

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

WARD KLUGMANN, Individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

AMERICAN CAPITAL LTD., MALON
WILKUS, JOHN R. ERICKSON,
IRA WAGNER, SAMUEL A. FLAX, and
RICHARD E. KONZMANN,

Defendants.

Civil Action No. 8:09-CV-00005-PJM

**FINAL JUDGMENT AND ORDER CERTIFYING SETTLEMENT CLASS,
APPROVING CLASS ACTION SETTLEMENT AND PLAN OF ALLOCATION,
AWARDING ATTORNEYS' FEES AND EXPENSES, APPROVING
REIMBURSEMENT OF PLAINTIFFS' EXPENSES AND DISMISSING ACTION
WITH PREJUDICE**

This matter came on for hearing on June 7, 2012, upon the motion of Plaintiffs for approval of the Settlement set forth in the Stipulation of Settlement, dated as of February 9, 2012 (the "Settlement Stipulation"). Due and adequate notice having been given to the Settlement Class as required by the Court's Preliminary Approval Order, dated February 22, 2012, and the Amendment to Order, dated March 14, 2012 (collectively, the "Preliminary Approval Order"), and the Court having considered the Settlement Stipulation, all papers filed and proceedings had herein, and all comments received regarding the proposed Settlement, the proposed Plan of Allocation, Plaintiffs' Counsel's

application for an award of attorneys' fees and reimbursement of litigation expenses and Plaintiffs' application for reimbursement of their time and expenses devoted to prosecution of the Litigation, and having reviewed the entire record in the Litigation and good cause appearing,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. Except as otherwise specifically set forth herein, the Court, for purposes of this Final Judgment and Order (the "Judgment"), adopts all defined terms set forth in the Settlement Stipulation and incorporates the terms of the Settlement Stipulation by reference herein.

2. The Court has jurisdiction over the subject matter of the above-captioned Litigation (the "Litigation"), Plaintiffs, the other Settlement Class Members, and Defendants.

3. The Court finds that the forms and methods for dissemination of the Notice of Pendency and Proposed Settlement of Class Action and Settlement Hearing, Proof of Claim and Release (the "Notice"), and publication of the Summary Notice of Proposed Settlement of Class Action and Settlement Hearing, as provided for in the Preliminary Approval Order, constituted the best notice practicable under the circumstances to apprise all Persons within the definition of the Settlement Class of the pendency of the Litigation and their rights in it, the terms of the proposed Settlement of the Litigation, of the proposed Plan of Allocation, of Plaintiffs' Counsel's application for an award of attorneys' fees and reimbursement of expenses, Plaintiffs' application for reimbursement for their time and expenses, and afforded Settlement Class Members with an opportunity to present their

objections, if any, to the Settlement Stipulation, and fully met the requirements of Rule 23(c) and (e) of the Federal Rules of Civil Procedure, the requirements of the Private Securities Litigation Reform Act of 1995, 15 U.S.C. § 78u-4(a)(7), federal law, due process, the United States Constitution, and any other applicable law.

4. The Court finds that all Persons within the definition of the Settlement Class have been adequately provided with an opportunity to object to the proposed Settlement, the proposed Plan of Allocation, Plaintiffs' Counsel's application for an award of attorneys' fees and reimbursement of litigation expenses and Plaintiffs' application for reimbursement of their time and expenses devoted to prosecution of the Litigation or to request exclusion from the Settlement Class by executing a written request for exclusion in conformance with the procedures and deadlines set forth in the Preliminary Approval Order, and that no objections to the proposed Settlement, Plaintiffs' counsel's application for an award of attorneys' fees and reimbursement of litigation expenses and Plaintiffs' application for reimbursement of their time and expenses devoted to prosecution of the Litigation have been submitted, and those Persons who requested exclusion from the Settlement Class are listed in Exhibit 1 to this Judgment and are hereby excluded from the Settlement Class.

