

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN  
MILWAUKEE DIVISION

ROSALIND MAIDEN, On Behalf of herself and  
Others Similarly Situated,

Plaintiff,

v.

MERGE, INC. (d.b.a. MERGE HEALTHCARE),  
RICHARD A. LINDEN, and SCOTT T. VEECH,

Defendants.

CIVIL No. 2:06-00349-RTR

Chief Judge Rudolph T. Randa

**NOTICE OF: (1) PENDENCY OF CLASS ACTION, AND (2) HEARING ON PROPOSED  
SETTLEMENT AND ATTORNEYS' FEE PETITION AND  
RIGHT TO SHARE IN NET SETTLEMENT FUND**

**NOTICE OF PENDENCY OF SETTLEMENT OF CLASS ACTION: If you purchased the publicly traded securities of Merge Technologies, Inc. between April 25, 2002 and July 3, 2006, inclusive, please be advised that your rights may be affected by a class action lawsuit pending in this Court (the "Action").**

*A Federal Court authorized this Notice. This is not a solicitation from a lawyer.*

**NOTICE OF SETTLEMENT: Please also be advised that Lead Plaintiff, the Southwest Carpenters Pension Trust ("Lead Plaintiff") has reached a proposed partial settlement of the Action that will resolve all claims of Lead Plaintiff and the Settlement Class (as defined in paragraph 1) against Merge Technologies, Inc., and the Individual Defendants Richard A. Linden, Scott T. Veech and David Noshay (the "Settlement"). This Notice explains important rights you may have, including your possible receipt of cash from the Settlement. Your legal rights will be affected whether or not you act. Also enclosed is a Proof of Claim and Release form (the "Claim Form") that you must complete and submit postmarked no later than November 12, 2008 to participate in the Settlement. Please read this Notice carefully!**

1. **Statement of Plaintiff Recovery:** This Notice relates to a proposed partial settlement of a class action lawsuit filed against Merge Technologies, Inc. ("Merge"), Richard A. Linden, Scott T. Veech and David Noshay (collectively, "Defendants"). Subject to Court approval, Lead Plaintiff, on behalf of the Settlement Class, has agreed to settle all claims that were or could have been asserted in the Action against the Defendants in exchange for a settlement payment of \$16,000,000 in cash. This Settlement, however, is only a partial settlement of the Action, and Lead Plaintiff will continue to pursue claims against KPMG LLP ("KPMG" or the "Non-Settling Defendant"). Pending final approval of the Settlement, this amount will be contributed to a "Settlement Fund" to pay claims of investors who, between April 25, 2002 and July 3, 2006, inclusive (the "Class Period"), purchased the publicly-traded securities of Merge Technologies, Inc. (the "Class"). Such investors are referred to in this Notice as "Settlement Class Members." The Net Settlement Fund (the Settlement Fund less taxes, notice and administration costs and attorneys' fees and litigation expenses awarded to counsel representing Lead Plaintiff ("Lead Counsel")) will be distributed in accordance with a plan of allocation (the "Plan of Allocation") that is described in this Notice. Lead Plaintiff's damages consultant estimates that approximately 39.2 million shares may have been affected by the conduct at issue in the Action. Thus, assuming that the owners of all affected shares elect to participate, the average per share recovery from the Settlement Fund is estimated to be approximately \$0.41 per affected share, before the deduction of attorneys' fees, costs and expenses, as approved by the Court.

2. **Reasons for the Settlement:** In light of the amount of the Settlement and the immediacy of recovery to the Settlement Class, Lead Plaintiff believes that the proposed partial Settlement is fair, reasonable and adequate, and in the best interests of the Settlement Class. Lead Plaintiff believes that the Settlement provides a substantial benefit now, namely \$16,000,000 in cash less the various deductions described in this Notice, as compared to the risks of protracted litigation through trial and appeals, the defenses asserted in the Action, the inherent uncertainty and risk associated with a complex action, such as this one, the ability of Merge to pay a judgment in a greater amount, and the claims against the remaining Non-Settling Defendant. Defendants deny the claims asserted against them in the Action or that they have engaged in any wrongdoing, violation of law or breach of duty, and the Settlement may not be construed as an admission of wrongdoing by any of the Defendants. Defendants have agreed to the Settlement in order to eliminate the burden and expense of continued litigation.

3. **Statement of Average Amount of Damages Per Share:** The parties do not agree on the average amount of damages per share that would be recoverable if Lead Plaintiff was to prevail on the claims asserted against Defendants. Defendants deny that any shares were damaged as Lead Plaintiff has alleged. In addition, Defendants were prepared to establish that the price of Merge’s common stock was not inflated as the result of any allegedly false or misleading public statement by any Defendant, and that the decline in the price of Merge’s common stock alleged in the Action was not the result of the disclosure of information that allegedly had been wrongfully withheld or misstated by any Defendant.

4. **Statement of Attorneys’ Fees and Expenses Sought:** Lead Counsel (as defined in paragraph 7) intends to apply for an award of attorneys’ fees in an amount not to exceed 25% of the Settlement Fund net of Court-approved litigation expenses. In addition, Lead Counsel also intends to apply for reimbursement of litigation expenses paid or incurred in connection with the prosecution and resolution of the claims against Defendants, in an amount not to exceed \$250,000. If the Court (as defined in paragraph 8) approves Lead Counsel’s fee and expense application, the average cost per affected share will be approximately \$0.11.

5. **Identification of Attorneys’ Representatives:** Any questions regarding the Settlement should be directed to Lead Counsel: Blair A. Nicholas, Bernstein Litowitz Berger & Grossmann LLP, 12481 High Bluff Drive, Suite 300, San Diego, CA 92130, 888-924-1888, [www.blbglaw.com](http://www.blbglaw.com).

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:</b>	
<b>SUBMIT A CLAIM FORM POSTMARKED NO LATER THAN NOVEMBER 12, 2008</b>	The only way to get a payment.
<b>EXCLUDE YOURSELF FROM THE CLASS POSTMARKED NO LATER THAN OCTOBER 13, 2008</b>	Get no payment. This is the only option that allows you to ever be part of any other lawsuit against Defendants with respect to the claims in this case.
<b>OBJECT NO LATER THAN OCTOBER 13, 2008</b>	Write to the Court and explain why you do not like the Settlement.
<b>GO TO THE HEARING ON NOVEMBER 10, 2008 AT 2:00 P.M. AND FILE A NOTICE OF INTENTION TO APPEAR NO LATER THAN OCTOBER 13, 2008</b>	Ask to speak in Court about the fairness of the Settlement.
<b>DO NOTHING</b>	Get no payment. Give up your rights.

