UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

BRIAN FERRY, individually and on behalf of others similarly situated,

Plaintiff,

v. C.A. No. 3:06-cv-00379

SGS CONTROL SERVICES, INC. and SGS NORTH AMERICA, INC.

Defendants.
_____/

PLAINTIFF'S MEMORANDUM IN SUPPORT OF EMERGENCY MOTION FOR PROTECTIVE ORDER, SANCTIONS AND CORRECTIVE NOTICE

Plaintiff files this memorandum of law in support of his motion for an Order (1) declaring settlement agreements obtained by Defendants (hereafter "SGS") to be null and void insofar as they purport to settle the FLSA claims of putative class members; (2) prohibiting SGS from soliciting additional settlement agreements or otherwise communicating with potential class members regarding any of the issues raised by this case; (3) authorizing Plaintiff to notify potential class members that any settlement agreements signed by class members are null and void and do not affect their right to participate in this action (such notice to be included in the notice to class members of their right to participate in this action); and (4) awarding Plaintiff his costs and reasonable attorneys fees associated with this motion. As set forth below, SGS' actions in soliciting settlement agreements that purport to waive a worker's FLSA rights are contrary to public policy, misleading, and designed to discourage potential class members from participating in this suit. Accordingly, the

Court should correct the damage done by SGS improper contacts with the class members, prohibit SGS from further such contacts, and take such other action as the Court deems appropriate.

I. STATEMENT OF THE CASE AND THE FACTS RELEVANT TO THIS MOTION

This is a Fair Labor Standards Act (FLSA) case for unpaid overtime. Plaintiff, Brian Ferry, alleges that Defendant SGS failed to pay its Oil, Gas and Chemical (OGC) inspectors overtime in compliance with the FLSA. Specifically, Plaintiff challenges three SGS policies applicable to all OGC inspectors and that Plaintiff contends resulted in overtime violations for all inspectors: (1) SGS' policy of using the fluctuating work week method of calculating overtime when it was not entitled to use that method; (2) SGS policy of paying overtime to inspectors long after the pay period in which it was earned; and (3) SGS policy of prohibiting inspectors from claiming more than 16 hours of overtime per week when they, in fact, worked more than 16 hours. Whether the first two policies violate the FLSA turns largely on legal questions with respect to the interpretation of the relevant FLSA regulations. *See, Ferrer v. SGS Control Services, Inc.,* 8:04-cv-916-T-26EAJ (MD Fla.2005) (Jury Trial Transcript Vol 6A at 77-82) (granting directed verdict to OGC inspector that SGS is not entitled to use fluctuating work week method of calculating overtime) (Px 5).

Plaintiff's complaint, which was filed in June 2006, is brought as a collective action on behalf of Plaintiff and other OGC inspectors. A motion for conditional certification of the collective action is being filed simultaneously with this motion for protective order. SGS' answer was filed August 1, 2006. As explained in the attached affidavits of Kevin Mitchell, Px. 1, and Russell Freese, Px 2, shortly after answering the complaint, SGS began informing its OGC inspectors that they would have to attend a mandatory meeting with SGS attorneys outside the office. Px 1 ¶23; Px 2 ¶23. SGS refused to tell OGC inspectors in advance what the meetings were about and inspectors were

not allowed to bring anyone with them to the meetings. *Id.* The meetings occurred in hotels or motels. *Id.* On the date of each inspector's scheduled meeting, he or she was met by his SGS supervisor or human resources person and ushered into a room where an SGS attorney and a court reporter were waiting. Px. 1 ¶24, Px 2 ¶25. The attorney asked the inspector questions regarding his pay and indicated that SGS would compensate him for unpaid overtime at a rate of $1400 per year of work for a maximum of three years. *Id.* The attorney then presented the inspector with a check, which had already been prepared, and indicated the inspector could have the check if he signed a document saying he had been properly compensated by SGS. Inspectors who refused to sign the document were asked to leave. *Id.* Inspectors were not advised to consult an attorney and were expected to make a decision then and there. *Id.* Inspectors who signed the "Agreement" were not give copies of the document they signed. These meetings lasted about 10 minutes each. The "Agreement" that SGS asked inspectors to sign states:

