admission or concession on the part of CMSC that any Settlement Class Member has suffered any injury, loss, or damage. By entering into this Agreement, CMSC does not admit that it violated the FLSA, the MMWL, or any other federal, state or local law in any respect whatsoever.

18. **CONFIDENTIALITY.** Neither the Parties nor their counsel, without the prior written approval of counsel for the other Parties (which approval may be withheld in a Party's sole discretion) shall issue, authorize, or contribute to the preparation or dissemination of any press release or any other public statement concerning this Agreement or any of its terms, or sponsor or participate in any press conference, interview, media appearance, social media forum, or other public discussion concerning this Agreement or any of its terms. Notwithstanding the provisions of this paragraph, the Parties or counsel for the Parties may state, but only in response to inquiry, that all matters subject to litigation between the Parties have been resolved.

19. **NO WAIVER.** The waiver by any Party of any breach of this Agreement shall not be deemed or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this Agreement or any of its terms.

20. **ENTIRE AGREEMENT.** This Agreement and the Exhibits attached hereto constitute the entire agreement between and among the Parties and supersede all prior agreements or understandings, if any, whether oral or written, with regard to the subject matter hereof between and among the Parties. The Agreement may not be modified or amended except in a writing signed by or on behalf of all Parties hereto or their successors in interest.

21. **SUCCESSORS AND ASSIGNS.** The Agreement, upon taking effect, shall be binding upon and inure to the benefit of the Parties and their respective heirs, executors, administrators, parents, subsidiaries, affiliates, successors, and assigns and upon any corporation, partnership, or other entity into or with which any Party has merged or consolidated or may merge or consolidate.

22. **EXHIBITS.** The Exhibits attached hereto are hereby incorporated by reference as if fully set forth herein.

23. **GOVERNING LAW.** This Agreement shall be construed and enforced in accordance with the laws of the United States and the State of Missouri.

24. **AUTHORITY TO SIGN.** Each of the individuals executing this Agreement warrants and represents that he has been duly authorized and empowered to execute this Agreement on behalf of and to bind the Party or Parties on whose behalf he/she signs.

25. **MISCELLANEOUS.** This Agreement has been mutually prepared by the Parties, represented and assisted by counsel, and will be construed according to its fair meaning and not for or against any of the Parties.

26. **COUNTERPARTS.** This Agreement may be executed in any number of actual or faxed counterparts and by the different Parties on separate such counterparts, each of which

when so executed and delivered shall be an original, whether actual or a facsimile copy. The executed signature pages from each counterpart may be joined together and attached to one such original, which shall then constitute one and the same instrument.

**27. EXTENSIONS OF TIME.** The Parties may agree to reasonable extensions of time to carry out any of the provisions of the Agreement and the non-requesting Parties' consent to an extension will not be unreasonably denied.

**IN WITNESS WHEREOF**, the Parties, by their counsel, have executed this Agreement, intending to be legally bound by it.

**THIS AGREEMENT** has been read, understood and agreed to by:

**Todd Shackelford and Martha Woolery**

**Cargill Meat Solutions Corporation**

By: /s/ Mark A. Kistler  
One of their Attorneys

By: /s/ Jeremy J. Glenn  
One of its Attorneys

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