## WHAT THIS NOTICE CONTAINS

Why Did I Get This Notice?	Page 3
What Is This Case About? What Has Happened So Far?	Page 4
How Do I Know If I Am Part Of The Settlement?	Page 5
What Recovery Does The Settlement Provide?	Page 5
Why Is There A Settlement?	Page 5
What Led Up To The Settlement?	Page 6
Why Have Defendants Agreed To The Settlement?	Page 6
What Are The Lead Plaintiff's Reasons For The Settlement?	Page 6
What Might Happen If There Were No Settlement?	Page 6
How Much Will My Payment Be?	Page 6
What Rights Am I Giving Up By Agreeing To The Settlement?	Page 10
What Payment Are The Attorneys For The Class Seeking? How Will The Lawyers Be Paid?	Page 11
How Do I Participate In The Settlement? What Do I Need To Do?	Page 11
What If I Do Not Want To Be A Part Of The Settlement? How Do I Exclude Myself?	Page 12
When And Where Will The Court Decide Whether To Approve The Settlement?	
Do I Have To Come To The Hearing? May I Speak At The Hearing If I Don't Like The Settlement?	Page 12
What If I Bought Shares On Someone Else's Behalf?	Page 13
Can I See The Court File? Whom Should I Contact If I Have Questions?	Page 14

## WHY DID I GET THIS NOTICE?

6. This Notice is being sent to you pursuant to an Order of the United States District Court for the Eastern District of Wisconsin (Milwaukee Division) (the "Court") because you or someone in your family may have purchased Merge securities during the Class Period. The Court has directed us to send you this Notice because, as a potential Settlement Class Member, you have a right to know about your options prior to the trial or settlement of this case. Additionally, you have the right to understand how a class action lawsuit may generally affect your legal rights. If the Court approves the Settlement, after any objections and appeals are resolved, a claims administrator selected by Lead Plaintiff and approved by the Court will make payments pursuant to the Settlement.

7. In a class action lawsuit, the Court selects one or more people, known as class representatives, to sue on behalf of all people with similar claims, commonly known as the class or the class members. By Order dated November 21, 2006, the Court appointed the Southwest Carpenters Pension Trust to serve as "Lead Plaintiff" under a federal law relating to lawsuits such as this one. On October 26, 2007, the Court appointed the law firm Bernstein Litowitz Berger & Grossmann LLP as Lead Counsel (hereinafter, "Lead Counsel") to serve as Lead Counsel in the Action. A class action is a type of lawsuit in which the claims of a number of individuals are resolved together, thus providing the class members with both consistency and efficiency. Once the class is certified, the Court must resolve all issues on behalf of the class members, except for those, if any, who choose to exclude themselves from the class. (For more information on excluding yourself from the Settlement Class, please read "What If I Do Not Want To Be A Part Of The Settlement? How Do I Exclude Myself?").

8. The Court in charge of this case is the United States District Court for the Eastern District of Wisconsin (Milwaukee Division), and the case is known as *Maiden v. Merge, et al.* The Judge presiding over this case is the Honorable Rudolph T. Randa, United States District Judge. The people who are suing are called plaintiffs, and those who are being sued are called defendants. In this case, the Plaintiffs are referred to as Lead Plaintiff, on behalf of itself and the Settlement Class, and Defendants are Merge Technologies, Inc., as well as Richard A. Linden, Scott T. Veech and David Noshay, who may be referred to as the "Individual Defendants." Lead Plaintiff will continue to pursue claims against Non-Settling Defendant, KPMG.

9. This Notice explains the lawsuit, the Settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them. The purpose of this Notice is to inform you of this case, that it is a class action, how you might be affected and how to exclude yourself from the Settlement if that is your preference. It also is being sent to inform you of the terms of the proposed Settlement, and of a hearing to be held by the Court to consider the

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fairness, reasonableness, and adequacy of the proposed Settlement and the application by Lead Counsel for attorneys' fees and reimbursement of litigation expenses, and interest thereon (the "Final Approval Hearing").

10. The Final Approval Hearing will be held on November 10, 2008 at 2:00 p.m., before the Honorable Rudolph T. Randa at 320 United States Courthouse, 517 East Wisconsin Avenue, Milwaukee, WI 53202, to determine:

- (i) whether the proposed Settlement Class should be certified;
- (ii) whether the proposed Settlement is fair, reasonable and adequate and should be approved by the Court;
- (iii) whether the claims against Defendants should be dismissed with prejudice as set forth in the Stipulation;
- (iv) whether the proposed Plan of Allocation is fair and reasonable and should be approved; and
- (v) whether the application by Lead Counsel for an award of attorneys' fees and reimbursement of litigation expenses, and interest thereon, should be approved.

11. This Notice does not express any opinion by the Court concerning the merits of any claim in the Action, and the Court still has to decide whether to approve the Settlement. If the Court approves the Settlement, payments will be made after appeals, if any, are resolved, and after the completion of all claims processing. Please be patient.

#### WHAT IS THIS CASE ABOUT? WHAT HAS HAPPENED SO FAR?

12. Merge engages in the development and delivery of medical imaging and information management software and services. The Company is headquartered in Milwaukee, Wisconsin. Shares of Merge trade on the NASDAQ under the ticker symbol "MRGE."

13. In the Action, Lead Plaintiff alleges that Merge and members of its senior management made false statements and omitted material facts between April 25, 2002 and July 3, 2006 regarding the Company's financial results, which had the effect of artificially inflating Merge's stock price. Defendants deny all allegations of any wrongdoing in the Action.

14. On March 22, 2006, and thereafter, seven class action lawsuits were filed in the Eastern District of Wisconsin by and on behalf of persons who purchased or otherwise acquired publicly-traded securities of Merge between April 25, 2002 and July 3, 2006, inclusive. By Order dated November 21, 2006, the Court consolidated all of the lawsuits into one action and appointed Lead Plaintiff. On October 26, 2007, the Court appointed the law firm Bernstein Litowitz Berger & Grossmann LLP as Lead Counsel for the putative class of purchasers of the Company's securities.

