

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

RICHARD AYERS, JOSE ACOSTA,  
FREDERICK ANTHONY BROUSSARD, and  
JEFFREY WAYNE SCHELL, individually and  
on behalf of others similarly situated,

Plaintiffs,

vs.

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

Defendants.

**Civil Action 03 CV 9078 (RMB)**

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

Plaintiffs,

vs.

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

Defendants.

**Civil Action 06 CV 7111 (RMB)**

**NOTICE OF PENDENCY OF CLASS ACTION, PROPOSED SETTLEMENT AND HEARING DATE**  
**FOR COURT APPROVAL**  
**(SGS AUTOMOTIVE SERVICES, INC.)**

**TO: ALL CURRENT AND FORMER EMPLOYEES OF SGS AUTOMOTIVE SERVICES, INC. (“SGS”) WHO WERE EMPLOYED BY SGS AS INSPECTORS OR PERFORMED INSPECTION FUNCTIONS DURING ALL OR PART OF THE “COVERED PERIOD,” AS DEFINED BELOW.**

**PLEASE READ THIS NOTICE CAREFULLY.**

**IF YOU WISH TO RECEIVE YOUR SHARE OF THE SETTLEMENT OF THIS CLASS ACTION, YOU NEED TO COMPLETE AND POSTMARK YOUR CLAIM FORM NOT LATER THAN JULY 8, 2008.**

QUESTIONS? CALL-TOLL FREE 1 (866) 923-0867

**IF YOU WISH TO COMMENT IN FAVOR OF THE SETTLEMENT OR OBJECT TO THE SETTLEMENT, OR IF YOU DECIDE NOT TO PARTICIPATE IN THE SETTLEMENT, YOU MUST FOLLOW THE DIRECTIONS IN THIS NOTICE.**

**IF YOU INTEND NOT TO PARTICIPATE IN THE SETTLEMENT, YOU MUST COMPLETE AND POSTMARK YOUR REQUEST FOR EXCLUSION FORM ON OR BEFORE JULY 8, 2008, OR ELSE YOU WILL BE BOUND BY THE SETTLEMENT.**

Pursuant to the order of the United States District Court for the Southern District of New York entered on March 10, 2008, YOU ARE HEREBY NOTIFIED AS FOLLOWS:

A proposed settlement (“the Settlement”) has been reached between the parties in this class action pending in United States District Court for the Southern District of New York brought on behalf of all individuals described above (“the Class”). The Court has preliminarily approved the Settlement and conditionally certified the Class for purposes of the Settlement only. You have received this notice because the parties’ records indicate that you are a member of the Class. This notice is designed to inform you of how you can make a claim under the Settlement, comment in favor of the Settlement or object to the Settlement, or elect not to participate in the Settlement. If you do not timely submit a Request for Exclusion Form, and if the Settlement is finally approved by the Court, the Settlement will be binding upon you, even if you object to the Settlement. However, to receive your share of the proceeds to be paid under the Settlement, you must submit a valid and timely Claim Form.

**I. BACKGROUND OF THE CASE**

On November 12, 2003, Plaintiff Richard Ayers commenced a purported class action against SGS Control Services, Inc., in the United States District Court for the Southern District of New York alleging overtime violations under the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201 *et seq.* (“Ayers action”). On June 8, 2006, Plaintiff Brian Ferry commenced a purported class action against SGS Control Services, Inc. and SGS North America, Inc., in the United States District Court for the Southern District of Texas, which also alleged overtime violations under the FLSA (“Ferry action”). The Ayers Action was amended three (3) times to add more Plaintiffs and more SGS entities as defendants. On December 5, 2006, the Court consolidated the Ayers action and the Ferry action (which had been transferred to the Southern District of New York) for all purposes. On March 10, 2008, the complaint in the Ayers/Ferry consolidated cases was amended to allege a class action under Rule 23 of the Federal Rules of Civil Procedure and violations of state and federal wage-and-hour laws, including the FLSA, as incorporated into a claim of breach of contract, and to more specifically define the Class.

SGS denies any liability or wrongdoing of any kind associated with the claims alleged. Specifically, SGS denies that it violated any state or federal wage-and-hour laws, including the FLSA, denies that it breached any express or implied contract with the Class and denies that the Class is owed any compensation for overtime or any other payments, interest or penalties. SGS submits that it has paid significant overtime to its employees in accordance with the settled law of the land.

After good-faith negotiations between Class Counsel and counsel for SGS in July 2007 failed to bring about a settlement, and after good-faith negotiations presided over by a private mediator on August 2, 2007 and again on October 20 through October 22, 2007 failed to resolve the parties’ differences, this case went to trial on October 24, 2007. After one day of trial, in recognition of the substantial risk of an adverse result in the action for either side, Plaintiffs and SGS agreed to settle the action pursuant to the terms and conditions of the Settlement.

The Settlement represents a compromise and settlement of highly disputed claims. Nothing in the Settlement is intended to or will be construed as an admission by SGS that Plaintiffs' claims in the action have merit or that it has any liability to Plaintiffs or the Class on those claims.

Plaintiffs and SGS, and their counsel, have concluded that the Settlement is advantageous, considering the risks and uncertainties to each side of continued litigation. The parties and their counsel have determined that the Settlement is fair, reasonable, and adequate and is in the best interests of the members of the Class.

As a member of the Class, you will share in the proceeds of the Settlement if you submit a valid and timely Claim Form. You will be bound by the terms of the Settlement unless you elect not to participate in the Settlement by timely filing a Request for Exclusion Form.

## **II. SUMMARY OF THE SETTLEMENT**

The Settlement provides for the following:

### **A. Who is included in the Settlement?**

You are included in the Settlement if you meet all of the conditions set forth in the beginning of this notice. The Settlement also includes current and former employees of the Oil, Gas & Chemicals Services Division of SGS North America, Inc. f/k/a SGS Control Services, Inc. ("OGC inspectors") and of SGS North America, Inc.'s Agricultural Services Division ("Agri inspectors"), who were employed by SGS as inspectors during all or part of the "Covered Period" (defined below). It is estimated that there are approximately 2,500 members of the Class.

### **B. What will I receive from the Settlement?**

From a total settlement amount of \$7,250,000 plus interest as provided in the Settlement Agreement, less (i) Class Counsel's Fees and Costs and less (ii) payments to the Class Representatives (defined below), you will receive a share of the remaining amount ("the Net Common Fund") based on the number of pay periods you were actively employed with SGS as an SGS Automotive Services, Inc. ("Auto") inspector during the Covered Period (defined below), how you were paid (i.e., whether you were paid under the Pay for Performance ("PfP") program), whether you opted into the *Ayers* or *Ferry* actions (i.e., whether you were an "Opt-In Plaintiff"), and whether you were paid bi-weekly or semi-monthly. The Covered Period is defined as the period beginning three years prior to the filing of the Fourth Amended Complaint alleging a Rule 23 class action through the date of such filing, or, for Opt-In Plaintiffs, the period beginning three years prior to the filing of the individual Plaintiff's consent to sue through the date of the filing of the Fourth Amended Complaint alleging a Rule 23 class action, except that, for Class Members residing in the following states or territories, the Covered Period shall be the period beginning the number of years shown prior to the filing of the Fourth Amended Complaint through the date of such filing: California (4); Hawaii (6); Nebraska (4); New York (6); and the Virgin Islands (6).

Although we cannot determine the exact amount of your Settlement Payment at this time, your final Settlement Payment will be based on the following formula:

Pre-share Payments:

If you are a current or former Auto inspector paid under the PfP program, you will receive \$350 per year worked for the period beginning 3 years prior to the filing of the class complaint (or prior to the filing of a consent to sue, if you are an Opt-In Plaintiff) until April 19, 2007 for alleged damages due to the PfP calculation

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and unpaid overtime wage claims. (If you live in one of the 5 states or territories listed above, the period upon which your payments will be based is the number of years shown.) If you are (or were) an Auto inspector who is also an Opt-In Plaintiff, you will receive an additional \$350 per year worked during the above-described period.

If you are a current or former Auto inspector who was not paid under the PfP program, you will receive \$50 per year worked for the period beginning 3 years prior to the filing of the class complaint (or prior to the filing of a consent to sue, if you are an Opt-In Plaintiff) until April 19, 2007 for alleged damages due to unpaid overtime wage claims. (If you live in one of the 5 states or territories listed above, the period upon which your payments will be based is the number of years shown.) If you are (or were) an Auto inspector who is also an Opt-In Plaintiff, you will receive an additional \$50 per year worked during the above-described period.

Every class member (OGC, Agri and Auto inspectors) is guaranteed a Pre-Share Payment of at least \$100. Therefore, if the formula above yields you less than \$100, you will receive an additional amount to bring your total Pre-Share Payment to \$100.

