

**SETTLEMENT AGREEMENT AND GENERAL RELEASE OF CLAIMS BETWEEN
WAYNE FARMS LLC AND ALL PLAINTIFFS IN**

***In Re Wayne Farms LLC FLSA Litigation, S.D. Miss.
2:07md1872
(including all member cases)***

1. Parties and Process

When used herein, unless expressly limited, “Plaintiffs” refers to each and every one of the persons listed on Exhibit A to this Agreement, each of whom joined this action and claimed to have been employed at Wayne Farms’ listed chicken processing plant during the period(s) shown in Exhibit A. “Defendant” refers to Wayne Farms LLC and its predecessors, successors, assignees, affiliates, officers, agents, employees and insurers.

Exhibit A shall be amended, prior to entry of Final Judgment, to include new opt-in Plaintiffs whose consents are filed as provided here, and, at that time, Liaison Counsel will list the gross settlement compensation due to each Plaintiff on Exhibit A.

Exhibit B to this Agreement presents the agreed Notice and Consent forms to be mailed by the Settlement Administrator to all others who have actively worked in a non-exempt, Master Card pay system job in at least one of these groups at some time during the indicated period:

Dobson, North Carolina since June 1, 2006;
Danville, Arkansas since June 1, 2006;
Albertville, Alabama new hires since November 19, 2007;
Decatur (Fresh), Alabama new hires since November 19, 2007;
Enterprise, Alabama new hires since April 24, 2008;
Union Springs, Alabama new hires since April 24, 2008;
Laurel, Mississippi new hires since April 24, 2008;
College Park, Georgia new hires since April 24, 2008;
Pendergrass, Georgia new hires since April 24, 2008.

Wayne Farms will deliver the mailing lists to the Settlement Administrator not later than two weeks following the Court’s preliminary approval of this Agreement. Opt-in consents may be filed at any time prior to 5:00 p.m. on August 1, 2009. Consents arising from employment at a plant targeted by a present member case shall be filed in that member case. Consents arising from employment at Dobson, North Carolina or Danville, Arkansas shall be filed in case 2:07md1872, or in a new, separate member case, or in the *Agee* case, 2:07cv1010, as the Court may direct. Promptly after the opt-in period closes, Liaison Counsel will add the timely Opt-Ins to Exhibit A, list the gross amount due to each Plaintiff and move the Court to enter the Final Judgment attached hereto as Exhibit C.

As explained in the notices, the Opt-Ins will join only for and on condition of settlement, so that, if the settlement should be disapproved, they shall not become parties to this or any member case. Unless approved preliminarily and by Final Judgment as mutually anticipated, this Agreement shall bind no party or counsel for any party.

2. Warranties of Authority to Settle

Undersigned Liaison Counsel for Plaintiffs represents and warrants that he is fully authorized by each and every Plaintiff to enter into this Agreement and that Plaintiffs and their counsel will, at their cost, take all actions that may be necessary to effectuate this Settlement Agreement, including but not limited to preparation and submission of a joint motion for settlement approval and related orders. Undersigned Liaison Counsel for Defendant warrants that he is fully authorized by Wayne Farms LLC to enter into this Agreement and that Wayne Farms LLC will cooperate reasonably, at its cost, in all matters reasonably necessary to effectuate this Agreement.

3. Financial Consideration

Not later than thirty (30) days following entry of the agreed Final Judgment (Exhibit C to this Agreement), Wayne Farms LLC shall deliver to undersigned counsel for the Plaintiffs, or to a Settlement Administrator designated by Plaintiffs' counsel, its check for THREE HUNDRED THOUSAND DOLLARS (\$300,000.00), which is the agreed, compromise value of FLSA claims asserted by all Plaintiffs in all member cases.

Additionally, Wayne Farms will pay such prevailing plaintiff attorney fees and costs as may be awarded to the Plaintiffs by the United States District Court for the Southern District of Mississippi, provided that total fees do not exceed ONE MILLION DOLLARS (\$1,000,000.00) and costs in the amount of SEVENTY-FIVE THOUSAND DOLLARS (\$75,000.00) which includes the costs of administration of the settlement. Plaintiffs shall not seek or accept an award exceeding either limit. Wayne Farms will not oppose a compliant fee or cost application on any ground other than Plaintiffs' failure to offer proof that the requested costs or fees were incurred. Should the Court's fee award fall short of \$1,000,000.00, Plaintiffs' Liaison Counsel may rescind this Settlement Agreement by actual delivery of written rescission notice to defense Liaison Counsel via email, fax, or hand delivery within 24 hours of receipt of notice of the Court's fee award.

In no event shall Wayne Farms' financial obligations under this Settlement Agreement exceed ONE MILLION, THREE HUNDRED, SEVENTY-FIVE THOUSAND DOLLARS (\$1,375,000.00).