15. On March 21, 2007, Lead Plaintiff filed the Consolidated Class Action Complaint ("Consolidated Complaint"). The Consolidated Complaint alleges violations of §§ 10(b) and 20(a) of the Securities and Exchange Act of 1934 (the "Exchange Act"). In the Consolidated Complaint, Lead Plaintiff alleges that Merge, the Individual Defendants and KPMG issued false and misleading statements throughout fiscal years 2002, 2003, 2004, and for the first three quarters of 2005. The allegations in the Consolidated Complaint were based upon an investigation conducted by Lead Plaintiff that included the review of public and non-public information and numerous interviews of witnesses with personal knowledge of the facts. The Consolidated Complaint sought to proceed on behalf of a class consisting of all persons or entities who purchased or otherwise acquired Merge securities during the period April 25, 2002 through July 3, 2006, inclusive. On July 16, 2007, Merge, the Individual Defendants and KPMG moved to dismiss the Consolidated Complaint under Rule 12(b)(6) of the Federal Rules of Civil Procedure. On November 14, 2007, Lead Plaintiff opposed those motions.

16. On March 31, 2008, the Court issued its Decision and Order. The Court denied the motions to dismiss filed by Merge and Defendants Richard A. Linden and Scott T. Veech in their entirety. The Court granted the motions to dismiss filed by David Noshay and Non-Settling Defendant KPMG without prejudice.

17. On June 20, 2008, Lead Plaintiff filed the Amended Consolidated Class Action Complaint ("Amended Complaint"). The Amended Complaint alleges violations of §§ 10(b) and 20(a) of the Exchange Act. In the Amended Complaint, Lead Plaintiff alleges that Merge, Linden, Veech and KPMG issued false and misleading statements throughout fiscal years 2002, 2003, 2004, and for the first three quarters of 2005.

18. Lead Counsel conducted an extensive investigation relating to the allegations of wrongdoing pertaining to each defendant, including Merge; the alleged damages suffered by the Settlement Class; and the defenses asserted by the Defendants. As part of this investigation, Lead Counsel reviewed approximately 600,000 pages of documents

produced by Merge. Lead Counsel further reviewed and analyzed the Company's financial statements and other public filings, the Company's public statements, including press releases, analyst reports, news articles, investigative memoranda of interviews with former employees and third parties, and other publicly disseminated information. Lead Counsel's investigation also included the review of publicly available reports and articles, such as reports by securities analysts, investor advisory services, and journalists concerning Merge.

19. The Settlement resulted from extensive negotiations between Lead Plaintiff and Merge. The process included an arm's-length settlement mediation supervised by the Honorable Nicholas H. Politan (Ret.) on April 30, 2008. During the mediation on April 30, 2008, the terms of the Settlement were reached.

#### HOW DO I KNOW IF I AM PART OF THE SETTLEMENT?

20. If you are a Member of the Class, you are subject to the Settlement whether or not you submit a Claim Form, unless you timely request to be excluded. The Class consists of all purchasers of the publicly-traded securities of Merge between April 25, 2002 and July 3, 2006, inclusive, who were damaged thereby. Excluded from the Class are Defendants, the officers and directors of the Company, members of the immediate family of each of the Defendants and any person, firm trust, corporation, officer, director or other individual or entity in which any Defendant has a controlling interest or which is related to or affiliated with any of the Defendants, and the legal representatives, agents, affiliates, heirs, successors-in-interest or assigns of any such excluded party. Also excluded from the Class are those persons who timely request exclusion from the Class pursuant to this Notice (see "What If I Do Not Want To Participate In The Settlement? How Do I Exclude Myself?").

**RECEIPT OF THIS NOTICE DOES NOT NECESSARILY MEAN THAT YOU ARE A CLASS MEMBER OR ARE ENTITLED TO RECEIVE PROCEEDS FROM THE SETTLEMENT. IF YOU WISH TO PARTICIPATE IN THE SETTLEMENT, YOU MUST SUBMIT THE ENCLOSED CLAIM FORM POSTMARKED NO LATER THAN NOVEMBER 12, 2008.**

#### WHAT RECOVERY DOES THE SETTLEMENT PROVIDE?

21. The Settlement provides for a recovery of \$16,000,000 in cash, which will be deposited into an interest-bearing escrow account within ten (10) calendar days after the Court enters an order preliminarily approving the Settlement. Lead Counsel's fees, expenses and costs with interest thereon, to the extent allowed by the Court, as well as taxes, notification costs, and administration costs will be deducted from these Settlement proceeds, and the balance will be distributed to the Settlement Class. The amount of any recovery will depend on a number of factors, including when and for what price Settlement Class Members purchased and/or sold their Merge securities and the total number of shares for which timely and valid Claim Forms are submitted by Settlement Class Members ("Authorized Claimants") (see "How Much Will My Payment Be?").

22. Lead Plaintiffs' damages expert estimates that approximately 39.2 million shares of the Company's common stock were traded during the Class Period and may have been affected by the conduct at issue in the Consolidated Complaint. Thus, assuming that the owners of all affected shares elect to participate, the average per share recovery from the Settlement Fund would be approximately \$0.41 per affected share before deduction of attorney's fees, costs and expenses as approved by the Court.

#### WHY IS THERE A SETTLEMENT?

23. Under the proposed Settlement, the Court will not decide in favor of either Lead Plaintiff or Defendants. By agreeing to the Settlement, Lead Plaintiff and Defendants avoid the costs of further litigation and the risks of a trial, and the Settlement Class Members are compensated.

24. In light of the amount of the Settlement, and the immediacy of recovery to the Settlement Class, Lead Plaintiff and Lead Counsel believe that the proposed Settlement is fair, reasonable and adequate, and in the best interests of Settlement Class Members. Lead Plaintiff believes that the Settlement provides a substantial benefit, namely \$16,000,000 in cash, less the various deductions described in this Notice, as compared to the uncertain outcome and the risk of protracted litigation, especially in complex litigation such as this Action, as well as the difficulties and delays inherent in any such litigation. Based upon Lead Plaintiff's and Lead Counsel's evaluation and with the concurrence of the Honorable Nicholas H. Politan (Ret.) serving as mediator, Lead Plaintiff and Lead Counsel have determined that the settlement set forth in this Stipulation is fair, reasonable and adequate and in the

best interests of the Settlement Class and that it confers substantial benefits upon the Settlement Class. Lead Plaintiff will continue to litigate its claims on behalf of the Settlement Class against KPMG.