AGREEMENT

> THIS AGREEMENT, ACKNOWLEDGMENT, AND CALCULATION SHEET AND ANY PAYMENTS MADE TO ME ARE INTENDED TO SETTLE AND COMPROMISE ANY AND ALL ISSUES RELATING TO COMPENSATION. THIS AGREEMENT, ACKNOWLEDGMENT, CALCULATION SHEET AND ANY PAYMENTS MADE TO ME DO NOT CONSTITUTE AN ADMISSION OF LIABILITY BY SGS.
>
> I agree and acknowledge that the amount indicated below along with compensation previously paid to me by SGS, accurately and fully compensates me for all hours I worked for SGS's primary benefit. I further acknowledge that if I worked any hours that were not on my time sheet, the amount below equals or is more than any amount I would have been entitled to during my employment. Finally, I acknowledge that the method used to determine the hours owed to me was explained to me, and that I was given the opportunity to ask questions and offer my own evidence of hours worked. I certify

under penalty of perjury that the foregoing is true and correct.

Total Amount Owed: $_____
Years Covered: $_____
Name of Inspector:_____
Signature of Inspector:_____
SSN:_____
Date Signed: _____

Px. 3. Attached to the "AGREEMENT" was a document entitled "Calculation Sheet" which indicated that the payment was calculated at the rate of $1400 per year. Px 3.

At least one of the inspectors who signed the agreement, Russell Freese, Px 2 ¶24, has filed a consent to sue form with the court consenting to be a party-plaintiff in this action. *See* Docket Entry No. 25.

Upon learning of these meetings between SGS and its inspectors, counsel for Plaintiff contacted David Long-Daniels, counsel for SGS, and asked about the meetings. Mr. Long-Daniels confirmed that SGS was meeting on a company-wide basis with all inspectors who have potential overtime claims, other than those that have already opted-into a lawsuit, and offering them money in exchange for a settlement of all overtime claims they may have. Px 4.

ARGUMENT

I. THIS COURT HAS A DUTY TO SUPERVISE CONTACTS WITH CLASS MEMBERS

The FLSA allows workers to pursue minimum wage and overtime claims through an opt-in collective action mechanism. 29 U.S.C. 216(b). A court's authority to control counsel's conduct in a 216(b) collective action includes the authority to "manage the process of joining multiple parties in a manner that is orderly, sensible, and not otherwise contrary to statutory commands or the provisions of the Federal Rules of Civil Procedure." *Hoffman-LaRoche Inc. V. Sperling,* 493 U.S.

165, 171 (1989). Indeed "because of the potential for abuses in collective actions, such as unapproved, misleading communications to absent class members, 'a district court has both the duty and the broad authority to exercise control over a class action and to enter appropriate orders governing the conduct of counsel and parties.'" *Id.* at 667, *quoting Gulf Oil Co. v. Bernard,* 452 U.S. 89, 100 (1981*).*

In *Gulf Oil Co.* the Supreme Court made clear that a Court has the authority to limit communications with potential class members where there is a clear record of abuse. *Id.* at 102. In the wake of *Gulf Oil* courts have not been hesitant to prohibit communications which were either misleading, coercive, or designed to discourage class members from joining the suit. *Kleiner v. First Nat. Bank of Atlanta,* 751 F.2d 1193, 1206 (11th Cir. 1985); *Burrell v. Crown Central Petroleum,* 176 F.R.D. 239, 244-45 (E.D.Tex. 1997); *Hampton Hardware, inc. v. Cotter & Co., Inc.,* 156 F.R.D. 630, 632-33 (N.D. Tex. 1994).

Courts in FLSA actions have not hesitated to issue protective orders when an employer engages in improper communications with potential class members. *See e.g. Belt v. Emcare, Inc.,* 299 F. Supp. 2d 664, 668-669 (E.D. Tex. 2003) (letter sent to potential FLSA class members by employer which court found to be misleading, coercive and designed to interfere with the court's supervision of the collective action justified a prohibition on contacts between the employer and potential class members as well as other sanctions); *Ladegaard v. Hard Rock Concrete Cutters, Inc.,* 2001 WL 1403007 at *2, *7 (N.D. Ill. 2001) (voiding releases that the employer obtained from potential FLSA class members and ordering remedial notice sent to potential class members).