Wayne Farms also waives and agrees not to collect its costs judgments obtained against Plaintiffs in the referenced action and its member cases.

4. Taxability of Settlement Funds

Defendant makes no warranty regarding the taxability of any settlement payment to a Plaintiff or to Plaintiffs' counsel. On the contrary, all parties agree that Plaintiffs shall be solely responsible for any and all state, federal or other taxes, including penalty, interest and expenses, without regard to the nature of such tax, which could or may arise as a result of the Plaintiffs' receipt of settlement funds. For purposes of calculation of the amounts required by law to be withheld from taxes, payments made to Plaintiffs will be deemed to be half taxable wages, reported to the IRS on Form W-2, and half liquidated damages, reported to the IRS on Form 1099.

5. Orders and Assignments Requiring Deductions

In reporting to the Settlement Administrator designated by Plaintiffs the garnishments, withholding orders, tax levies and other liens against Plaintiffs' wages, Wayne Farms shall be entitled to rely on the authenticity and validity of any wage withholding orders or assignments received with respect to the employees or former employees participating in the settlement and any claim of improper deduction based upon such assignments or orders shall be directed, if at all, only to the Settlement Administrator, assignee or creditor. Each Plaintiff warrants that, excepting only the written orders and assignments actually delivered to Wayne Farms prior to calculation of the settlement payment, there is no outstanding assignment, bankruptcy or insolvency proceeding or wage withholding order of any nature entitling any assignee or creditor of the Plaintiff to receive all or any part of that Plaintiff's settlement payment.

Should Wayne Farms have notice that any part of the funds payable by Wayne Farms under this Agreement are claimed to be subject to any security agreement, security interest, judgment, lien or attachment arising from any obligation of any counsel for any Plaintiff, then, in addition to any other remedies that may be available, Defendant may deposit with the Court that part of the funds claimed by creditor(s) and upon doing so shall be deemed to have fulfilled its obligations to Plaintiffs and to their counsel to the same extent as if Defendant had made the payment(s) as otherwise prescribed by this Agreement.

6. Settlement Administration

The Plaintiffs shall designate a Settlement Administrator to determine the gross and net amounts due to each Plaintiff, to distribute the net amount to each Plaintiff, to deduct and remit to the proper authorities all amounts required by law to be withheld, and to report the deductions and payments to the proper tax collection agencies. Plaintiffs' Counsel shall bear sole responsibility for the Settlement Administrator's selection and compensation.

7. Complete Release of All Accrued FLSA Claims

For and in consideration of the obligations undertaken by the Defendant in this Agreement, including but not limited to the financial consideration payable to relieve their debts to their counsel and that which is payable to those listed in Exhibit A, the sufficiency of which is hereby acknowledged, each Plaintiff, and all of them together, hereby irrevocably and unconditionally release, acquit and forever discharge Wayne Farms LLC, ContiGroup Companies, Inc., Continental Grain Company, the current and former officers and employees of

each, and each and every parent, subsidiary, third party administrator, shareholder, director, attorney, predecessor, affiliate, successor, agent, member, insurer, re-insurer and all successors and assigns of each from any and all claims, actions, causes of actions, demands, rights, damages, costs, penalties, assessments, attorney fees, and all the other expenses whatsoever (collectively claims) known or unknown, arising prior to or on the date of execution of this Settlement Agreement, whether or not relating to Plaintiffs' present or former employment with Defendant, arising out of the matters and things alleged and those that could have been alleged in *In Re Wayne Farms LLC FLSA Litigation*, S.D. Miss. 2:07md1872, and/or in any member case, including, but not limited to, all claims related to the adequacy, allocation or distribution of the settlement payment. With respect to all released claims, each Plaintiff: (a) waives the benefits and/or provisions of any and all statutes and rules of law that might otherwise limit or restrict the effect of the release by each Plaintiff of the release of claims not currently known, and (b) represents that he/she is the sole owner of the released claims and that he/she has not assigned, transferred or sold any of the released claims, or any interest thereon, to any person or entity. Further, each Plaintiff accepts the terms of this Agreement and the payments made pursuant to this Agreement in full accord and satisfaction of all such claims. The only exceptions to the forgoing release and waiver and the following promise not to sue are each Plaintiff's right to enforce this Agreement and new claims, if any, that may accrue after the entry of a Final Judgment approving this Agreement.