#### WHAT LED UP TO THE SETTLEMENT?

25. The Settlement resulted from more than two years of litigation and extensive arm's-length negotiations among Lead Plaintiff, Lead Counsel and counsel for Defendants. The process included an arm's-length settlement mediation supervised by the Honorable Nicholas H. Politan (Ret.) on April 30, 2008, which ultimately resulted in an agreement to settle the claims asserted in the Action against Defendants.

#### WHY HAVE DEFENDANTS AGREED TO THE SETTLEMENT?

26. Defendants have denied and continue to deny that they have committed, or threatened or attempted to commit, any wrongful act or violation of law or duty of any nature, and contend that they acted properly under the circumstances. Nevertheless, Merge and the Individual Defendants desire to settle and terminate the claims of the Lead Plaintiff and the Settlement Class Members so as to avoid the substantial expense, inconvenience and distraction of continued defense of the Action. The Settlement is not evidence of, an admission of, or a concession by any of the Defendants of any fault or liability whatsoever, or any infirmity in any defenses they have asserted or intended to assert in the Action.

#### WHAT ARE THE LEAD PLAINTIFF'S REASONS FOR THE SETTLEMENT?

27. Lead Plaintiff and Lead Counsel believe that the claims against Merge are meritorious. Lead Plaintiff and Lead Counsel further recognize and acknowledge the expense and length of continued proceedings necessary to prosecute the Action against Merge through trial and appeals. They have also considered the uncertain outcome and the risk of protracted litigation, especially in complex litigation such as this Action, as well as the difficulties and delays inherent in any such litigation. Lead Plaintiff believes that a recovery now will provide an immediate benefit to Settlement Class Members, which is superior to the risk and delay of proceeding with the Action. Considering these issues, and balancing them against the certain and substantial benefits that the Settlement Class will receive as a result of the Settlement, Lead Plaintiff and Lead Counsel determined that the Settlement described herein is fair, reasonable and adequate, and that it is in the best interests of the Settlement Class to settle the claims against Defendants on the terms set forth in the Stipulation and this Notice.

#### WHAT MIGHT HAPPEN IF THERE WERE NO SETTLEMENT?

28. If there were no Settlement and Lead Plaintiff failed to establish any essential legal or factual element of their claims, neither Lead Plaintiff nor the Settlement Class would recover anything from Defendants. Also, if Defendants were successful in proving any of their defenses, the Settlement Class likely would recover substantially less than the amount provided in the Settlement, or nothing at all.

#### HOW MUCH WILL MY PAYMENT BE?

##### **THE PROPOSED PLAN OF ALLOCATION: GENERAL PROVISIONS**

29. Merge has agreed to pay or cause to be paid sixteen million dollars (\$16,000,000) in cash.
30. After approval of the Settlement by the Court and upon satisfaction of the other conditions to the Settlement, the Net Settlement Fund will be distributed to Authorized Claimants in accordance with the Plan of Allocation described below.
31. The Settlement Fund will be distributed as follows:
- (i) To pay all federal, state and local taxes on any income earned by the Settlement Fund and to pay the reasonable costs incurred in connection with determining the amount of, and paying, taxes owed by the Settlement Fund (including reasonable expenses of tax attorneys and accountants);
  - (ii) To pay costs and expenses in connection with providing Notice to Settlement Class Members and administering the Settlement on behalf of Settlement Class Members;

- (iii) To reimburse Lead Counsel for, and to pay, costs and expenses incurred by Lead Counsel in connection with, commencing and prosecuting the Action, with interest thereon, if and to the extent allowed by the Court;
- (iv) To pay Lead Counsel's attorneys' fees, to the extent allowed by the Court; and
- (v) Subject to an Order of the Court granting approval of the Settlement and the Plan of Allocation (or such other allocation plan as the Court may approve) becoming final (meaning that the time for appeal or appellate review of the Order granting final approval has expired, or if the Order is appealed, that appeal is either decided without causing a material change in the Order or upheld on appeal and no longer subject to appellate review by further appeal or writ of certiorari) the balance of the Net Settlement Fund shall be distributed to Authorized Claimants in accordance with the Plan of Allocation.

32. There will be no distribution of the Net Settlement Fund until a Plan of Allocation is finally approved, and the time for any petition for rehearing, appeal or review, whether by certiorari or otherwise, has expired.

33. Defendants are not entitled to get back any portion of the Settlement Fund once the Court's Order approving the Settlement becomes final. Moreover, Defendants have no liability, obligation or responsibility for the administration of the Settlement or disbursement of the Net Settlement Fund or the Plan of Allocation.

34. Approval of the Settlement is independent from approval of the Plan of Allocation. Any determination with respect to the Plan of Allocation will not affect the Settlement, if approved.

35. Only those Settlement Class Members who purchased or otherwise acquired Merge securities during the Class Period **AND WERE DAMAGED AS A RESULT OF SUCH PURCHASES OR ACQUISITIONS**, will be eligible to share in the distribution of the Net Settlement Fund. Each person wishing to participate in the distribution must timely submit a valid Claim Form and all required documentation postmarked no later than November 12, 2008, to the address set forth in the Claim Form that accompanies this Notice. Unless otherwise ordered by the Court, any Settlement Class Member who fails to submit a Claim Form postmarked no later than November 12, 2008 shall be forever barred from receiving payments pursuant to the Settlement set forth in the Stipulation but will in all other respects be subject to the provisions of the Stipulation, including the terms of any judgment entered and releases given. This means that each Settlement Class Member releases the Released Claims (as defined in paragraph 45) against the Released Persons (as defined in the Stipulation) (including Defendants) and is enjoined and prohibited from filing, prosecuting, or pursuing any of the Released Claims against any of the Released Persons (including Defendants) regardless of whether or not such Settlement Class Member submits a Claim Form.

36. The Court has reserved jurisdiction to allow, disallow, or adjust on equitable grounds the Claim of any Settlement Class Member. The Court also reserves the right to modify the Plan of Allocation without further notice to Settlement Class Members. Payment pursuant to the Plan of Allocation approved by the Court shall be conclusive against all Authorized Claimants. No person shall have any claim against Lead Plaintiff, Lead Counsel or the Claims Administrator or other agent designated by Lead Counsel based on the distributions made substantially in accordance with the Stipulation and the Settlement contained therein, the Plan of Allocation, or further orders of the Court.