II. PRIVATE SETTLEMENTS OF FLSA CLAIMS ARE VOID AS A VIOLATION OF PUBLIC POLICY

The FLSA was enacted for the purpose of protecting workers from substandard wages and oppressive working hours. *Barrentine v. Arkansas-Best Freight System,* 450 U.S. 728 (1981). Recognizing that there are often great inequalities in bargaining power between employers and employees, Congress made the FLSA's provisions mandatory; thus the provisions are not subject to negotiation or bargaining between employers and employees. *Brooklyn Savings Bank v. O'Neil,* 324 U.S. 697 (1945). "FLSA rights cannot be abridged by contract or otherwise waived because this would nullify the purposes of the statute and thwart the legislative policies it was designed to effectuate." *Id.* at 740. In *Brooklyn Savings Bank,* an employer faced with possible FLSA liability contacted a former employee and offered to pay him back overtime in exchange for a release. When the employee subsequently sued for liquidated damages the employer plead the release as a defense. The Supreme Court rejected that defense noting that "[w]here a private right is granted in the public interest to effectuate a legislative policy, waiver of a right so charged or colored with the public interest will not be allowed where it would thwart the legislative policy which it was designed to effectuate." Id. at 704. Similarly, in *Schulte v. Gangi,* 328 U.S. 108 (1946), the Court declared a release that had been entered into between an employer and its employees was void even though there was a genuine dispute as to whether the employer was even covered by the FLSA. According to the Court, "the remedy of liquidated damages cannot be bargained away by bona fide settlements of disputes over coverage." 328 US. at 114.

More recently, the Supreme Court reaffirmed these decisions noting,

> This Court's decisions interpreting the FLSA have frequently emphasized the nonwaivable nature of an individual employee's right to a minimum wage and to overtime pay under the Act. Thus, we have held that FLSA rights cannot be abridged by contract or otherwise waived because this would 'nullify the purposes' of the

> statute and thwart the legislative policies it was designed to effectuate.

Barrentine v. Arkansas-Best Freight Sys., Inc., 450 U.S. 728, 740 (1981).

Following these Supreme Court cases, courts have consistently recognized that FLSA claims can only be settled in one of two ways: First, under Section 216(c), the Secretary of Labor is authorized to supervise payment to employees of unpaid wages owed to them. An employee who accepts a payment supervised by the Secretary waives his right to bring suit for both the unpaid wages and for liquidated damages.[1] *See Sneed v. Sneed's Shipbuilding, Inc.,* 545 F.2d 537, 539 (5th Cir. 1977). The only other way to settle FLSA claims is in the context of suits under Section 216(b) to recover back wages for FLSA violations. When employees bring a private action under the FLSA, a valid settlement can be reached if the district court approves the settlement for fairness. *See, e.g., Jarrard v. Southeastern Shipbuliding Corp.,* 163 F.2d 960, 961 (5th Cir. 1947) (settlement approved by state court is enforceable). As a result, employers who seek to settle FLSA claims with their workers typically submit a settlement or stipulated judgment to the Court for its review and approval. *See, e.g., Camp v. Progressive Corp.,* 2004 WL 2149079 at *4 (E.D. La. 2004) (evaluating settlement of FLSA suit for fairness); *Stalnaker v. Novar Corp.,* 293 F.Supp.2d 1260 (M.D. Ala. 2003) (same); *Hall v. McKenzie Tank Lines, Inc.* 2006 WL 1517246 (M.D. Fla. 2006) (same).

Courts throughout the country have consistently recognized that DOL supervision or court approval are the only two valid ways to settle an FLSA claim; private settlements that are not supervised by DOL or approved by a court are void as a matter of law.. *See, Walton v. United*

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[1] Not all settlements supervised by DOL operate as a release. If DOL does not think that a settlement is fair to employees no release results. *Walton v. United Consumers Club Inc.,* 786 F.2d 303, 306 (7th Cir. 1986).

Consumers Club Inc., 786 F.2d 303, 306 (7th Cir. 1986)("it is necessary to ban private settlements of disputes about pay . . . [o]therwise the parties' ability to settle disputes would allow them to establish sub-minimum wages."); *Lynn's Food Stores, Inc. v. U.S.,* 679 F.2d 1350, 1352-1353 (11th Cir. 1982)(per Goldberg, J., sitting by designation)("to approve an "agreement" between an employer and employees outside of the adversarial context of a lawsuit brought by the employees would be in clear derogation of the letter and spirit of the FLSA"); *Brennan v. Veterans Cleaning Service, Inc.,* 482 F.2d 1362, 1370 (5th Cir. 1973) ("It has long been recognized that the protection afforded by the Fair Labor Standards Act may not be waived by agreement between employer and employee."); *Caserta v. Home Lines Agency, Inc.,* 273 F.2d 943, 946 (2nd Cir. 1959) ("an express release by the employee is invalid, and this even though the release is limited to the claims for liquidated damages and was made in settlement of a bona fide dispute"); *Hohnke v. US,* 69 Fed. Cl. 170, 178-179 (Ct. Claims 2005)(FLSA settlements must be supervised by DOL or court approved); *Brown v. L&P Industries, LLC,* 2005 WL 3503637 at *8 (E.D.Ark. 2005) (same); *McConnell v. Applied Performance Technologies, Inc.,* 2002 WL 483540 at *6 (S.D. Ohio 2002) (broad form release in settlement of state court breach of contract action is void as a matter of law insofar as it purports to settle FLSA claims). *See also O'Connor v. U.S.,* 308 F.3d 1233, 1242 (Fed. Cir.2002) (in the private employment context a purely private settlement of FLSA claims is prohibited).

