

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

LYLE BREHM, on behalf of Willard F. )  
Brehm, Gladys M. Brehm, the Willard F. )  
Brehm Revocable Trust and the Gladys )  
M. Brehm Revocable Trust, REX )  
WELDON, on behalf of Nancy Weldon, )  
Robert Clark Weldon and the Robert )  
Clark Weldon and Nancy Weldon Trust, )  
JILL SCHUNEMAN, on behalf of herself )  
and the Jill Schuneman Living Trust, )  
and DAVID BUCKLEY, on behalf of )  
himself, the Robert L. McKissick )  
Irrevocable Trust and the Brenda L. )  
Buckley Revocable Trust, collectively on )  
behalf of themselves and all others )  
similarly situated, )

Plaintiffs, )

v. )

CAPITAL GROWTH FINANCIAL, LLC, )  
BRIAN SCHUSTER, ENGLE & )  
SCHUSTER FINANCIAL, INC., )  
AMERICAN CAPITAL CORPORATION, )  
ROYAL PALM CAPITAL GROUP, INC., )  
ALAN JACOBS, MICHAEL JACOBS, )  
GERALD PARKER, JOHN BOYCE, )  
GERALDINE MAGALNICK, PATRICK )  
HARRINGTON, PETER KIRSCHNER, )  
and STARK WINTER SCHENKEIN & )  
CO., LLP, )

Defendants. )

8:07CV254

MEMORANDUM AND ORDER

This matter is before the court on the plaintiff's motions for expedited rulings on certain motions, Filing Nos. [278](#) & [280](#), and for preliminary approval of a proposed partial settlement agreement, Filing No. [272](#). This is a purported class action for securities fraud pursuant to [15 U.S.C. § 77](#) *et seq.* Plaintiffs seek expedited rulings on motions to dismiss filed by defendant Peter Kirshner, Filing No. [177](#) (reasserted in Filing No. [262](#)), defendant

Gerald Parker, Filing No. [183](#) (reasserted in Filing No. [264](#)), and defendant Stark Winter, Filing No. [22](#) (reasserted in Filing No. [182](#)) and on its motion to certify the class, Filing No. [207](#) (reasserted in Filing No. [261](#)). Plaintiffs also move for preliminary approval of a proposed partial settlement agreement with defendants Capital Growth Financial and Alan and Michael Jacobs, Filing No. [272](#). Defendant Stark Winter objects to the approval of the proposed partial settlement as premature in view of the pending motion to certify a class and because it has not reviewed the proposed agreement, which was filed under seal. Filing No. [284](#). It argues that any potential cross-claims or claims for indemnification or contribution against the settling defendants would be prejudiced by premature approval of the proposed partial settlement. Stark Winter also seeks oral argument.

The motions to dismiss have been ruled on and the motions to expedite consideration are moot. See Filing Nos. 289 & 290, Memoranda and Orders. The plaintiff's motion to certify a class, Filing No. [207](#) (reasserted in Filing No. [261](#)), is not yet ripe for decision. Responses to the motion are due shortly. See Filing No. 225 (no hyperlink available) & [238](#). Motions for class certification are generally referred to the magistrate judge for disposition. The motion will be referred to the magistrate judge for expedited consideration.

In view of the unusual procedural posture of this case, the court finds a hearing on the motion for approval of proposed partial settlement is appropriate. Accordingly,

IT IS ORDERED:

1. The plaintiff's motions for expedited rulings (Filing Nos. [278](#) & [280](#)) are denied as moot with respect to motions to dismiss filed by defendants Kirschner, Parker, and Stark Winter.

2. The plaintiff's motion for an expedited ruling (Filing No. [280](#)) on their motion for class certification is granted.

3. The Clerk of Court is directed to refer the plaintiffs' motion for certification of class (Filing No. [207](#), reasserted in Filing No. [261](#)) to the magistrate judge for expedited consideration.

4. The plaintiffs' motion for preliminary approval of proposed partial settlement agreement (Filing No. [272](#)) is set for hearing on **June 18, 2009, at 9:00 a.m.** in Courtroom No. 3, Roman L. Hruska U.S. Courthouse, 111 South 18th Plaza, Omaha, Nebraska.

DATED this 14<sup>th</sup> day of May, 2009.

BY THE COURT:

s/Joseph F. Bataillon

CHIEF DISTRICT JUDGE