#### **THE PROPOSED PLAN OF ALLOCATION: CALCULATION OF LOSS AMOUNT**

37. A "Loss Amount" will be calculated for each purchase or acquisition of the Merge securities that are listed in the Claim Form, and for which adequate documentation is provided. The calculation of the Loss Amount will depend upon several factors, including when the Merge securities were purchased or otherwise acquired and whether they were held until the conclusion of the Class Period or sold during the Class Period, and if so, when they were sold.

38. **Information Required on the Claim Form:** Each Claim Form must indicate each Authorized Claimant's position in Merge securities as of the close of trading on April 24, 2002, the day before the first day of the Class Period, and the closing position in Merge securities as of the close of trading on July 3, 2006. Each Claim Form also must list *all* transactions in Merge securities, including all purchases and sales, made during the Class Period.

#### **BASIS FOR CALCULATION OF LOSS AMOUNT**

39. The objective of the Plan of Allocation is to equitably distribute the settlement proceeds to those Settlement Class Members who suffered economic losses as a result of the alleged fraud, as opposed to losses caused by market, industry or other non-fraud related Company specific factors. The Plan of Allocation reflects Lead Plaintiff's damages consultant's analysis undertaken to that end, including a review of publicly available information regarding

Merge and statistical comparisons of the price movements of Merge's common stock with the price performance of relevant market and industry indices during the Class Period.

40. Recognized Losses are based on the level of alleged artificial inflation in the price of Merge's securities at the time of purchase. However, in order to have compensable damages under the federal securities laws, the disclosure of the allegedly misrepresented information must be the cause of the decline in the price of the securities. In this case, Lead Plaintiff alleges that Merge and members of its senior management made false statements and omitted material facts between April 25, 2002 and July 2, 2006 regarding the Company's financial statements, which had the effect of artificially inflating Merge's stock price. Defendants deny all such allegations.

41. In order to have recoverable damages, disclosure of the alleged misrepresentations about the Company's financial statements must be the cause of the decline in the price of the security. On February 24, 2006, Merge issued a press release announcing that it would delay the issuance of its financial results for the fourth quarter 2005 to allow additional time to complete the audit of the Company's financial statements. On March 17, 2006, Merge announced that it would delay filing its Annual Report on Form 10-K for the year ended December 31, 2005, due to "revenue recognition and tax accounting matters relating to the merger of the Company and Cedara Software Corp. in June 2005" and that it was initiating an internal investigation into anonymous letters received by the Board relating to the Company's accounting and that the Company's previously issued financial statements for the quarters ended June 30, 2005, and September 30, 2005, should no longer be relied upon. On July 3, 2006, prior to markets opening, Merge announced that its acting CEO, CFO and a Senior Vice President had resigned. Merge also announced that the Audit Committee had determined that, because of improper accounting and financial reporting practices with respect to reporting periods in the fiscal years 2002 through 2005, the previously issued financial statements for each of the reporting periods in 2002 through 2005 should no longer be relied upon and that the audit reports of KPMG with respect to those financial statements should no longer be relied upon. This announcement ended the Class Period.

42. The Recognized Loss will be reduced dollar-for-dollar to the extent that: (i) Merge securities were purchased or otherwise acquired at a price below the lowest reported trading price for Merge securities on the date during the Class Period on which the purchase or acquisition was made (e.g., at a discounted price).

#### **SPECIFIC LOSS AMOUNTS**

43. Specific Recognized Losses will be calculated as follows:

##### **A. Introductory Provisions:**

To receive a distribution from the Net Settlement Fund, all persons must:

- (i) Establish membership in the Settlement Class;
- (ii) Complete a valid Claim Form and supply all required documentation;
- (iii) Submit the completed Claim Form and documentation so that it is postmarked for mailing to the Claims Administrator no later than November 12, 2008.

##### **B. Calculation of Recognized Loss for Claims:**

A "Claim Per Share" will be calculated for each purchase or acquisition of Merge securities that is listed on the Claim Form, and for which adequate documentation is provided. The calculation of the Claim Per Share will depend upon several factors, including:

- (i) When each Merge security was purchased or otherwise acquired; and
- (ii) When each Merge security was sold.

##### **C. Recognized Gains and Losses for Merge Common Stock:**

- 1. For shares of Merge common stock that were purchased from April 25, 2002 through February 23, 2006, and:
  - (a) sold prior to February 24, 2006, the Claim Per Share is \$0;
  - (b) sold from February 24, 2006 through March 16, 2006, the Claim Per Share is the lesser of:
    - (i) purchase price per share less \$20.50 per share (February 24, 2006 closing price), or
    - (ii) \$4.00 per share (February 24, 2006 price decline);
  - (c) sold from March 17, 2006 through July 2, 2006, the Claim Per Share is the lesser of: (i) purchase price per share less \$15.85 per share (March 17, 2006 closing price), or (ii) \$6.12 per share (February 24, 2006 and March 17, 2006 price declines);

- (d) retained at the end of July 2, 2006, the Claim Per Share is the lesser of: (i) purchase price per share less \$7.30 per share (July 3, 2006 closing price), or (ii) \$11.13 per share (February 24, 2006, March 17, 2006 and July 3, 2006 price declines).
- 2. For shares of Merge common stock that were purchased from February 24, 2006 through March 16, 2006, and:
    - (a) sold prior to March 17, 2006, the Claim Per Share is \$0;
    - (b) sold from March 17, 2006 through July 2, 2006, the Claim Per Share is the lesser of: (i) purchase price per share less \$15.85 per share (March 17, 2006 closing price), or (ii) \$2.12 per share (March 17, 2006 price decline);
    - (c) retained at the end of July 2, 2006, the Claim Per Share is the lesser of: (i) purchase price per share less \$7.30 per share (July 3, 2006 closing price), or (ii) \$7.13 per share (March 17, 2006 and July 3, 2006 price declines).
  - 3. For shares of Merge common stock that were purchased from March 17, 2006 through July 2, 2006, and:
    - (a) sold prior to July 2, 2006, the Claim Per Share is \$0;
    - (b) retained at the end of July 2, 2006, the Claim Per Share is the lesser of: (i) purchase price per share less \$7.30 per share (July 3, 2006 closing price), or (ii) \$5.01 per share (July 3, 2006 price decline).

#### **D. Recognized Gains and Losses for Merge Options:**

The settlement proceeds available for Merge options purchased or acquired during the Class Period shall be limited to an amount equal to one percent of the Net Settlement Fund. In the case the option was exercised for Merge common stock, the amount paid, or proceeds received, upon the settlement of the option contract equals the intrinsic value of the option using Merge common stock's closing price on the date the option was exercised.

#### **Call Options**

- 1. For Call Options on Merge common stock that were *purchased* during the period April 25, 2002 through July 2, 2006, and
  - a. *owned* at the end of one of the following dates: February 23, 2006, March 16, 2006 or July 2, 2006, the claim per Call Option is the difference between the price paid for the Call Option less the proceeds received upon the settlement of the Call Option contract;
  - b. *not owned* at the end of one of the following dates: February 23, 2006, March 16, 2006 or July 2, 2006, the claim per Call Option is \$0.
- 2. For Call Options on Merge common stock that were *written* during the period April 25, 2002 through July 2, 2006, the claim per Call Option is \$0.

#### **Put Options**

- 1. For Put Options on Merge common stock that were *written* during the period April 25, 2002 through July 2, 2006, and
  - a. *owned* at the end of one of the following dates: February 23, 2006, March 16, 2006 or July 2, 2006, the claim per Put Option is the difference between the amount paid upon settlement of the Put Option contract less the initial proceeds received upon the sale of the Put Option contract.
  - b. *not owned* at the end of one of the following dates: February 23, 2006, March 16, 2006 or July 2, 2006, the claim per Put Option is \$0.

2. For Put Options on Merge common stock that were *purchased* during the period April 25, 2002 through July 2, 2006, the claim per Put Option is \$0.

**E. General Provisions:**

- (i) The Net Settlement Fund will be allocated among all eligible Settlement Class Members.
- (ii) Each Authorized Claimant shall recover his or her Recognized Loss. However, in the event that the sum total of Recognized Losses of all Authorized Claimants who are entitled to receive payment out of the Net Settlement Fund is greater than the Net Settlement Fund, each such Authorized Claimant shall receive his/her/its *pro rata* share of the Net Settlement Fund, which shall be his/her/its Recognized Loss divided by the total of all Recognized Losses to be paid from the Net Settlement Fund, multiplied by the total amount in the Net Settlement Fund. The proration factor applied to the Authorized Claims of Settlement Class Members will be based on the amount in the Net Settlement Fund available to satisfy those claims, as set forth in paragraph 1.
- (iii) If the Net Settlement Fund exceeds the sum total amount of the Recognized Losses of all Authorized Claimants entitled to receive payment out of the Net Settlement Fund, the excess amount in the Net Settlement Fund shall be distributed *pro rata* to all Authorized Claimants entitled to receive payment out of the Net Settlement Fund.
- (iv) Each Authorized Claimant will be required to provide proof of his or her ownership position(s) in Merge securities as of the close of trading on April 24, 2002 and July 3, 2006. Each Claim Form also must list *all* transactions in Merge securities, including all purchases and sales, made during the Class Period (April 25, 2002, through and including July 3, 2006).
- (v) In the event a Settlement Class Member has more than one purchase or sale of Merge securities during the Class Period, all purchases and sales shall be matched on a First In First Out (“FIFO”) basis, Class Period sales will be matched first against any Merge securities held at the beginning of the Class Period, and then against purchases in chronological order, beginning with the earliest purchase made during the Class Period. Purchases and sales of Merge securities shall be deemed to have occurred on the “contract” or “trade” date as opposed to the “settlement” or “payment” date. The receipt or grant by gift, devise or operation of law of Merge securities during the Class Period shall not be deemed a purchase or sale of such Merge securities for the calculation of an Authorized Claimant’s Recognized Loss, nor shall it be deemed an assignment of any claim relating to the purchase of such Merge securities unless specifically provided in the instrument of gift or assignment.
- (vi) To the extent a Claimant had a gain from his, her or its overall transactions in Merge securities during the Class Period, the value of the Recognized Loss will be zero. Such claimants will in any event be bound by the Settlement. To the extent that a Claimant suffered an overall actual loss on his, her or its overall transactions in Merge securities during the Class Period, but that loss was less than the Recognized Loss calculated above, then the Recognized Loss shall be limited to the amount of the actual loss.
- (vii) A payment to any Authorized Claimant of less than **\$10** in total will not be included in the calculation and will not be distributed.

WHAT RIGHTS AM I GIVING UP BY AGREEING TO THE SETTLEMENT?

44. If the Settlement is approved, the Court will enter a judgment (the “Judgment”). The Judgment will dismiss the claims against Defendants with prejudice and provide that Lead Plaintiff and each of the Settlement Class Members, except those who validly and timely requested to be excluded from the Settlement Class, shall upon the Effective Date of the Settlement, be deemed to have, and by operation of this Judgment shall have, fully, finally and forever released, relinquished, settled and discharged any and all Released Claims (including Unknown Claims) against Defendants’ Released Persons and any claims or potential claims that could be asserted in connection with the resolution of the Action or Released Claims, whether or not Lead Plaintiff and Settlement Class Members execute and deliver Claim Forms.

45. “Released Claims” means collectively any and all claims (including Unknown Claims, as defined in the Stipulation) and includes:

- a. any and all claims, causes of action, actions, suits, matters, and issues or liabilities of every nature and description whatsoever (including, but not limited to, any claims of negligence, gross negligence, omissions, breaches of duty of care and/or breaches of any other duty, fraud, or violations of any state or federal statutes,

regulations, or rules, and any claims for damages, interest, attorneys' fees, expert or consulting fees, and any other costs, expenses or liability whatsoever), whether known or unknown, whether fixed, contingent, accrued, unaccrued, liquidated, unliquidated, or absolute, whether suspected or unsuspected, whether disclosed or undisclosed, whether matured or unmatured, whether or not concealed or hidden, whether based on federal, state, local, statutory or common law or any other law, rule or regulation, at law or in equity, whether class or individual in nature, that (i) have been asserted in the Action against any of the Released Persons; or (ii) that could have been asserted in this or any other forum by or on behalf of the Lead Plaintiff or Settlement Class Members based on, arising out of, in connection with, or related in any way to any Lead Plaintiff's Released Person's holding, voting, sale, transfer, purchase or other acquisition of Merge's publicly-traded securities during the Settlement Class Period.

b. all claims whether known or Unknown Claims, asserted or unasserted by or on behalf of Merge and/or the Individual Defendants against Lead Plaintiff and any Settlement Class Member or their attorneys, which have been or could have been asserted, whether under state, federal, common or administrative law, relating to the subject matter of the Action, including the institution, prosecution or settlement of the Action.