A few courts have recognized exceptions to the rule prohibiting unsupervised private settlements, but the very narrow circumstances under which those exceptions have been granted only reinforces the general rule. For example, in *Thomas v. State of La.,* 534 F.2d 613, 615 (5th Cir. 1976), state employees entered into an FLSA settlement agreement that paid full single damages after they won a jury verdict but before judgment was entered in the case. During that interval, the

Supreme Court ruled that state employees were not covered by the FLSA thereby wiping out the plaintiffs' FLSA claim. The court reasoned that since the plaintiffs were represented by lawyers and had no FLSA rights at the time they settled, the settlement was enforceable. In his concurrence, Judge Clark emphasized that the opinion "cannot be construed to approve non-judicial settlements of wage hour claims in situations removed from the unique facts of this case. . . . I deem this concurrence necessary to emphasize that ***Schulte*** **continues to raise a barrier to even fair bargaining between an employee and an employer where there is a dispute as to existing law**.") (emphasis added).[2]

III. SGS'S SETTLEMENT AGREEMENTS ARE VOID, MISLEADING AND CLEARLY DESIGNED TO DISCOURAGE INSPECTORS FROM PARTICIPATING IN THIS COLLECTIVE ACTION.

A. The Settlement Agreements Are Void and Unenforceable

It is clear from the above case law that the settlement agreements obtained by SGS are void. DOL did not participate in any way in SGS "settlements," nor were they reviewed, let alone approved, by a Court. They are nothing more than private settlements prohibited by *Brooklyn Savings* and its progeny.

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[2] Plaintiff is aware of only one case that has enforced a private settlement of an overtime claim. *Martinez v. Bohls Bearing Equipment Co.,* 361 F.Supp.2d 608 (W.D.Tex. 2005). The court in that case apparently recognized that its opinion was directly contrary to the great weight of authority, not only in the Fifth Circuit but other circuits as well, as it certified its opinion for interlocutory appeal under 28 U.S.C. § 1292(b). No appeal was ever filed and the case was closed. Not only is *Martinez* contrary to established law, but it is also distinguishable from this case on its facts. In *Martinez* the only dispute between the employer and the employee was a factual one regarding the number of hours of overtime worked. There were no disputed legal issues such as are presented here with respect to the proper interpretation of DOL's fluctuating work week method of overtime pay. Even before the *Brooklyn Savings Case* private settlements involving disputed legal issues were unenforceable. *See Strand v. Garden Valley Telephone Co.,* 51 F.Supp. 898, 904 (D. Minn. 1943).

Even if private settlements of FLSA claims were not void as a matter of law, SGS' settlement agreements would still be unenforceable given the circumstances under which they were obtained. As explained in the affidavits of Kevin Mitchell and Russell Freese, Px 1 and 2, OGC inspectors were given no warning of the subject matter of the meetings where the settlements were presented and they were given no opportunity to consult with an attorney or anyone else about their rights. Shockingly, given the fact that SGS' attorneys conducted the meetings, SGS' release does not indicate that an inspector should consult a lawyer or take the time to give careful consideration to the offer prior to signing. Such language is commonplace in employment related releases and mandatory in ADEA releases.[3] Instead, it appears that inspectors were brought into the meeting cold, offered a lump sum of money, and required to accept or reject the offer on the spot. *See* Px 2 at ¶24. Perhaps most egregious of all, is the fact that the SGS attorney never informed inspectors of the challenges to the fluctuating work week method of overtime payment and other illegal pay practices raised by this litigation and other FLSA litigation against SGS. Those issues raise complex legal questions regarding the proper interpretation of DOL's overtime regulations that no worker would be likely to be aware of, let alone be in a position to knowingly waive, in a ten-minute meeting in which those issues were not mentioned let alone discussed. No doubt SGS' attorneys did not want to mention those claims since one SGS inspector received a jury award of $63,370 single damages, $126,740, double damages in a challenge SGS' use of the fluctuating work week. *Ferrar v. SGS Control Services, Inc.,* 8:04-cv-916-T-26EAJ (M.D. Fla. 2005) (Transcript of Jury