5. With respect to the Settlement Class, this Court finds and concludes that, for purposes of the Settlement only, the prerequisites of Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure have been satisfied in that: (a) the number of Settlement Class Members is so numerous that joinder of all members thereof is impracticable; (b) there are questions of law or fact common to the Settlement Class; (c) the claims of

Plaintiffs are typical of the claims of the Settlement Class they seeks to represent; (d) Plaintiffs will fairly and adequately represent the interests of the Settlement Class and retained counsel experienced in the prosecution of securities and class action claims; (e) the questions of law or fact common to the Settlement Class Members predominate over any questions affecting only individual Settlement Class Members; and (f) a class action is superior to other available methods for the fair and efficient adjudication of the controversy, and, for the purposes of this Settlement, and hereby:

(a) certifies a Settlement Class consisting of all Persons who purchased the publicly-traded common stock of ACAS between October 31, 2007 and November 7, 2008, inclusive. Excluded from the Settlement Class are Defendants, members of Defendants' immediate families, any entity in which any Defendant has a controlling interest, and the legal representatives, heirs, successors or assigns of any such excluded persons (all solely in their capacity as such and not otherwise). Also excluded from the Settlement Class are those Persons who have made Requests for Exclusion and who are listed on Exhibit 1 hereto;

(b) appoints and certifies Plaintiffs Charles E. Mendinhall, Ron Miller, Joseph J. Saville, Kent Nixon and Nina van Dyke as representatives of the Settlement Class; and

(c) finds, pursuant to Rules 23(g)(1) and (4) of the Federal Rules of Civil Procedure, that Court-appointed Co-Lead Counsel, Izard Nobel LLP ("Izard Nobel") and Brower Piven, A Professional Corporation ("Brower Piven") (collectively "Plaintiffs' Counsel"), have represented, and will continue to

represent the interests of the Settlement Class fairly and adequately, and therefore appoints Izard Nobel and Brower Piven as counsel for the Settlement Class.

6. Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, this Court hereby approves the Settlement set forth in the Settlement Stipulation and finds that said Settlement is, in all respects, fair, reasonable, and adequate to, and is in the best interests of, Plaintiffs and each Settlement Class Member based on: (a) the Settlement resulting from arm's-length negotiations between able and experienced counsel representing the interests of Plaintiffs and the Settlement Class Members, and the Defendants, following development of the facts in the Litigation; (b) the amount of the recovery for Settlement Class Members being well within the range of fairness given the strengths and weaknesses of the claims and defenses thereto and the likely amount of damages that could be recovered absent the Settlement assuming complete success by Plaintiffs on the merits for themselves and all Settlement Class Members; (c) the risks of non-recovery and/or recovery of a lesser amount than is represented through the Settlement by continued litigation through all pre-trial, trial and appellate procedures; (d) the recommendation of experienced counsel for Plaintiffs and Defendants; and (e) after due and proper notice to Settlement Class Members of the Settlement and the terms of the Settlement Stipulation, the lack of any objection from any Settlement Class Member to the Settlement or any aspect thereof, and, accordingly, the Settlement embodied in the Settlement Stipulation is hereby approved in all respects and the Parties to the Settlement Stipulation are directed to perform and consummate the Settlement in accordance with its terms and provisions of the Settlement Stipulation and this Judgment.

7. The Released Claims are dismissed with prejudice as to the Settlement Class Members as against the Released Persons, with the Parties are to bear their own costs except as otherwise provided in the Settlement Stipulation or this Judgment, and by operation of this Judgment and under the terms of the Settlement Stipulation and the releases therein, it is intended to preclude, and shall preclude, Plaintiffs and all other Settlement Class Members from filing or pursuing the Released Claims.

8. Upon the Effective Date, each Settlement Class Member shall be deemed to have, and by operation of this Judgment to have, fully, finally, and forever released, relinquished and discharged the Released Claims against the Released Persons whether or not such Settlement Class Member executes and delivers the Proof of Claim and Release and whether or not the Claims Administrator and Plaintiffs' Counsel accept the Settlement Class Member's Proof of Claim and Release. Such release shall be binding upon each Settlement Class Member and upon any Person acting, or purporting to act, on behalf of Settlement Class Members (but solely in their capacity as a Person acting or purporting to act on behalf of a Settlement Class Member and not in the Person's individual capacity or otherwise).

9. Upon the Effective Date, each of the Defendants and Released Persons shall be deemed to have, and by operation of this Judgment shall have, fully, finally, and forever released, relinquished and discharged all claims against each of the Settlement Class Members and all Plaintiffs' Counsel, arising out of, relating to, or in connection with the institution and/or prosecution of the Litigation, and each of the Settlement Class Members shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and

forever released, relinquished and discharged all claims against Defendants, Released Persons, and Defendants' Counsel arising out of, relating to, or in connection with the defense of the Litigation, in each case except as expressly provided in the Settlement Stipulation or to enforce the terms of the Settlement Stipulation.