#### Late Payment Share:

After deducting all Pre-Share Payments (including Pre-Share Payments made to OGC, Agri and Auto inspectors, Class Counsel's Fees and Costs, and payments to the Class Representatives and Class Discovery Representatives), the Net Common Fund will be distributed: (1) to OGC inspectors who were paid under the fluctuating workweek ("FWW") (also called "coefficient overtime") method; and (2) to Opt-In Plaintiffs (whether OGC, Agri or Auto inspectors) who were paid on a semi-monthly basis.

Opt-In Plaintiffs paid on a semi-monthly basis, whether OGC, Agri or Auto, are eligible to receive a Late Payment Share based on overtime paid during the Covered Period. If you are an Opt-In Plaintiff paid on a semi-monthly basis, the amount you were paid will be converted to a percentage of the total late payment claims for all Opt-In Plaintiffs paid on a semi-monthly basis during the Covered Period. That percentage will be applied to the Net Common Fund to determine your Late Payment Share.

Your Settlement Payment will be reduced by applicable tax deductions and withholdings.

#### **C. When will I receive my Settlement Payment?**

The Settlement Payments will be paid after final court approval of the Settlement and after all rights to appeal or review are exhausted or any appeal or review (except an appeal of the attorney's fee award) has been resolved in favor of the Settlement.

#### **D. What if I do not want to participate in the Settlement?**

You will not be included in the Settlement if you submit a Request for Exclusion Form that is provided with this notice in accordance with the conditions for submitting that form.

#### **E. What if I do not submit an Exclusion Form but also do not submit a Claim Form?**

You still will be bound by the terms of the Settlement, but you will not receive a Settlement Payment. To receive your share of the Settlement you must submit a valid and timely Claim Form.

**F. Claims Administrator.**

The Court has appointed The Garden City Group, Inc., P.O. Box 9260, Dublin, OH 43017-4660, to act as an independent settlement administrator and to resolve any dispute concerning a Class Member's eligibility to participate in the Settlement and his or her share of the Settlement proceeds.

**G. Release of Claims.**

The Settlement includes a release by Class Members (other than those who file Request for Exclusion Forms) of SGS North America, Inc.; Oil, Gas & Chemicals Services and Agricultural Services Divisions of SGS North America Inc. f/k/a SGS Control Services, Inc.; and SGS Automotive Services, Inc. and all of their respective current and former officers, directors, employees, partners, shareholders, agents, attorneys, parents, predecessors, successors, subsidiaries, assigns, and related and affiliated entities, from any and all wage and hour claims, whether known or unknown, arising from the start of time to the date of the filing of the Fourth Amended Complaint alleging a Rule 23 action, whether under federal, state and/or local law, statute, ordinance, regulation, common law, or other source of law, including, without limitation, the Fair Labor Standards Act and any other federal or state statute, whether or not such claims are in the nature of claims for damages, unpaid wages or overtime, premium pay, sea pay, day-off pay, holiday pay, deductions, unreimbursed business expenses, waiting-time penalties, or other penalties for overtime, missed meal periods, missed rest breaks, and other alleged wage-and-hour violations, attorney's fees or injunctive relief, compensatory damages, punitive damages, liquidated damages or any other form of monetary relief; and whether sounding in contract, statute, ordinance, constitution or tort. Under the Settlement, Class Members will be deemed to have waived any rights and benefits that they might have under any statute which effectively provides that a general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

**H. Class Representatives and Class Discovery Representatives.**

Subject to Court approval, in addition to their share as Participating Class Members, Named Plaintiffs Richard Ayers, Jose Acosta, Frederick Anthony Broussard, Jeffrey Wayne Schell and Brian Ferry may each be paid up to a maximum of \$20,000 for their services as Class Representatives, including remaining in contact with the class counsel, reviewing documents, participating in the prosecution of the case, the risk of paying SGS's attorneys' fees and costs in the event of an unsuccessful outcome. Class Representatives also have carried the burden of making their claims public in the community of the inspection industry. Their services were important in creating the fund of 7.25 million dollars for the benefit of the class. If approved by the Court, this payment will be deducted from the Settlement Payment, as explained in Section II.B.

Subject to Court approval, in addition to their share as Participating Class Members, Plaintiffs Richard Ayers, Anthony Broussard, Tim Callas, Jaime Castillo, Eddie Chacon, Brian Ferry, Russell Freese, Eduardo Garabito, Randy Holman, Robert Kraemer, Jeff Lewis, Lowell Lewis, Warren Moore, Mike Morvilus, Noe Nodalo, Sherri Roberts, William Venable, Charles Weed and Jeff Young, as Class Discovery Representatives, may each be paid up to a maximum of \$1,500 per day of attendance at deposition, mediation, or trial, and any related travel in return for lost work and wages, lost vacation time, travel away from family, and labor expended on behalf of the class in discovery, mediation and trial. If approved by the Court, this payment will be deducted from the Settlement Payment, as explained in Section II.B.

