

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE HERLEY INDUSTRIES, INC.  
SECURITIES LITIGATION

Case No. 06-CV-2596 (JRS)

**NOTICE OF PROPOSED CLASS ACTION SETTLEMENT**

**TO: ALL PERSONS WHO PURCHASED OR OTHERWISE ACQUIRED THE PUBLICLY TRADED SECURITIES OF HERLEY INDUSTRIES, INC. DURING THE PERIOD FROM OCTOBER 1, 2001 THROUGH JUNE 14, 2006, INCLUSIVE, (THE "CLASS PERIOD") AND WHO ALLEGEDLY SUSTAINED A LOSS AS A RESULT OF THE ACQUISITION (THE "CLASS").**

**YOU MAY BE ENTITLED TO A PAYMENT FROM THIS PROPOSED SETTLEMENT.**

*A federal court authorized this notice. This is not a solicitation from a lawyer.*

- If approved by the Court,<sup>1</sup> the proposed Settlement will create a \$10,000,000 Settlement Fund for the benefit of eligible investors who purchased or otherwise acquired common stock of Herley Industries, Inc. ("Herley" or the "Company") during the Class Period.
- The Settlement would resolve claims in a class action lawsuit alleging that Herley and certain of its officers and directors misled investors by making certain misrepresentations and omissions in Herley's public statements, which had the effect of inflating Herley's stock price (the "Action"). The Class is represented in the Action by the court-appointed Lead Plaintiff and Class Representative, Norfolk County Retirement System ("Class Representative").
- The Court will review the Settlement at the Settlement Hearing to be held on September 13, 2010 at 9:00 a.m.
- **Your legal rights are affected whether you act or do not act. Read this notice carefully.**

| YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT |                                                                                                        |
|--------------------------------------------------|--------------------------------------------------------------------------------------------------------|
| <b>SUBMIT A CLAIM FORM BY NOVEMBER 13, 2010</b>  | The <i>only</i> way to get a payment.                                                                  |
| <b>OBJECT BY AUGUST 30, 2010</b>                 | Write to the Court about why you do not like the Settlement. This will not exclude you from the Class. |
| <b>GO TO A HEARING ON SEPTEMBER 13, 2010</b>     | Ask to speak in Court about the Settlement at the Settlement Hearing.                                  |
| <b>DO NOTHING</b>                                | Get no payment. Give up rights.                                                                        |

**SUMMARY OF THIS NOTICE**

**Statement of Plaintiff Recovery**

This proposed Settlement will create a Settlement Fund of \$10,000,000 in cash, plus interest as it accrues. Based on the information currently available to Class Representative and the analysis performed by its damages expert, it is estimated that if members of the Class submit claims for 100% of the shares eligible for distribution under the Plan of Allocation (described below), the estimated average distribution per share will be approximately \$.74.<sup>2</sup> Historically, actual claims rates are substantially less than 100%, which result in higher distributions per share. This estimate is before deduction of any court-awarded expenses, such as attorneys' fees and litigation expenses, Class Representative's costs and expenses and the cost of sending this Notice and administering the distribution of the Settlement. The amount an eligible Class Member will actually recover will depend on numerous factors, including the numbers of Class Members who submit a valid Proof of Claim. These factors are fully explained in the Plan of Allocation beginning on page 7. Please refer to the Plan of Allocation for more information on your potential "Recognized Loss" (defined below).

<sup>1</sup> All capitalized terms not otherwise defined in this document shall have the meaning provided in the Stipulation and Agreement of Settlement, dated July 2, 2010 (the "Stipulation").

<sup>2</sup> An allegedly damaged share might have been traded more than once during the Class Period, and this average recovery would be the total for all purchasers of that share.

### **Statement of Potential Outcome if the Claims Continued to Be Litigated**

The Parties disagree about whether each or any of the Defendants is liable for the claims asserted against them and whether each or any of the Defendants caused any damages. The issues on which the Parties disagree include, for example: (1) whether the Defendants made any false or material misstatements or omissions; (2) whether those alleged misrepresentations and omissions were material; (3) whether the Defendants acted with the required state of mind; (4) the amount by which the prices of Herley common stock were artificially inflated (if at all) during the Class Period as a result of the alleged securities fraud; (5) whether any purchasers of Herley common stock suffered damages as a result of the alleged misstatements and omissions in the Company's public statements; and (6) the amount of such damages, assuming they exist.

The Defendants deny that they are liable to the Class and deny that the Class has suffered any damages attributable to the Defendants' actions. While Class Representative believes that it and the Class have meritorious claims, it recognizes that there are significant obstacles to be overcome before there could be any recovery.