10. All Settlement Class Members are permanently barred and enjoined from instituting, prosecuting, participating in, continuing, maintaining, or asserting, in any capacity, any action or proceeding that asserts any of the Released Claims.

11. Only those Settlement Class Members who submit complete, valid and, except as otherwise set forth in the Settlement Stipulation or allowed by this Court, timely, Proofs of Claim and Release forms shall be entitled to participate in the Settlement and receive a distribution from the Net Settlement Fund.

12. Neither the Settlement Stipulation nor the Settlement, nor any act performed or document executed pursuant to or in furtherance of the Settlement Stipulation or the Settlement (i) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any Released Claim, or of any wrongdoing or liability of the Released Persons, or (ii) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of any of the Released Persons in any civil, criminal, or administrative proceeding in any court, administrative agency or other tribunal.

13. Any Released Person may file the Settlement Stipulation and/or this Judgment from this Litigation in any other action that may be brought against them by any of the Settlement Class Members or any other Released Person in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release,

good faith settlement, judgment bar, or reduction or any theory of claim preclusion or issue preclusion or similar defense or counterclaim, and any Party to the Settlement Stipulation, counsel for any Party to the Settlement Stipulation, any Settlement Class Member, or counsel for any Settlement Class Members may file the Settlement Stipulation in any proceeding brought to enforce any of its terms or provisions.

14. Those Persons who have requested exclusion from the Settlement Class listed in Exhibit 1 hereto shall not be bound by this Judgment, the release of Released Claims against the Released Parties and/or the releases set forth herein, in the Settlement Stipulation and/or in the Proof of Claim and Release. Pursuant to Rule 23(c)(3) of the Federal Rule of Civil Procedure, all Persons who fall within the definition of Settlement Class Members who have not requested exclusion from the Settlement Class are thus Settlement Class Members and are bound by this Judgment and by the terms of the Settlement Stipulation

15. This Court hereby overrules the one objection received to the Plan of Allocation that complains that no proceeds of the Settlement will be distributed to Persons for Shares not purchased during the Class Period but only held during the Class Period on the grounds that, as a matter of law, there is no standing for claims in this litigation based on holding Shares during the Class Period in this Litigation, and approves the Plan of Allocation as set forth in the Notice as fair, reasonable, and equitable, and directs Plaintiffs' Counsel to proceed, through the Court-appointed Claims Administrator, The Garden City Group, Inc. ("GCG"), with the processing of Proof of Claim and Release forms and the administration of the Settlement pursuant to the terms of the Plan of

Allocation and, upon completion of the claims processing procedure, to present to this Court a proposed final distribution order for the distribution of the Net Settlement Fund to Settlement Class Members, as provided in the Settlement Stipulation and Plan of Allocation.

16. Plaintiffs' Counsel are hereby awarded thirty-three and one-third (33 1/3 %) percent of the Settlement Fund, plus \$219,689.48 in reimbursement of litigation expenses. The amounts shall be paid to Plaintiffs' Counsel from the Settlement Fund with interest from the date of entry of this Judgment to the date of payment at the same rate of interest that earned by the Settlement Fund. The Court finds the amount of attorneys' fees awarded herein is fair and reasonable based on: (a) the work performed and costs incurred by Plaintiffs' Counsel; (b) the complexity of the case; (c) the risks undertaken by Plaintiffs' Counsel and the contingent nature of their employment; (d) the quality of the work performed by Plaintiffs' Counsel in this Litigation and their standing and experience in prosecuting similar class action securities litigation; (e) awards to plaintiffs' counsel in other, similar litigation; (f) the benefits achieved for Settlement Class Members through the Settlement; and (g) the absence of any objection from any Settlement Class Members to either the application for an award of attorneys' fees or reimbursement of expenses to Plaintiffs' Counsel. The Court further finds that the expenses that Plaintiffs' Counsel's request reimbursed were reasonably and necessarily incurred by Plaintiffs' Counsel in the prosecution of the Litigation and in obtaining the results achieved for the Settlement Class.