**I. Class Counsel Fees and Costs.**

Class Counsel will seek approval from the Court for payment of their fees and costs in an amount up to a maximum of 33 1/3% of the Settlement Payment in attorneys' fees and costs, which, if approved by the

Court, will be deducted from the Settlement Payment, as explained in Section II.B. Class Counsel believe the amount requested for fees and costs is fair and reasonable, and SGS will not oppose their request for such amount.

**J. Costs of Administration.**

SGS will pay the costs of administering the Settlement. Such costs will not be deducted from the Settlement Payment.

**K. Other terms.**

The Settlement Agreement will be interpreted, construed and enforced in accordance with the substantive laws of the State of New York without reference to choice of law principles. Should any provision of the Agreement be found invalid or unenforceable for any reason by a court with jurisdiction over the interpretation of this Agreement, such finding shall not invalidate or make unenforceable any other provision of the Agreement or affect in any way whatsoever the validity or enforceability of the Agreement as a whole.

**III. CLASS REPRESENTATIVES' AND CLASS COUNSEL'S SUPPORT OF THE SETTLEMENT.**

The Class Representatives and Class Counsel support this settlement. Their reasons include the inherent risk of denial of class certification, the risk of no recovery or limited recovery if a trial proceeded on the merits, and the inherent delays and uncertainties associated with litigation. Based on their experience litigating similar cases, Class Counsel believe that further proceedings in this case, including a trial and probable appeals, would be very expensive and protracted. No one can confidently predict how the various legal questions at issue, including the amount of damages, would ultimately be resolved. Therefore, upon careful consideration of all of the facts and circumstances of this case, Class Counsel believe that the Settlement is fair, reasonable, and adequate.

**IV. WHAT ARE YOUR RIGHTS AS A CLASS MEMBER?**

**A. Participating in the Settlement.**

The Class Representatives and Class Counsel represent your interests as a Class Member. Unless you elect not to participate in the Settlement by timely filing an Exclusion Form, you are a part of the Class, you will be bound by the terms of the Settlement and any final judgment that may be entered by the Court, and you will be deemed to have released the claims against SGS and the other released parties described above. As a member of the Class, you will not be responsible for the payment of attorneys' fees or reimbursement of litigation expenses unless you retain your own counsel, in which event you will be responsible for your own attorneys' fees and costs.

**B. Claiming a Share of the Settlement Proceeds.**

To receive a share of the Settlement proceeds, you must complete the enclosed Claim Form according to the instructions below and return it, signed, to the Claims Administrator at the following address:

*Richard Ayers, et al. vs. SGS Control Services, Inc. et al.;*  
*Brian Ferry vs. SGS Control Services, Inc. et al.*  
c/o The Garden City Group, Inc.  
P.O. Box 9260  
Dublin, OH 43017-4660

To be valid, the Claim Form must be completed in full, signed by you under penalty of perjury, accompanied by a photocopy of your driver's license or other form of government issued photo identification (e.g., passport) or SGS-issued photo identification card. The Claim Form must be postmarked not later than July 8, 2008. A Class Member who fails to mail a Claim Form in the manner and by the deadline specified above will not receive a share of the Settlement proceeds. If that Class Member also fails to file a valid and timely Request for Exclusion Form, the Class Member is bound by all terms and conditions of the Settlement, if the Settlement is approved by the Court, and the Judgment, even though the Class Member did not receive a share of the Settlement Proceeds.

**C. Commenting in favor of the Settlement.**

If you wish, you may comment in favor of the Settlement in writing and/or by appearing in person at the final approval hearing, which will be held on July 30, 2008 at 2:00 p.m. in the U.S. Courthouse, 500 Pearl Street, New York, New York. To do so, you must, not later than July 8, 2008, submit a written notice of your comments and/or your intent to appear and comment in favor of the Settlement at the final approval hearing. Your notice must include your full name, address, date of birth, and dates of your employment at SGS. Send your notice to:

**Office of the Clerk:**  
United States District Court,  
Southern District of New York  
U.S. Courthouse  
500 Pearl Street  
New York, New York 10007-1312