[3] Unlike private FLSA settlements, private settlements of employment discrimination claims, such as ADEA claims, do not violate public policy as long as the waiver is both knowing and voluntary. *Gormin v. Brown-Forman Corp.,* 963 F.2d 323, 327 (11th Cir. 1992). The contents of an ADEA release are now controlled by statute. *See* 29 USC §626(f)(1).

Trial Vol. 7 at 104) (attached as Px 6). That SGS offered inspectors only $1400/year to waive similar violations is a clear indication of how over-reaching SGS' Agreement was.[4]

The coercive atmosphere of the meetings also calls into question the voluntariness of the waivers. After all, who would not be intimidated by being ordered to a meeting in a motel room without explanation, greeted by a supervisor and then ushered into a room with the employer's lawyer and court reporter. SGS has a history of retaliation against its OGC inspectors, a fact that and was surely in the minds of most, if not all of inspectors. *Ferrar v. SGS Control Services, Inc.,* 8:04-cv-916-T-26EAJ (M.D. Fla. 2005) (Transcript of Jury Trial Vol. 7 at 104) (jury verdict finding SGS discharged inspector because he complained about his overtime pay). Px 6.

These circumstances would be more than sufficient to invalidate an employment discrimination claim waiver.[5] In short, this is precisely the sort of private compromise of FLSA rights that the court condemned in *Brooklyn Savings Bank*, *Schulte,* and their progeny.

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[4] SGS "settlement" was in no way a resolution of a bona fide dispute between the company and each inspector. Although inspectors were apparently asked about uncompensated hours they may have worked, SGS calculated the amounts to be offered to each worker and prepared the check prior to talking to the inspector. This was a payment for a release just as in *Brooklyn Savings,* nothing more, nothing less.

[5] Prior to the enactment of the Older Worker Benefit Protection Act (OWBPA), 29 U.S.C. § 621(f)(1), which now governs ADEA releases, courts applied a seven factor totality of the circumstances test. *See e.g. Widener v. Arco Oil and Gas Co.,* 717 F.Supp. 1211, 1216 (N.D. Tex. 1989). Under that test, whether the worker was given adequate time for deliberation before signing the release, whether the worker was encouraged to seek counsel before signing, and whether the worker knew his rights were critical factors. SGS' release flunks all of those tests. The worker's education level was also a factor and here most inspectors have no more than a high school education. Under the OWBPA a worker must be given at least 21 days to consider a release current law, must be advised in writing to consult and attorney, and the release must specifically state the statutory rights being waived. 29 U.S.C. §621(f)(1). SGS' release fails to satisfy any of those criteria either.

B. SGS Contacts With Potential Class Members Were Misleading And Designed To Discourage Inspectors From Participating In this Lawsuit.

Why would SGS and its attorneys have attempted to obtain such patently void and unenforceable releases? Why, at the very least did they not give inspectors the opportunity to consult with an attorney and consider their options before signing – something that is now standard practice for all employment-related releases? Clearly, SGS was less interested in obtaining valid releases than it was in misleading employees into believing that they had fully compromised all wage claims so that they would have no reason to opt-into this action or some other FLSA action. After all, while SGS and its attorneys are aware of the long history of court cases prohibiting private settlements of FLSA claims, individual inspectors could not be expected to be aware of that law. Signing such a release could only lead an SGS inspector into believing that he was prohibited from opting into an FLSA suit such as this one. SGS' requirement that inspectors sign the release "under penalty of perjury" was especially pernicious, suggesting as it does that inspectors could be subject to criminal sanctions if they participated in an FLSA suit. Even if one or two inspectors talked to a lawyer and joined this action despite the release, the vast majority of those who signed them would not. In this way SGS clearly hoped to undermine this collective action and reduce the number of opt-in plaintiffs. There can be no other reason for asking SGS employees to sign invalid releases.[6]