46. Upon the Effective Date, each of Defendants' Released Persons shall be deemed to have, and by operation of this Judgment shall have, fully, finally and forever released, relinquished and discharged the Released Claims as against Lead Plaintiff's Released Persons, and Lead Counsel and their agents. The Judgment will also permanently bar and enjoin to the full extent provided by Section 21D(f)(7) of the Securities Exchange Act of 1934, 15 U.S.C. § 78u-4(f)(7), from instituting or prosecuting in any court, whether state or federal, or other tribunal, all claims for contribution, known or unknown, asserted on any theory, however denominated, whether under state or federal law, which relate in any way to any of the acts, events or occurrences alleged in the Action.

**WHAT PAYMENT ARE THE ATTORNEYS FOR THE CLASS SEEKING?  
HOW WILL THE LAWYERS BE PAID?**

47. Lead Counsel have not received any payment for their services in pursuing claims against Defendants on behalf of the Class, nor have Lead Counsel been reimbursed for their out-of-pocket expenses. At the Settlement Hearing described below, or at such other time as the Court may direct, Lead Counsel intends to apply to the Court for an award of attorneys' fees in an amount not to exceed 25% of the Settlement Fund net of Court-approved litigation expenses.

48. Lead Counsel also intends to apply for reimbursement of litigation expenses in an amount not to exceed \$250,000. If the application for attorneys' fees and reimbursement of litigation expenses is approved by the Court, the average cost per affected share would be approximately \$0.11. THE COURT HAS NOT EXPRESSED ANY OPINION ON THE APPLICATION FOR ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES.

49. The fee requested by Lead Counsel would compensate Lead Counsel for its efforts in achieving the Settlement for the benefit of the Settlement Class, and for its risk in undertaking this representation on a contingency basis. The fee requested is within the range of fees awarded under similar circumstances in litigation of this type. The Court will determine the amount of the award.

**HOW DO I PARTICIPATE IN THE SETTLEMENT? WHAT DO I NEED TO DO?**

50. For settlement purposes only, the Court has certified this action as a class action. If you purchased or otherwise acquired Merge securities during the period from April 25, 2002 through July 3, 2006, inclusive, and you are not excluded by the definition of the Settlement Class and do not elect to exclude yourself, then you are a Settlement Class Member, and you will be bound by the proposed Settlement provided for in the Stipulation, in the event it is approved by the Court, as well as by any judgment or determination of the Court affecting the Settlement Class. Unless otherwise provided by the Court, any Settlement Class Member who fails to submit a Claim Form postmarked on or before November 12, 2008 shall be forever barred from receiving any payments pursuant to the Settlement set forth in the Stipulation but will in all other respects be subject to the provisions of the Stipulation, including the terms of any judgments entered and the releases given.

51. If you wish to remain a Settlement Class Member, you may be eligible to share in the proceeds of the Settlement, provided that you timely submit an acceptable Claim Form. The Claim Form must be supported by such documents as specified in the Claim Form. The Claim Form is enclosed. Extra copies of the Claim Form may be

obtained from the Claims Administrator at the website noted below or downloaded from Lead Counsel's website at [www.blbgglaw.com](http://www.blbgglaw.com).

52. The Court may disallow or adjust the Claim of any Settlement Class Member. The Court also may modify the Plan of Allocation without further notice to the Class. Payments pursuant to the Plan of Allocation, as approved by the Court, will be conclusive against all Authorized Claimants. No person shall have any claim against Lead Plaintiff, Lead Counsel or the Claims Administrator, or any other agent designated by Lead Counsel, based on the distributions made substantially in accordance with the Stipulation and the Settlement, the Plan of Allocation or further orders of the Court. Each Claimant shall be deemed to have submitted to the jurisdiction of the United States District Court for the Eastern District of Wisconsin (Milwaukee Division) with respect to his, her or its Claim Form.

53. As a Settlement Class Member, you are represented by Lead Plaintiff and Lead Counsel, unless you enter an appearance through counsel of your own choice at your own expense. You are not required to retain your own counsel, but if you choose to do so, such counsel must file an appearance on your behalf and must serve copies of such appearance on the attorneys listed in the section entitled, "When and Where Will the Court Decide Whether to Approve the Settlement?"

54. If you do not wish to remain a Settlement Class Member, you may exclude yourself from the Settlement Class by following the instructions in the section entitled, "What If I Do Not Want To Be A Part Of The Settlement? How Do I Exclude Myself?"

55. If you object to the Settlement or any of its terms, the proposed Plan of Allocation, or Lead Counsel's application for attorneys' fees and reimbursement of litigation expenses, and if you do not exclude yourself from the Settlement Class, you may present your objections by following the instructions in the section entitled, "When and Where Will the Court Decide Whether to Approve the Settlement?"

WHAT IF I DO NOT WANT TO BE A PART OF THE SETTLEMENT?  
HOW DO I EXCLUDE MYSELF?

56. Each Settlement Class Member will be bound by all determinations and judgments in this lawsuit concerning the Settlement, whether favorable or unfavorable, unless such person mails, by first class mail, a written Request for Exclusion from the Class, addressed to *Maiden v. Merge, et al.* Securities Litigation - EXCLUSIONS - c/o The Garden City Group, Inc., P.O. Box 9304, Dublin, OH 43017-4204, postmarked no later than October 13, 2008. You will not be able to exclude yourself from the Settlement Class after that date. Each Request for Exclusion must set forth the name and address of the person or entity requesting exclusion; must state that such person "requests exclusion from the Class in *Maiden v. Merge, et al.*, Case No. 2:06-00349-RTR"; be signed by such person; and provide a telephone number, and the date(s), price(s), and number(s) of securities of all purchases and sales of Merge securities during the Class Period. Requests for Exclusion will not be valid if they are not made within the time stated above, unless the Requests for Exclusion are otherwise accepted by the Court.

57. If a Settlement Class Member requests to be excluded from the Settlement Class, that Settlement Class Member will not receive any benefit provided for in the Stipulation.

WHEN AND WHERE WILL THE COURT DECIDE WHETHER TO APPROVE THE SETTLEMENT?  
DO I HAVE TO COME TO THE HEARING?  
MAY I SPEAK AT THE HEARING IF I DON'T LIKE THE SETTLEMENT?