### **Statement of Attorneys' Fees and Costs Sought**

Class Representative and the Class are represented by the law firms of Labaton Sucharow LLP ("Labaton") and Kirby McInerney LLP ("Kirby") (collectively "Class Counsel"). Class Counsel has not received any payment for its services in litigating the Action, nor has it been reimbursed for its litigation expenses. Class Counsel intends to make a motion at the Settlement Hearing asking the Court to award it attorneys' fees of no more than 33.3% of the Settlement Fund (including any accrued interest), and reimbursement from the Settlement Fund of expenses incurred during the litigation, in an amount not to exceed \$750,000, plus interest. Pursuant to the Private Securities Litigation Reform Act of 1995 ("PSLRA"), the Class Representative may also ask the Court to reimburse it for costs and expenses it incurred in representing the Class in an amount of no more than \$20,000. If the Court approves the fee and expense applications in full, the average amount of fees and expenses per damaged share of common stock will be approximately \$0.30. This amount will vary depending on the number of eligible claims submitted.

### **Further Information**

Further information regarding the Settlement and this Notice may be obtained by contacting the Claims Administrator: *Herley Securities Litigation*, c/o The Garden City Group, Inc. PO Box 9415, Dublin, OH 43017-4515, 800-943-1373, [www.gardencitygroup.com](http://www.gardencitygroup.com); or Class Counsel: Labaton Sucharow LLP, 140 Broadway, New York, NY 10005, 888-753-2796, [www.labaton.com](http://www.labaton.com). Please Do Not Call the Court or Herley With Questions About the Settlement.

### **Reasons for the Settlement**

For Class Representative, the principal reason for the Settlement is the immediate benefit of a substantial cash recovery for the Class. This benefit must be compared to the risk that no recovery or a smaller recovery might be achieved after a contested jury trial and likely appeals, possibly years into the future. For the Defendants, who deny all allegations of wrongdoing, the principal reason for the Settlement is to eliminate the burden, expense, uncertainty and risk of further litigation.

### **BASIC INFORMATION**

|                                       |
|---------------------------------------|
| 1. Why did I get this notice package? |
|---------------------------------------|

You or someone in your family may have purchased or otherwise acquired publicly traded Herley securities during the period from October 1, 2001 through June 14, 2006, inclusive, and may be a Class Member in this Action. This package explains the lawsuit, the Settlement, Class Members' legal rights, what benefits are available, who is eligible for them and how to get them.

The Court directed that this Notice be sent to Class Members because they have a right to know about a proposed settlement of this class action lawsuit, and about all of their options, before the Court decides whether to approve the Settlement. If approved, the Settlement will end all of the Class's claims against the Defendants. The Court will review the Settlement at a Settlement Hearing on September 13, 2010 at 9:00 a.m. If the Court approves the Settlement, and after any objections and appeals (if there are any) are resolved, the Claims Administrator appointed by the Court will make the payments that the Settlement allows.

The Court in charge of the case is the United States District Court for the Eastern District of Pennsylvania, and the case is known as *In re Herley Industries, Inc. Securities Litigation*, No. 06-cv-2596 (JRS). This case was assigned to United States District Judge Juan R. Sanchez. The person bringing the case is called the Class Representative, and the company and the persons being sued are called Defendants.

## 2. What is this lawsuit about and what has happened so far?

Herley is a leading supplier of microwave technology for the defense and commercial markets worldwide. Herley's primary business is manufacturing microwave products and technologies for defense contractors, the United States government, and international customers. Herley also produces products for the scientific and medical communities. Herley is a public company, and its shares are traded on the NASDAQ. Herley's principal place of business is located in Lancaster, Pennsylvania.

On January 15, 2010, the Court appointed Norfolk County Retirement System as Lead Plaintiff and Class Representative. The Court also approved the selection of the law firms of Labaton and Kirby as Class Counsel.

On June 6, 2006, Defendants Herley and Lee Blatt ("Blatt"), Herley's former Chief Executive Officer, were indicted by the federal government for allegedly engaging in fraud in connection with three contracts with the United States government (the "Indictment"). The Indictment contained thirty-five counts. As a result of the Indictment, on June 9, 2006, the United States Navy suspended four of Herley's facilities from, among other things, receiving new contracts from the United States military subject to certain exceptions. At the time of the announcement of the Indictment and suspension Herley's stock price declined. It is this decline which the Class Representative alleges caused damages to the Class. The suspension of Herley's four divisions was lifted in October of 2006.

On May 5, 2008, Herley entered into a plea agreement, pursuant to which Herley pleaded guilty to two felony counts of obstruction of a federal audit. Pursuant to the plea agreement, the government withdrew the remaining thirty-three counts against the Company. Blatt pleaded guilty to a misdemeanor tax violation that was not a count charged in the Indictment. Pursuant to his plea agreement, all of the charges in the Indictment against Blatt were withdrawn.

During the Class Period, Herley issued public statements to its investors which, among other things, discussed Herley's relationship with its customers, including its relationship with the United States government. Herley also advised its investors in public statements that it believed that it had materially complied with government contracting regulations and laws during the relevant time period.