8. Promise Not to Sue

The Plaintiffs and each of them, for and in consideration of the benefits of this Agreement, agree to take all actions necessary at their cost to secure entry of the Final Judgment attached hereto as Exhibit C. Each Plaintiff represents that he or she has not filed any other FLSA claim or complaint against Defendant with any local, federal or state agency or court and that he or she will not do so at any time hereafter, whether or not it alleges continuing violations, if the complaint or charge is based in whole or in part on any alleged FLSA violation prior to the date of the Final Judgment entered pursuant to this Agreement. If such agency or court assumes jurisdiction of any such complaint or charge against the Defendant on behalf of a Plaintiff, he or she shall immediately request such agency or court to withdraw or dismiss with prejudice the matter and shall use his or her best efforts to cause the agency or court to withdraw or dismiss the matter with prejudice. If Defendant is required to defend the matter, the involved Plaintiff shall be obligated to reimburse Defendant's reasonable litigation expenses, including attorney fees.

9. Collective Bargaining Grievances

Each Plaintiff who is represented by a labor organization promises that, as of the execution of this Agreement, he or she is not asserting against Defendant any claim like or related to a settled claim or promises to withdraw or dismiss any pending grievance or proceeding on such a claim and further not to assert any like or related claim against Defendant for any conduct preceding the entry of Final Judgment. If any arbitrator, agency or court assumes jurisdiction of any like or related claim against the Defendant made by a Union on behalf of such a Plaintiff, that Plaintiff shall immediately request such arbitrator, agency or court to withdraw or dismiss with prejudice the matter and shall use his or her best efforts to cause the

arbitrator, agency or court to dismiss the matter with prejudice. For purposes of this § 9, a claim is like or related to a settled claim if it asserts that Defendant has failed to pay, or has underpaid, a non-exempt poultry processing employee in Danville, Arkansas, Albertville, Alabama, Decatur Alabama, Enterprise Alabama, Laurel, Mississippi or Union Springs, Alabama for time spent performing tasks before or after his or her scheduled shift hours, including during unpaid breaks, regardless of the statutory, legal, equitable, contractual or other basis of the claim, and regardless of the forum in which the claim is asserted.

10. Applicable Law

This Agreement is made and entered into in the State of Mississippi and, except as required by the Fair Labor Standards Act, the National Labor Relations Act, or the Labor Management Relations Act, each as amended, shall be governed by the laws of the State of Mississippi. The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any of the parties. With regard to any presumption arising from draftsmanship, this Agreement shall be interpreted as jointly drafted in equal respects by all parties.

11. Severability

Should any provision of this Agreement be declared or determined by any court to be illegal or invalid, the remaining parts, terms and provisions shall not be effected thereby and the illegal or invalid part, term or provision shall be deemed stricken from this Agreement.

12. No Admission and Denial of Unlawful Conduct

Plaintiffs acknowledge that Defendant denies the settled allegations and that this Agreement reflects a compromise of disputed claims, not an admission of any liability or guilt of any kind. Consequently, nothing in this Agreement shall be represented as, or used as any evidence of any violation of any law or obligation by Defendant, in any forum, ever.

13. Distribution of Funds

In the event that a Plaintiff should die or become incapacitated prior to his or her receipt of the settlement payment made pursuant to this Agreement, undersigned counsel for Plaintiffs shall be deemed to be his or her trustee for purpose of receipt and distribution of the funds, until such time as a court may appoint another as the representative of the disabled or deceased. If a check cannot be delivered because of the Settlement Administrator's inability to locate the Plaintiff, the Settlement Administrator shall follow the direction of Plaintiffs' counsel as to the disposition of those funds. At any time after one year following entry of Final Judgment, Wayne Farms may recover from the Settlement Administrator from undistributed funds the amount that Wayne Farms shows that it expended since Final Judgment to convert from master card timekeeping practices to individual timekeeping practices, but not exceeding the undistributed balance of settlement funds.

14. Breach of Settlement Agreement

Nothing in this Settlement Agreement shall operate to release, remise, discharge or acquit any claims by any of the Parties arising from breach of this Settlement Agreement.

15. Modification to Settlement Agreement

This Settlement Agreement may not be rescinded, modified or amended, except as approved by the Court.

16. Complete Agreement

No party has relied on any promise, representation or understanding which is not expressed in writing in this Agreement, including its referenced Exhibits, in determining whether or not to accept this Agreement's terms. The parties accept this written Agreement as their entire agreement regarding the matters and subjects set forth herein, without limitation.

17. Execution

The parties may execute this Agreement in counterparts or in multiple originals, each of which shall have the same effect, and each duplicate of which shall have the same effect, as a single, jointly executed original.

WHEREFORE, having negotiated, drafted and finally reviewed each and every part of the foregoing agreement, each and every attachment hereto, and having been duly authorized to do so, undersigned counsel hereby execute this Agreement on behalf of their respective clients.

s/William S. Hommel, Jr.
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Date:

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Attorney for Defendant

Date: