

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

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

Plaintiff,

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

**AMENDED MOTION FOR AN ORDER APPROVING THE FINAL DISTRIBUTION OF THE
SETTLEMENT FUND AND APPROVING PAYMENT OF SETTLEMENT
ADMINISTRATION COSTS¹**

On behalf of the Settlement Class,² Plaintiffs Charles E. Mendinhall, Ron Miller, Joseph J. Saville, Kent Nixon and Nina van Dyke (collectively, “Plaintiffs”) respectfully request that this Court enter the [Amended Proposed] Order Approving the Final Distribution of Settlement Fund and Approving Payment of Settlement Administration Costs, which will:

- (1) Approve the procedures used and actions taken by the Garden City Group (“GCG”) and Settlement Class Counsel for the administration of the Settlement as described herein and in the Amended Affidavit of Jason Zuena In Support of Motion for Distribution of the Net Settlement Fund (“Zuena Affidavit”), attached as Exhibit 1 to the Memorandum in

¹ This Amended Motion and supporting papers replace and supersede the Motion for an Order Approving the Final Distribution of the Settlement Fund and Approving Payment of Settlement Administration Costs and supporting papers filed on May 30, 2013.

² Unless otherwise indicated, all capitalized terms have the same meanings as set forth in the Stipulation of Settlement dated February 9, 2012 (the “Stipulation” or “Stipulation of Settlement”).

Support of Amended Motion for an Order Approving the Final Distribution of the Settlement Fund and Approving Payment of Settlement Administration Costs.

- (2) Approve the fully or partially valid claims of Class Members (the “Authorized Claimants”) identified in the lists of Timely Authorized Claimants and Late Postmarked but Otherwise Authorized Claimants, included in Exhibit C to the Zuena Affidavit;
- (3) Approve the rejection of claims determined to be deficient by GCG, as set forth in the list of Rejected or Ineligible Claims, included in Exhibit C to the Zuena Affidavit;
- (4) Approve the payment of unreimbursed fees and costs incurred by GCG, in the amount of \$754,884.04, as set forth in Exhibit D to the Zuena Affidavit;
- (5) Direct that distribution of the balance of the Net Settlement Fund be made to those claimants whose claims are approved by the Court (“Authorized Claimants”);
- (6) Direct that distribution checks to Authorized Claimants shall bear the notation “Non-Negotiable After 180 Days,” and that no check shall be negotiated in the Net Settlement Fund more than 200 days after the date of the check;
- (7) Direct that if any balance remains in the Net Settlement Fund after six (6) months from the date of distribution of the Net Settlement Fund (whether by reason of tax refunds, uncashed checks or otherwise), Settlement Class Counsel shall, if feasible, direct GCG to reallocate such balance among Authorized Claimants who deposited the checks sent in the initial distribution in an equitable and economic fashion. In the event that the amount of money remaining in the Net Settlement Fund is insufficient to justify the cost of a second distribution to Authorized Claimants, Settlement Class Counsel shall seek Court approval for an alternative distribution;
- (8) Allow destruction of claim forms, along with all related correspondence, one year after the final distribution of the Net Settlement Fund to Authorized Claimants and destruction of the Payable Claims and Non-Payable Claims Listings and the computer database (compiled from the claim forms and related correspondence) three years after the final distribution to Authorized Claimants.
- (9) Release and discharge GCG, Plaintiffs, Settlement Class Counsel, Defendants, Defendants’ Counsel and/or any persons involved in the review, verification, calculation, tabulation, or any other aspect of the processing of the Proof of Claim forms from any and all claims arising out of such involvement, and bar all Settlement Class Members from making any further claims against the Settlement Fund beyond the amount allocated to them pursuant to this Motion.

The facts supporting this Motion are fully set forth in the accompanying Memorandum in Support of Amended Motion for an Order Approving the Final Distribution of the Settlement Fund and

Approving Payment of Settlement Administration Costs and the Amended Affidavit of Jason Zuena In Support of Motion for Distribution of the Net Settlement Fund (with Exhibits thereto). Defendants have indicated that they do not oppose the granting of this motion.

Respectfully submitted:

Dated: May 31, 2013

BROWER PIVEN
A Professional Corporation

/s/ Yelena Trepetin

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CERTIFICATE OF SERVICE

I hereby certify that the Amended Motion for an Order Approving the Final Distribution of the Settlement Fund and Approving Payment of Settlement Administration Costs; the Memorandum in Support of Amended Motion for an Order Approving the Final Distribution of the Settlement Fund and Approving Payment of Settlement Administration Costs (with Exhibit 1); and the [Amended Proposed] Order Approving the Final Distribution of the Settlement Fund and Approving Payment of Settlement Administration Costs were filed through the ECF system and will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF), and electronic copies will be sent to those indicated as non-registered participants on May 31, 2013.

/s/ Yelena Trepetin

Yelena Trepetin