The Class asserted that those public statements were materially false and misleading since they failed to disclose: (i) Herley's alleged wrongful conduct vis-à-vis the government, and (ii) that Herley was the under investigation by the government and that Blatt was the target of that government investigation.

Defendants deny all allegations of wrongdoing. The Settlement should not be seen as an admission or concession on the part of any Defendant about any of the claims, their fault or liability for damages.

## 3. Why is this a class action?

In a class action, one or more people called class representatives (in this case Norfolk) sue on behalf of people or entities, known as "class members," who have similar claims. A class action allows one court to resolve in a single case many similar claims that, if brought separately by individuals, might be economically so small that they would never be brought. One court resolves the issues for all class members, except for those who exclude themselves, or "opt out," from the class (discussed below).

## 4. Why is there a settlement?

The Court did not finally decide in favor of Class Representative or the Defendants. The Settlement will end the Action and all the claims against the Defendants therein, and avoid the uncertainties and costs of further litigation and any future jury trial. Affected investors will get compensation immediately, rather than after the time it would take to conduct additional litigation, have a trial and exhaust all appeals. The Settlement was reached after Class Representative conducted a thorough investigation, briefed challenging motions to dismiss the claims, conducted discovery including the review of more than two-hundred thousand pages of documents produced during the course of the Action, consulted with an expert in the field of damages, prepared for a trial and engaged in arm's-length negotiations about a settlement. On June 23, 2010, the Parties participated in a Court-ordered Settlement Conference before Honorable Juan R. Sanchez, at which time an agreement in principle to settle the Action was reached. Class Representative and Class Counsel believe the Settlement is in the best interest of Class Members.

## **WHO IS IN THE SETTLEMENT**

### **5. How do I know if I am part of the Settlement?**

On September 30, 2009, the Court certified this Action as a class action and ordered that everyone who fits the following description is a Class Member, unless they took steps to exclude themselves:

All persons who purchased or otherwise acquired the publicly traded securities of Herley Industries, Inc. during the period from October 1, 2001 through June 14, 2006, inclusive, and who allegedly sustained a loss as a result of this acquisition. Excluded from the Class are Defendants, the employees of the Defendants and members of the Individual Defendants' immediate families.

Also excluded from the Class is any person or entity who previously excluded himself, herself or itself by timely serving a valid and proper request for exclusion in accordance with the Notice of Pendency of Class Action ("Pendency Notice"), which was previously mailed to potential Class Members.

See the Plan of Allocation beginning on page 7 for more information about the securities that are part of the Settlement. Receipt of this Notice does not mean that you are a Class Member. Please check your records or contact your broker to see if you purchased or acquired Herley common stock during the Class Period.

### **6. Are there exceptions to being included in the Class?**

There are some people who cannot be in the Class. The excluded persons are: (a) the Defendants in the Action; (b) the employees of the Defendants; (c) the members of the immediate families of the Individual Defendants in the Action (as defined in the Stipulation); and (d) any Person who timely and validly sought exclusion from the Class pursuant to the Pendency Notice. All Class Members who did not seek exclusion from the Class in accordance with the Pendency Notice are bound by the terms of the Settlement.

If one of your mutual funds purchased or acquired shares of Herley common stock during the Class Period, that alone does not make you a Class Member. You are a Class Member only if you (or your broker on your behalf) purchased or acquired Herley securities during the Class Period.

### **7. What if I am still not sure if I am included?**

If you are still not sure whether you are included, you can ask for free help from the Claims Administrator: *Herley Securities Litigation*, c/o The Garden City Group, Inc. PO Box 9415, Dublin, OH 43017-4515, 800-943-1373, [www.gardencitygroup.com](http://www.gardencitygroup.com). Or you can fill out and return the Proof of Claim and Release form ("Proof of Claim") described on page 5, in Question 10, to see if you qualify.

## **THE SETTLEMENT BENEFITS—WHAT YOU MAY RECEIVE**

### **8. What does the Settlement provide?**

In the Settlement, Herley has agreed to fund a \$10,000,000 (before interest) account to be divided, after deduction of Court-awarded attorneys' fees and expenses, the Class Representative's Court-approved costs and expenses, settlement administration costs and any applicable taxes ("Net Settlement Fund"), among all Class Members who timely submit valid Proofs of Claim.

### **9. How much will my payment be?**

The Plan of Allocation discussed on page 7 explains how claimants' "Recognized Losses" will be calculated. Your share of the Net Settlement Fund will depend on several things, including: (a) the amount of Recognized Losses of other Class Members; (b) how many shares of Herley stock you bought; (c) how much you paid for the shares; (d) when you bought them; and (e) whether or when you sold them (and, if so, for how much you sold them).

It is unlikely that you will get a payment for your entire Recognized Loss, given the number of potential Class Members. After all Class Members have sent in their Proofs of Claim, the payment you get will be a portion of the Net Settlement Fund. Your share will be your Recognized Loss divided by the total of all Class Members' Recognized Losses and then multiplied by the total amount in the Net Settlement Fund. See the Plan of Allocation beginning on page 7 for more information.

Once all the Proofs of Claim are processed and claims are calculated, Class Counsel, without further notice to the Class, will apply to the Court for an order distributing the Net Settlement Fund to the members of the Class. Class Counsel will also ask the Court to approve payment of the Claims Administrator's fees and expenses incurred in connection with administering the Settlement that have not already been reimbursed.

#### **HOW YOU GET A PAYMENT—SUBMITTING A PROOF OF CLAIM**

##### **10. How can I get a payment?**

To qualify for a payment, you must timely send in a validly completed Proof of Claim with supporting documents (DO NOT SEND ORIGINALS of your supporting documents). A Proof of Claim is being circulated with this Notice. You may also get a Proof of Claim on the Internet at the websites for the Claims Administrator: [www.gardencitygroup.com](http://www.gardencitygroup.com), or Class Counsel: [www.labaton.com](http://www.labaton.com). Please read the instructions carefully, fill out the Proof of Claim, include all the documents the form asks for, sign it, and mail it to the Claims Administrator by first-class mail, postmarked **on or before** November 13, 2010. *The Claims Administrator needs all of the information requested in the Proof of Claim in order to determine what you may be entitled to.*

##### **11. When would I get my payment?**

The Court will hold a hearing on September 13, 2010 at 9:00 a.m., to decide whether to approve the Settlement. All Proofs of Claim need to be submitted or postmarked **on or before** November 13, 2010. If the Court approves the Settlement, there may still be appeals which would delay payment, perhaps for more than a year. It also takes time for all the Proofs of Claim to be processed. Please be patient.

##### **12. What have I given up by staying in the Class and getting a payment?**

Unless you previously excluded yourself from the Class in accordance with the Pendency Notice, you remain in the Class, which means that once the Settlement becomes effective (the "Effective Date"), you will forever give up and release all "Settled Claims" (as defined below) against the "Released Defendant Parties."<sup>3</sup> You will not in the future be able to bring a case asserting any Settled Claim against the Released Defendant Parties.

"Settled Claims" means all claims and causes of action of every nature and description, whether known or unknown, arising from the beginning of time to present, whether under federal, state, common or foreign law, that the Class Representative or any member of the Class claimed or could have claimed against any Defendant in this Action arising out of or related in any way to any of the facts, matters, transactions, allegations, or claims in the Consolidated Complaint. However, any release of the Settled Claims pursuant to this Stipulation shall not release, bar, waive, or otherwise affect claims to enforce the Settlement.

The "Effective Date" will occur after the Judgment by the Court approving the Settlement becomes final and is not subject to appeal. If you remain a member of the Class, all of the Court's orders will apply to you and legally bind you.

##### **13. If I did not exclude myself pursuant the Pendency Notice, can I sue the Defendants and the other Released Defendant Parties for the same thing later?**

No. Unless you excluded yourself in accordance with the Pendency Notice, you have given up any rights to sue the Defendants and the other Released Defendant Parties for all Settled Claims.

##### **14. If I excluded myself in accordance with the Pendency Notice, can I get money from the proposed Settlement?**

No. If you excluded yourself pursuant to the Pendency Notice, do not send in a Proof of Claim to ask for any money.

<sup>3</sup> "Released Defendant Parties" means any and all of the Defendants and/or their current or former attorneys, auditors, officers, directors, employees, partners, subsidiaries, affiliates, related companies, parents, insurers, heirs, executors, representatives, predecessors, successors, assigns, trustees or other individual or entity in which any Defendant has a controlling interest.

## **THE LAWYERS REPRESENTING YOU**

### **15. Do I have a lawyer in this case?**

The law firms of Labaton and Kirby, both located in New York, New York, were appointed to represent all Class Members. These lawyers are called Class Counsel. You will not be separately charged for these lawyers. The Court will determine the amount of Class Counsel's fees and expenses, which will be paid from the Settlement Fund if they are approved. If you want to be represented by your own lawyer, you may hire one at your own expense.

### **16. How will the lawyers be paid?**

Class Counsel has not received any payment for its services in pursuing the claims against the Defendants on behalf of the Class, nor has it been reimbursed for any litigation expenses. At the Settlement Hearing described below, or at such other time as the Court may order, Class Counsel will ask the Court to award it, from the Settlement Fund, attorneys' fees of no more than 33.3% of the Settlement Fund (including accrued interest), and to reimburse it for its litigation expenses, such as the cost of experts, that it has incurred in pursuing the Action. The request for reimbursement of expenses will not exceed \$750,000, plus interest on the expenses at the same rate as may be earned by the Settlement Fund. Pursuant to the PSLRA, the Class Representative may also ask the Court to reimburse it for costs and expenses it incurred in representing the Class in an amount of no more than \$20,000. If the applications for attorneys' fees and expenses are approved in full, the average amount of such fees and expenses per damaged share would be approximately \$0.30.