17. Plaintiffs' Counsel may apply, from time to time, for any expenses incurred by them in connection with the administration of the Settlement and distribution of the Net Settlement Fund to Settlement Class Members

18. The Court finds that the requests submitted by Plaintiffs for payment for their time and expenses in litigating this case on behalf of the Settlement Class are reasonable and adequately documented, and accordingly awards \$2,070 to Plaintiff Kent Nixon, \$4,625 to Plaintiff Joseph Saville, \$5,000 to Plaintiff Ron Miller, \$5,000 for Plaintiff Nina van Dyke, and \$3,750 to Charles E. Mendinhall. At the request of Plaintiffs' Counsel, in the interests of preserving the corpus of the Net Settlement Fund, the aforementioned reimbursements awarded to the Plaintiffs shall be paid to them by Plaintiffs' Counsel from this Court's award of attorneys' fees to Plaintiffs' Counsel.

19. The Court finds that the Claims Administrator, GCG, has incurred costs and expenses to date in providing notice to the settlement Class as directed by the Preliminary Approval Order and administering the Settlement of \$307,394.09, which the Court finds reasonable and commercially competitive, and hereby approves interim payment of that amount from the Settlement Fund.

18. All payments of attorneys' fees and reimbursement of expenses to Plaintiffs, Plaintiffs' Counsel and/or the Claims Administrator shall be made from the Settlement Fund, and the Released Persons shall have no liability or responsibility for the payment of any such attorneys' fees or expenses except as expressly provided in the Settlement Stipulation.

19. Any objection, order, or appeal from, or appellate modification of, the

portions of this Judgment approving the Plan of Allocation, Plaintiffs' Counsel's award of attorneys' fees and/or reimbursement of litigation expenses, the awards to the Plaintiffs and/or the interim payment of the costs of notice to the Settlement Class and administration of the Settlement incurred to date shall in no way disturb or affect the finality of the approval of the notice to the Settlement Class, the certification of the Settlement Class, or the Settlement as set forth in the Settlement Stipulation under this Judgment, and shall be considered separate from this Judgment.

20. The Court finds that Plaintiffs and Defendants, and their respective counsel, have, at all times during the course of the Litigation, complied with the requirements of Rule 11 of the Federal Rules of Civil Procedure. The Court finds that the amount paid and the other terms of the Settlement were negotiated at arm's length and in good faith by the Parties and reflect a settlement that was reached voluntarily based upon adequate information and after consultation with experienced legal counsel and under the supervision of a mediator.

21. Without affecting the finality of this Judgment in any way, the Court hereby reserves and retains exclusive and continuing jurisdiction over the Parties and the Settlement Class Members for all matters relating to the Litigation, the Settlement, and the Settlement Stipulation, including, but not limited to: (a) the administration, interpretation, effectuation or enforcement of the Settlement Stipulation and this Judgment; (b) implementation and enforcement of any awards from the Settlement Fund or Net Settlement Fund; (c) interpretation of the Plan of Allocation and disposition of the Settlement Fund or Net Settlement Fund; (d) determining applications for payment of

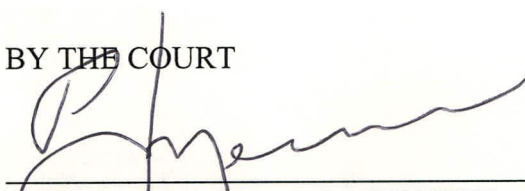
expenses incurred by Plaintiffs' Counsel in connection with administration and distribution of the Settlement Fund and Net Settlement Fund; (e) payment of taxes by the Settlement Fund; and (f) any other matters related to finalizing the Settlement and distributions from the Settlement, the Settlement Fund and/or the Net Settlement Fund.

22. In the event that the Settlement does not become Final or the Effective Date does not occur, (i) this Judgment shall be rendered null and void and shall be vacated *nunc pro tunc*, (ii) the Litigation shall proceed as set forth in the Settlement Stipulation, and (iii) no Party may assert that another Party is estopped (whether equitably, judicially, or collaterally) from taking any position regarding any substantive or procedural issue in the Litigation by virtue of anything in the Settlement Stipulation, having entered into the Settlement Stipulation, or having done anything in connection with or related to the Settlement. For the purposes of this paragraph, the Parties shall include Settlement Class Members.

23. It is expressly determined, within the meaning of Rule 54(b) of the Federal Rules of Civil Procedure, that there is no just reason for delay, and the Clerk of this Court is hereby directed to enter this Judgment forthwith.

Signed this 11 day of June, 2012.

BY THE COURT


HONORABLE PETER J. MESSITTE
UNITED STATES DISTRICT COURT JUDGE