**Also send a copy of your notice to:**  
*Richard Ayers, et al. vs. SGS Control Services, Inc. et al.; Brian Ferry vs. SGS Control Services, Inc. et al.*  
c/o The Garden City Group, Inc.  
P.O. Box 9260  
Dublin, OH 43017-4660

**DO NOT TELEPHONE THE COURT OR SGS'S COUNSEL.**

**D. Objecting to the Settlement.**

You may object to the terms of the Settlement before final approval, either by filing a written objection or filing a notice of your intent to appear and object at the final approval hearing (described in Section V below). However, if the Court rejects your objection, you will still be bound by the terms of the Settlement, unless you also submit a Request for Exclusion Form. To object, you must send a written notice of objection or a written notice of your intent to appear and object at the final approval hearing to the Court and the Claims Administrator at the addresses shown above. If you intend to be represented by counsel, then your attorney must file a notice of appearance with the Court. **DO NOT TELEPHONE THE COURT OR SGS'S COUNSEL.** Any written objection and/or notice of your intent to appear at the hearing must state each specific reason in support of your objection and any legal support for each objection and must include any supporting documentation and a list of any witnesses or experts that you would like to present to the Court. Your written objection and/or notice of your intent to appear at the hearing must also state your full name, address, date of birth, and the dates of your employment at SGS. To be valid and effective, the Court and the Claims Administrator must receive any written objections and/or notices of intent to appear at the hearing not later than July 8, 2008. A Class Member who fails to file and serve a written statement of objection in the manner described above and by the specified deadline will be deemed to have waived any objections and will be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement.

#### **E. Excluding Yourself from the Settlement.**

If you do not wish to participate in the Settlement, you must complete the enclosed Request for Exclusion Form. To be valid, the Request for Exclusion Form must be completed, signed by you under penalty of perjury, accompanied by a photocopy of your driver's license or other form of government-issued photo identification (e.g., passport) or SGS-issued photo identification card and returned to the Claims Administrator at the following address:

*Richard Ayers, et al. vs. SGS Control Services, Inc. et al.;*  
*Brian Ferry vs. SGS Control Services, Inc. et al.*  
c/o The Garden City Group, Inc.  
P.O. Box 9260  
Dublin, OH 43017-4660

The Request for Exclusion Form must be postmarked not later than July 8, 2008. If the Request for Exclusion Form is sent from within the United States it must be sent through the United States Postal Service via registered or certified mail, with return receipt requested. A Class Member who fails to mail a Request for Exclusion Form in the manner and by the deadline specified above may be bound by all terms and conditions of the Settlement, if the Settlement is approved by the Court, and the Judgment, regardless of whether he or she has objected to the Settlement.

Any person who files a complete and timely Request for Exclusion Form will, upon receipt, no longer be a member of the Settlement Class, will be barred from participating in any portion of the Settlement, and will receive no proceeds from the Settlement. Any such person, at his or her own expense, may pursue any claims he or she may have against SGS.

#### **V. FINAL SETTLEMENT APPROVAL HEARING**

The Court will hold a final approval hearing in the U.S. Courthouse, 500 Pearl Street, New York, New York on July 30, 2008 at 2:00 p.m. to determine whether the settlement should be finally approved as fair, reasonable, and adequate. The Court will also be asked to approve Class Counsel's request for costs and attorneys' fees and the payments made to Class Representatives and Class Discovery Representatives. Class Counsel is seeking approval of up to a maximum of 33 1/3% of the Settlement Payment in attorneys' fees and costs incurred or to be incurred. The hearing may be postponed without further notice to the Class. It is not necessary for you to appear at this hearing, but you may appear if you wish to.

#### **VI. GETTING MORE INFORMATION**

The above is a summary of the basic terms of the Settlement. For the precise terms and conditions of the Settlement (including the formula under which OGC, Agri and Auto inspectors' claims will be analyzed) you are referred to the detailed Joint Stipulation of Settlement and Release Between Plaintiffs and Defendants, which will be on file with the Clerk of the Court. The pleadings and other records in this litigation, including the Settlement Agreement, may be examined at any time during regular business hours in the United States District Court, U.S. Courthouse, 500 Pearl Street, New York, New York, or you may contact Class Counsel (Michael J. D. Sweeney, Esq. Getman Law Firm, 9 Paradies Lane, New Paltz, New York 12561) or the Claims Administrator. **PLEASE DO NOT TELEPHONE THE COURT, DEFENDANT'S COUNSEL OR SGS FOR INFORMATION REGARDING THIS SETTLEMENT OR THE CLAIM PROCESS!**