The fee requested by Class Counsel would compensate it for its efforts in achieving the Settlement for the benefit of the Class and for the risk in undertaking the Action on a contingency basis. A request of 33.3% may be determined by the Court to be reasonable given: (a) the result achieved; (b) the novelty and difficulty of the claims; (c) the risk that Class Representative would not prevail; (d) the quality of counsel's representation; and (e) the fees awarded in similar cases. The Court will determine the amount of the award.

## **OBJECTING TO THE SETTLEMENT**

### **17. How do I tell the Court that I do not like the proposed Settlement?**

If you are a Class Member you can object to any part of the Settlement, the proposed Plan of Allocation, and the application by Class Counsel for attorneys' fees and expenses. You must write to the Court setting out your objection, giving reasons why you think the Court should not approve any part or all of the Settlement.

To object, you must send a signed letter stating that you object to the proposed settlement in the case known as: *In re Herley Industries, Inc. Securities Litigation*, No. 06-cv-2596 (JRS). You must include your name, address, telephone number and your signature; identify the date(s), price(s) and number of shares of all purchases, acquisitions and sales of Herley stock you made during the Class Period; and state the reasons why you object to the Settlement. This information is needed to demonstrate your membership in the Class.

Unless otherwise ordered by the Court, any Class Member who does not object in the manner described in this Notice will be deemed to have waived any objection and will not be able to make any objection to the Settlement in the future.

Your objection must be filed with the Court and delivered or mailed First-Class (with a corresponding postmark) **on or before August 30, 2010** to all the following:

| <b><u>COURT:</u></b>                                                                                                                                                                                         | <b><u>CLASS COUNSEL:</u></b>                                                                                                                                                                                                                                                                           | <b><u>DEFENDANTS' COUNSEL:</u></b>                                                                                                                                                                                              |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| CLERK OF THE COURT<br>United States District Court for the<br>Eastern District of Pennsylvania<br>James A. Byrne United States<br>Courthouse,<br>601 Market Street,<br>Philadelphia, Pennsylvania 19106-1797 | LABATON SUCHAROW LLP<br>Jonathan Gardner<br>140 Broadway<br>New York, NY 10005<br><br>KIRBY MCINERNEY LLP<br>Ira M. Press<br>825 Third Avenue, 16 <sup>th</sup> Floor<br>New York, NY 10022<br><br><i>Counsel for Lead Plaintiff and Class<br/>Representative Norfolk County Retirement<br/>System</i> | BLANK ROME LLP<br>James T. Smith<br>One Logan Square<br>Philadelphia, PA 19103<br><br><i>Counsel for Defendants Herley<br/>Industries, Inc.; Lee Blatt; Myron<br/>Levy; Anello Garefino; Thomas<br/>Gilboy; and John Kelley</i> |

## THE COURT'S SETTLEMENT HEARING

### 18. When and where will the Court decide whether to approve the proposed Settlement?

The Court will hold a Settlement Hearing at 9:00 a.m. on September 13, 2010, in Courtroom 8B, of the James A. Byrne United States Courthouse, 601 Market Street, Philadelphia, Pennsylvania 19106-1797. At this hearing, the Court will consider whether the Settlement is fair, reasonable and adequate. The Court also will consider the proposed Plan of Allocation for the net proceeds of the Settlement and the applications for attorneys' fees and reimbursement of expenses. The Court will take into consideration any written objections filed in accordance with the instructions set out above in the answer to Question 17. We do not know how long it will take the Court to make these decisions.

You should also be aware that the Court may change the date and time of the Settlement Hearing without another notice being sent to Class Members. If you want to come to the hearing, you should check with Class Counsel before coming to be sure that the date and/or time has not changed.

### 19. Do I have to come to the hearing?

No. Class Counsel will answer questions the Court may have. But, you are welcome to come at your own expense. If you validly submit an objection, you do not have to come to Court to talk about it.

### 20. May I speak at the hearing and submit additional evidence?

If you object to the Settlement, you may ask the Court for permission to speak at the Settlement Hearing. To do so, you must include with your objection (see Question 18 above) a statement that it is your intention to appear in *In re Herley Industries, Inc. Securities Litigation*, No. 06-cv-2596 (JRS). Persons who intend to object and want to present evidence at the Settlement Hearing must also include in their written objection the identity of any witness they may call to testify and exhibits they intend to introduce at the Settlement Hearing. You cannot speak at the hearing if you excluded yourself from the Class pursuant to the Pendency Notice, or if you have not provided written notice of your intention to speak at the Settlement Hearing according to the procedures described above and in the answer to Question 18.

## **IF YOU DO NOTHING**

### 21. What happens if I do nothing at all?

If you do nothing and have not sought exclusion pursuant to the Pendency Notice, you will get no money from this Settlement and you will not be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against the Defendants and the other Released Defendant Parties about the Settled Claims in this case. To share in the Net Settlement Fund you must submit a Proof of Claim (see Question 10). To start, continue or be a part of any *other* lawsuit against the Defendants and the other Released Defendant Parties about the Settled Claims in this case you must have excluded yourself from the Class in accordance with the terms of the Pendency Notice.