**If you do not wish to object to the proposed Settlement, the application for attorneys' fees and reimbursement of litigation expenses, and/or the proposed Plan of Allocation, you need not attend the Final Approval Hearing.**

58. The Final Approval Hearing will be held on November 10, 2008 at 2:00 p.m., before the Honorable Rudolph T. Randa at 320 United States Courthouse, 517 East Wisconsin Avenue, Milwaukee, WI 53202. The Court reserves the right to approve the Settlement at or after the Final Approval Hearing with such modifications as may be consented to by the Parties to the Stipulation and without further notice to the members of the Settlement Class.

59. Any Settlement Class Member who does not request exclusion postmarked on or before October 13, 2008 may appear at the Final Approval Hearing and be heard on any of the matters to be considered at the hearing; provided, however, that no such person shall be heard unless his, her or its objection or opposition is made in writing and is filed, together with copies of all other papers (including proof of all purchases of Merge securities during the

Class Period) and briefs, with the Clerk's Office at the United States District Court for the Eastern District of Wisconsin (Milwaukee Division), 362 United States Courthouse, 517 East Wisconsin Avenue, Milwaukee, WI 53202, on or before October 13, 2008, and is sent for receipt no later than October 13, 2008 to each of the following:

**Lead Counsel for the Class**

BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP

Blair A. Nicholas, Esq.  
Timothy DeLange, Esq.  
12481 High Bluff Drive, Suite 300  
San Diego, CA 92130

**Counsel for Defendants**

KATTEN MUCHIN  
ROSENMAN LLP  
David H. Kistenbroker  
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525 W. Monroe Street  
Suite 1900  
Chicago, IL 60661-3693  
*Counsel for Defendant  
Merge Technologies, Inc.*

MCDERMOTT WILL &  
EMERY  
Steven S. Scholes  
227 West Monroe Street  
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*Attorneys for Defendant  
Richard A. Linden*

MAYER BROWN LLP  
Vincent J. Connelly  
71 S. Wacker Drive  
Chicago, IL 60606  
*Attorneys for Defendant  
Scott T. Veech*

QUARLES & BRADY  
Michael H. Schaalman  
411 East Wisconsin Avenue  
Milwaukee, WI 53202-4497  
*Attorneys for Defendant  
David Noshay*

60. The filing must demonstrate your membership in the Settlement Class, including the number of Merge securities purchased or otherwise acquired during the Class Period and price(s) paid. Only Settlement Class Members who have submitted their position in this manner will be entitled to be heard at the Final Approval Hearing, unless the Court orders otherwise. You may file an objection without having to appear at the Final Approval Hearing. Settlement Class Members who approve of the Settlement need not appear at the Final Approval Hearing.

61. Attendance at the hearing is not necessary; however, persons wishing to be heard orally in opposition to the approval of the Settlement, the proposed Plan of Allocation and/or the request for attorneys' fees and reimbursement of litigation expenses are required to notify the above counsel in advance of the hearing. Persons who intend to object to the Settlement, the proposed Plan of Allocation and/or Lead Counsel's application for an award of attorneys' fees and reimbursement of litigation expenses and desire to present evidence at the Final Approval Hearing must include in their written objections the identity of any witnesses they may call to testify and exhibits they intend to introduce into evidence at the Final Approval Hearing.

62. The Final Approval Hearing may be delayed from time to time by the Court without further written notice to the Settlement Class. If you intend to attend the Final Approval Hearing, you should confirm the date and time with Lead Counsel.

**Unless otherwise ordered by the Court, any Settlement Class Member who does not object in the manner described herein will be deemed to have waived any objection and shall be forever foreclosed from making any objection to the proposed Settlement, the application for attorneys' fees and reimbursement of litigation expenses and/or the proposed Plan of Allocation. Settlement Class Members do not need to appear at the hearing or take any other action to indicate their approval.**

WHAT IF I BOUGHT SHARES ON SOMEONE ELSE'S BEHALF?

63. If you purchased or otherwise acquired Merge securities during the Class Period for the beneficial interest of a person or organization other than yourself, you are directed to send a copy of this Notice and the Claim Form to the beneficial owner of the shares postmarked no later than fourteen (14) days from the date of this Notice, or to provide the names and addresses of such persons no later than fourteen (14) days from the date of this Notice

to *Maiden v. Merge, et al.* Securities Litigation, c/o The Garden City Group, Inc., P.O. Box 9304, Dublin, OH, 43017-4204, in which case the beneficial owner will be sent a copy of the Notice. Upon full compliance with these directions, such nominees may seek reimbursement of their reasonable expenses actually incurred in complying herewith by providing the Claims Administrator with proper documentation supporting the expenses for which reimbursement is sought. Copies of this Notice and the Claim Form may also be obtained from the Claims Administrator's website, [www.gardencitygroup.com](http://www.gardencitygroup.com), by e-mailing [MergeSecurities@gardencitygroup.com](mailto:MergeSecurities@gardencitygroup.com), by calling toll-free 1 (888) 292-1827, or by downloading a copy from Lead Counsel's website at [www.blbglaw.com](http://www.blbglaw.com).

CAN I SEE THE COURT FILE? WHOM SHOULD I CONTACT IF I HAVE QUESTIONS?

64. This Notice contains only a summary of the terms of the proposed Settlement. For a more detailed statement of the matters involved in the Action, you are referred to the papers on file in the Action, including the Stipulation, which may be inspected during regular office hours at the Office of the Clerk, United States District Court for the Eastern District of Wisconsin (Milwaukee Division), 362 United States Courthouse, 517 East Wisconsin Avenue, Milwaukee, WI 53202.

65. All inquiries concerning this Notice or the Claim Form should be directed to:

*Maiden v. Merge, et al.* Securities Litigation  
% The Garden City Group, Inc.  
P.O. Box 9304  
Dublin, OH 43017-4204  
1 (888) 292-1827

**OR**

BERNSTEIN LITOWITZ BERGER &  
GROSSMANN LLP  
Blair A. Nicholas, Esq.  
Timothy DeLange, Esq.  
12481 High Bluff Drive, Suite 300  
San Diego, CA 92130

**Lead Counsel for the Class**

**DO NOT CALL OR WRITE THE COURT OR THE OFFICE OF THE CLERK OF THE COURT  
REGARDING THIS NOTICE.**

Dated: July 15, 2008

By Order of the Court  
United States District Court  
Eastern District Court of Wisconsin