IV. PLAINTIFF IS ENTITLED TO A PROTECTIVE ORDER AND SANCTIONS.

Where, as here, a litigant's contacts with potential class members are misleading and

[6] If SGS had merely wanted to pay inspectors for back overtime that it believed was owed, nothing prevented it from simply issuing checks to inspectors. What is misleading in this case, and a direct challenge to the Court's ability to supervise this action, is SGS insistence that inspectors sign agreements that purport to settle all wage claims in exchange for the money. Since SGS must know that those settlements are of no legal validity, the only conclusion is that SGS was attempting to fool inspectors into not participating in this action.

designed to have the effect of undermining participation in the action sanctions are clearly appropriate. *Kleiner,* 751 F.2d at 1206; *Hampton Hardware, Inc.,* 156 F.R.D. at 632-633. In FLSA cases virtually identical to this, courts have not hesitated to order a variety of sanctions. For example, in *Belt v. Emcare, Inc.,* 299 F. Supp. 2d 664, 669 (E.D. Tex. 2003), an employer sent a letter to prospective class members which the court found to be misleading and designed to discourage participation in the action. The court then enjoined the employer from all communications with potential class members regarding the case, required the employer to pay for a corrective notice to be sent on its own letterhead correcting the misinformation it had provided to workers, and ordered the defendant to pay plaintiffs attorneys fees in bringing the motion for sanctions. In *LaDegaard,* 2001 WL 1403007 at *1 after an FLSA collective action was filed, an employer sent employees additional compensation along with a release of all claims relating to overtime. The court granted plaintiff's motion to declare the releases void and ordered "court-approved notice to each person who received a release stating that the release is void in its entirety, that signing it does not prohibit participation in [the] litigation and [that] defendants cannot retaliate against anyone for participating in the lawsuit." *Id* at *7-*8.

In *O'Brien v. Encotech Constr. Services, Inc.,* 203 F.R.D. 346, 348 (N.D. Ill. 2001), after an overtime suit was filed, an employer called individual employees into his office and offered them additional compensation in exchange for a release. The court enjoined the defendant from soliciting further releases, declared the releases that had been signed void with respect to FLSA claims, and ordered corrective notice informing employees that they retain their right to sue under the FLSA. *Id.* at 348-349. (In a subsequent opinion, the court held that the releases were void with respect to the state wage claims as well. *O'Brien v. Encotech Constr. Services, Inc.,* 183 F.Supp.2d 1047 (N.D. Ill.

2002). *See also Wang v. Chinese Daily News, Inc.,* 236 F.R.D. 485 (C.D. Ca. 2006) (enjoining employer from communicating with employees regarding wage claim and issuing curative notice for coercive and misleading communications designed to encourage workers not to participate in wage suit).

As in these cases, Plaintiff seeks an order declaring the settlement agreements obtained by SGS to be void, prohibiting SGS from soliciting additional "settlement agreements" or otherwise communicating with potential class members regarding the issues in this lawsuit. Plaintiff also asks that a curative notice be sent informing inspectors that the "settlement agreements" offered by SGS are void and do not in any way preclude their participation in this lawsuit. Inasmuch as notice has not yet issued to class, Plaintiff proposes that this curative language be incorporated in the general notice of the collective action sent to all inspectors. *See* Plaintiff's Motion To Conditionally Certify Fair Labor Standards Act Opt-In Class And To Issue Notice, filed Sept. 5, 2006. Finally Plaintiffs seek their attorneys fees for bringing this motion. All of these remedies are fully supported by the facts of this case and the case law cited above.

CONCLUSION

For all of the foregoing reasons, Plaintiffs urge this Court to enter an order (1) declaring the settlement agreements obtained by SGS to be null and void insofar as they purport to settle the FLSA claims of the putative class members; (2) prohibiting SGS from soliciting additional settlement agreements or otherwise communicating with potential class members regarding any of the issues raised by this case; (3) authorizing Plaintiff to notify potential class members that any settlement agreements signed by class members are null and void and do not affect their right to participate in this action (such notice to be included in the notice to class members of their right to participate in

this action); and (4) awarding Plaintiff his costs and reasonable attorneys fees associated with this motion.

Respectfully submitted,

s/ Edward Tuddenham

Edward Tuddenham
153 Upland Rd.
Cambridge Mass 02140
617-576-2182
Fax: 512-532-7780

Dan Getman
9 Paradies Lane
New Paltz, New York 12561
(845) 255-9370
Fax: (845) 255-8649

Attorneys for Plaintiff