## **GETTING MORE INFORMATION**

### 22. Are there more details about the proposed Settlement and the lawsuit?

This Notice summarizes the proposed Settlement. More details are in the Stipulation. You may review the Stipulation filed with the Court and all documents filed in the Action during business hours at the Office of the Clerk of the United States District Court for the Eastern District of Pennsylvania, James A. Byrne United States Courthouse, 601 Market Street, Philadelphia, Pennsylvania 19106-1797.

You also can call the Claims Administrator toll free at 800-943-1373; call Class Counsel at 888-753-2796; write to *Herley Securities Litigation*, c/o The Garden City Group, Inc., PO Box 9415, Dublin, OH 43017-4515; or visit the websites [www.gardencitygroup.com](http://www.gardencitygroup.com) or [www.labaton.com](http://www.labaton.com), where you can download copies of the Proof of Claim form and locate other information to help you determine whether you are a Class Member and whether you are eligible for a payment. **Please Do Not Call the Court or Herley With Questions About the Settlement.**

## **PLAN OF ALLOCATION OF NET SETTLEMENT FUND AMONG CLASS MEMBERS**

The \$10,000,000 Settlement Amount and any interest it earns is called the Settlement Fund. The Settlement Fund, minus all taxes, costs, fees and expenses (the "Net Settlement Fund"), will be distributed according to the Plan of Allocation described herein to members of the Class who timely submit valid Proofs of Claim that show a Recognized Loss, as defined herein, and who have a net loss on all Class Period transactions in Herley common stock ("Authorized Claimants"). Class Members who do not timely submit valid Proofs of Claim will not share in the Net Settlement Fund, but will otherwise be bound by the terms of the Settlement. The Court may approve the Plan of Allocation with or without modifications agreed to among the Parties, or another Plan of Allocation, without further notice to the Class.

The Claims Administrator will determine each Authorized Claimant's *pro rata* share of the Net Settlement Fund based upon each Authorized Claimant's "Recognized Loss," as described herein. The Plan of Allocation is not intended to estimate the amount a Class Member might have been able to recover after a trial, nor is it intended to estimate the amount that will be paid to Authorized Claimants. The Plan of Allocation is the basis upon which the Net Settlement Fund will be proportionately divided among all the Authorized Claimants. The Court will be asked to approve the Claims Administrator's determinations before the Net Settlement Fund is distributed to Authorized Claimants. No distributions to Authorized Claimants who would receive less than \$10.00 will be made, given the administrative expenses of processing and mailing such checks.

Defendants and their respective counsel will have no responsibility for or liability whatsoever for the investment of the Settlement Fund, the distribution of the Net Settlement Fund, the Plan of Allocation or the payment of any claim. Class Representative and Class Counsel likewise will have no liability for their reasonable efforts to execute, administer and distribute the Settlement.

The following Plan of Allocation reflects the allegations that the price of Herley common stock during the Class Period was inflated artificially by reason of allegedly false and misleading statements made by the Defendants related to the conduct regarding three government contracts and the existence of a government investigation concerning that conduct. The Defendants deny any allegations of liability.

Class Representative contends that the artificial inflation allegedly began on October 1, 2001. Class Representative further alleges that the artificial inflation was eliminated after disclosures in June 2006 when, among other things, Herley disclosed that it and Blatt had been indicted and that certain Herley divisions had been suspended by the Navy from receiving new contracts, subject to certain exceptions. The Plan of Allocation described below was created with the assistance of a damages expert who analyzed the movement of Herley's common stock after the alleged disclosures. It takes into account the portion of the stock drops attributable to the alleged fraud.

#### **PLAN OF ALLOCATION**

Each Authorized Claimant will receive a share of the cash in the Net Settlement Fund based on his, her or its Recognized Loss. To the extent there are sufficient funds in the Net Settlement Fund, each Authorized Claimant will receive an amount equal to the Authorized Claimant's Recognized Loss, as defined herein. If, however, the amount in the Net Settlement Fund is not sufficient to permit payment of the total of all Recognized Losses, then each Authorized Claimant will be paid the percentage of the Net Settlement Fund that each Authorized Claimant's recognized claim bears to the total of the claims of all Authorized Claimants ("*pro rata* share").

For purposes of determining whether a claimant had an out-of-pocket gain from his, her, or its overall transactions in Herley common stock during the Class Period or suffered a net loss, the Claims Administrator shall determine the difference between (i) the Total Purchase Amount<sup>4</sup> and (ii) the sum of the Sales Proceeds<sup>5</sup> and the Holding Value.<sup>6</sup> This difference will be deemed a claimant's out-of-pocket gain or loss on his, her, or its overall transactions in common stock during the Class Period.

To calculate the Recognized Loss on Herley common stock purchased and sold during the Class Period, such sales must be matched against purchases during the Class Period. To do so, the earliest sale will be matched first against those shares in the claimant's opening position on the first day of the Class Period, and then matched chronologically thereafter against each purchase made during the Class Period ("FIFO Matching"). This means that sales of Herley common stock will be first matched with any pre-Class Period holdings and then matched with purchases during the Class Period in chronological order. Sales of pre-Class Period purchases shall have no Recognized Loss.

A purchase or sale of Herley common stock will be deemed to have occurred on the "contract" or "trade" date as opposed to the "settlement" or "payment" date. All transaction amounts for purchase and sales of Herley common stock shall exclude commissions, taxes and fees. Any person or entity that sold Herley common stock "short" will have no Recognized Loss with respect to such purchase during the Class Period to cover said short sale. In the event that there is an opening short position in Herley common stock, the earliest Class Period purchases shall be matched against such opening short position, and not be entitled to a recovery, until that short position is fully covered. Option contracts are not securities eligible to participate in the Settlement. Accordingly, shares of Herley common stock purchased during the Class Period through the exercise of a call option or the assignment of a put option shall be treated as a purchase on the date of exercise or assignment for the stated exercise price set forth in the call or put option, and any Recognized Loss arising from such transaction shall be computed as provided for purchases of common stock.

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<sup>4</sup> The "Total Purchase Amount" is the total amount the claimant paid for all Herley common stock purchased during the Class Period.

<sup>5</sup> The Claims Administrator shall match any sales of Herley common stock during the Class Period and sales during the PSLRA 90-day look-back period first against the claimant's opening position in Herley common stock (the proceeds of those sales will not be considered for purposes of calculating gains or losses). The total amount received for sales of the remaining Herley common stock during the Class Period and sales during the PSLRA 90-day look-back period that may be matched against Class Period purchases is the "Sales Proceeds."

<sup>6</sup> The Claims Administrator shall ascribe a holding price for shares purchased during the Class Period and still held at the end of the PSLRA 90-day look-back period, with such holding price being \$11.74 per share (the "Holding Value").



Payment in this manner will be deemed conclusive against all Authorized Claimants. A Recognized Loss will be calculated as defined herein and cannot be less than zero.

### **Publicly Traded Herley Common Stock**

For shares purchased on or between October 1, 2001 through June 14, 2006, the following claims shall be allowed:

- a. For each share sold on or prior to June 5, 2006, the Recognized Loss shall be zero dollars.
- b. For each share sold on or after June 6, 2006 and on or before June 13, 2006, the Recognized Loss shall be of the lesser of: (1) dollar inflation at the time of purchase applicable to that date as set forth in Table 1 minus the dollar inflation at the time of sale; and (2) the difference between the purchase price (excluding all fees and commissions) and the selling price (excluding all fees and commissions).
- c. For each share sold on or after June 14, 2006 and on or before September 11, 2006, the Recognized Loss shall be the lesser of: (1) dollar inflation at the time of purchase applicable to that date as set forth in Table 1; (2) the difference between the purchase price (excluding all fees and commissions) and the selling price (excluding all fees and commissions); and (3) the difference between the purchase price (excluding all fees and commissions) and the average closing price for the date of sale as set forth in Table 2 below.
- d. For each share sold after September 11, 2006 or still held, the allowed claim shall be of the lesser of: (1) dollar inflation at the time of purchase applicable to that date as set forth in Table 1; and (2) the difference between the purchase price (excluding all fees and commissions) and the average closing price of \$11.74 per share as set forth in Table 2 below.

**Table 1: Inflation per Share Table**

| <b>Period</b> | <b>Begin Date</b> | <b>End Date</b> | <b>Inflation per Share</b> |
|---------------|-------------------|-----------------|----------------------------|
| 1             | 1-October-2001    | 5-June-2006     | \$ 5.78                    |
| 2             | 6-June-2006       | 6-June-2006     | \$ 4.93                    |
| 3             | 7-June-2006       | 12-June-2006    | \$ 3.47                    |
| 4             | 13-June-2006      | 13-June-2006    | \$ 0.10                    |
| 5             | 14-June-2006      | Current         | \$ 0.00                    |

**Table 2: PSLRA Loss Limitation Table**

| <b>Date</b> | <b>Average Closing Price After Corrective Disclosures</b> | <b>Date</b>     | <b>Average Closing Price After Corrective Disclosures</b> |
|-------------|-----------------------------------------------------------|-----------------|-----------------------------------------------------------|
| 6/14/2006   | \$ 9.21                                                   | 8/1/2006        | \$ 11.02                                                  |
| 6/15/2006   | \$ 10.13                                                  | 8/2/2006        | \$ 11.07                                                  |
| 6/16/2006   | \$ 10.31                                                  | 8/3/2006        | \$ 11.10                                                  |
| 6/19/2006   | \$ 10.40                                                  | 8/4/2006        | \$ 11.14                                                  |
| 6/20/2006   | \$ 10.31                                                  | 8/7/2006        | \$ 11.18                                                  |
| 6/21/2006   | \$ 10.24                                                  | 8/8/2006        | \$ 11.21                                                  |
| 6/22/2006   | \$ 10.21                                                  | 8/9/2006        | \$ 11.23                                                  |
| 6/23/2006   | \$ 10.22                                                  | 8/10/2006       | \$ 11.25                                                  |
| 6/26/2006   | \$ 10.26                                                  | 8/11/2006       | \$ 11.27                                                  |
| 6/27/2006   | \$ 10.29                                                  | 8/14/2006       | \$ 11.27                                                  |
| 6/28/2006   | \$ 10.33                                                  | 8/15/2006       | \$ 11.28                                                  |
| 6/29/2006   | \$ 10.39                                                  | 8/16/2006       | \$ 11.30                                                  |
| 6/30/2006   | \$ 10.45                                                  | 8/17/2006       | \$ 11.32                                                  |
| 7/3/2006    | \$ 10.54                                                  | 8/18/2006       | \$ 11.33                                                  |
| 7/5/2006    | \$ 10.62                                                  | 8/21/2006       | \$ 11.35                                                  |
| 7/6/2006    | \$ 10.71                                                  | 8/22/2006       | \$ 11.38                                                  |
| 7/7/2006    | \$ 10.78                                                  | 8/23/2006       | \$ 11.41                                                  |
| 7/10/2006   | \$ 10.86                                                  | 8/24/2006       | \$ 11.44                                                  |
| 7/11/2006   | \$ 10.92                                                  | 8/25/2006       | \$ 11.47                                                  |
| 7/12/2006   | \$ 10.96                                                  | 8/28/2006       | \$ 11.51                                                  |
| 7/13/2006   | \$ 10.99                                                  | 8/29/2006       | \$ 11.54                                                  |
| 7/14/2006   | \$ 11.02                                                  | 8/30/2006       | \$ 11.57                                                  |
| 7/17/2006   | \$ 11.03                                                  | 8/31/2006       | \$ 11.60                                                  |
| 7/18/2006   | \$ 11.03                                                  | 9/1/2006        | \$ 11.63                                                  |
| 7/19/2006   | \$ 11.04                                                  | 9/5/2006        | \$ 11.66                                                  |
| 7/20/2006   | \$ 11.05                                                  | 9/6/2006        | \$ 11.68                                                  |
| 7/21/2006   | \$ 11.06                                                  | 9/7/2006        | \$ 11.71                                                  |
| 7/24/2006   | \$ 11.06                                                  | 9/8/2006        | \$ 11.72                                                  |
| 7/25/2006   | \$ 11.06                                                  | 9/11/2006       | \$ 11.74                                                  |
| 7/26/2006   | \$ 11.06                                                  | After 9/11/2006 | \$ 11.74                                                  |
| 7/27/2006   | \$ 11.05                                                  |                 |                                                           |
| 7/28/2006   | \$ 11.04                                                  |                 |                                                           |
| 7/31/2006   | \$ 11.03                                                  |                 |                                                           |

**SPECIAL NOTICE TO SECURITIES BROKERS AND OTHER NOMINEES**

If you purchased or acquired Herley common stock (NASDAQ ticker: HRLY; CUSIP 427398102) during the period from October 1, 2001 through June 14, 2006, inclusive, for the beneficial interest of a person or organization other than yourself, the Court has directed that, WITHIN SEVEN (7) CALENDAR DAYS OF YOUR RECEIPT OF THIS NOTICE, you either: (a) provide to the Claims Administrator the name and last known address of each person or organization for whom or which you purchased or acquired Herley common stock during such time period (preferably in an MS Excel data table, setting forth (i) title/registration, (ii) street address, (iii) city/state/zip; or electronically in MS Word or WordPerfect files; or on computer-generated mailing labels) or; (b) request additional copies of this Notice and the Proof of Claim form, which will be provided to you free of charge, and within seven (7) calendar days send by First-Class Mail the Notice and Proof of Claim form directly to the beneficial owners of those Herley shares.

If you choose to follow alternative procedure (b), the Court has directed that, upon such mailing, you send a statement to the Claims Administrator confirming that the mailing was made as directed. You are entitled to reimbursement from the Settlement Fund of your reasonable expenses actually incurred in connection with the foregoing, including reimbursement of postage expense and the cost of ascertaining the names and addresses of beneficial owners. Those expenses will be paid after request and submission of appropriate supporting documentation. All communications concerning the foregoing should be addressed to the Claims Administrator:

*Herley Securities Litigation*  
c/o The Garden City Group, Inc.  
PO Box 9415  
Dublin, OH 43017-4515  
800-943-1373

Dated: July 16, 2010

BY ORDER OF THE COURT  
UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA