IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

IN RE: MUNICIPAL MORTGAGE & EQUITY, LLC, SECURITIES AND DERIVATIVE LITIGATION	**MDL 08-MD-1961** **ALL CLASS ACTIONS**

DECLARATION OF CHARLES J. PIVEN IN SUPPORT OF FINAL APPROVAL OF CLASS ACTION SETTLEMENT, PLAN OF ALLOCATION, AND APPLICATION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES

CHARLES J. PIVEN declares under penalty of perjury of the United States as follows:

1. I am Court-appointed Liaison Counsel[1] for Plaintiffs William D. Felix and Paul B. Engel (collectively, "Plaintiffs") and the Dividend Reinvestment Plan ("DRP") Class in the above-captioned action (the "Action"). On August 27, 2008, the Court appointed the law firms of Brower Piven, A Professional Corporation ("Brower Piven") and Berger & Montague, P.C. ("Berger & Montague") as Co-Lead Counsel, with Brower Piven having principal responsibility for Class members asserting claims under the Securities Act of 1933 (the "Securities Act") and Berger & Montague having principal responsibility for Class members asserting claims under the Securities Exchange Act of 1934 ("Exchange Act"). *See* Dkt. No. 9 at 15. I have personal knowledge of the matters set forth herein based on my active participation in all aspects of the prosecution and Settlement of this Action. If called upon, I can testify to the matters set forth herein.

2. I submit this declaration in support of Plaintiffs' motion for entry of an order:

[1] Unless otherwise indicated, all capitalized terms have the same meanings as set forth in the Stipulation of Settlement, dated April 15, 2015 (the "Stipulation").

(a) finding that the forms and methods for providing notice to the Class (the "Notice"), issued pursuant to this Court's Order Preliminarily Approving Settlement and Providing for Notice, dated May 21, 2015, and Revised Order, dated May 22, 2015 (collectively, the "Preliminary Approval Order"), met the requirements of Fed. R. Civ. P. 23(c) and (e), and due process;

(b) granting final certification, for the purposes of effectuating the Settlement, of the Class consisting of all persons who purchased or otherwise acquired the publicly-traded common stock of Municipal Mortgage & Equity, LLC ("MuniMae" or Company") pursuant to MuniMae's DRP between May 3, 2004 and January 29, 2008, inclusive;

(c) granting final approval, pursuant to Fed. R. Civ. P. 23(e), of the Settlement on the terms set forth in the Stipulation between Plaintiffs and defendants MuniMae, Michael L. Falcone, Mark J. Joseph, William S. Harrison, Melanie M. Lundquist, Charles M. Pickney, and David Kay (collectively, "Defendants");

(d) granting approval of the Plan of Allocation of the proceeds of the Settlement, as set forth in the Notice, as fair, reasonable and adequate;

(e) granting Plaintiffs' Counsel an award of $82,904.88 from the Settlement Fund in attorneys' fees to compensate for their efforts in prosecuting the Action and obtaining the Settlement;

(f) awarding the additional $150,000 Fee Contribution agreed to be paid to Co-Lead Counsel by Defendants, which will not come out of the Settlement Fund;

(g) granting Plaintiffs' Counsel an award of $120,141.12 as reimbursement of out-of-pocket expenses relating to the prosecution of this Action; and

(h) granting payment of $31,602.86 to The Garden City Group, Inc. ("GCG") for their fees and expenses for providing Notice to the Class and administering the Settlement through July 24, 2015.

3. The Stipulation provides that, to resolve all claims of Plaintiffs and the Class alleged in the Action, Defendants will pay up to $826,820.00 in cash for a release of the Released Claims brought against Defendants.

4. For the reasons discussed below, I respectfully submit that the Notice provided for the Settlement was the best notice practicable under the circumstances and met the requirements of the Fed. R. Civ. P. 23(c) and (e), and due process; the Class meets all of the requirements for certification under Fed. R. Civ. P. 23(a) and (b)(3); that the Settlement is fair, reasonable, and adequate in accordance with the factors applied by courts in the Fourth Circuit and elsewhere in approving class actions settlements; the Plan of Allocation of the proceeds of the Settlement, which simulates the method that Plaintiffs were most likely to present to the trier of fact to prove damages to the Class, is fair and equitable; and the requested attorneys' fees, reimbursement of expenses, and incentive awards are fair, reasonable and fully supported by the record here.

PLAINTIFFS' PROSECUTION OF THE ACTION

Commencement of the Action and Appointment of Lead Plaintiffs

5. This action originally consisted of five class actions and five derivative actions[2] filed in this Court and the Southern District of New York. On January 30, 2008, the first

[2] The five derivative actions were styled as follows: *Johnston v. Joseph, et al.*, No. 08-cv-00670 (filed March 13, 2008 in D. Md.); *Staub v. Joseph, et. al.*, No. 08-cv-00802 (filed April 1, 2008 in D. Md.);

complaint was filed in the Southern District of New York, styled *Gelmis v. Cole, et al.*, No. 1:08-cv-980-RMB ("*Gelmis* Action"). Later that day, the first notice, pursuant to the Private Securities Litigation Reform Act of 1995 ("PSLRA"), 15 U.S.C §78u-4(a)(3)(A)(i), was published on *PrimeNewswire*, a widely-circulated national business-oriented wire service, advising members of the proposed class that a class action had been filed against Defendants in the Southern District of New York and of their right to move the Court to serve as lead plaintiff no later than 60 days from the notice (March 31, 2008). The next day, the first action in this Court was filed, styled *Manson v. Municipal Mortgage & Equity, LLC, et al.*, No. 08-269 (the "Manson Action"). Thereafter, several different actions were filed in both the Southern District of New York and in this Court alleging the same or similar claims.

6. Three competing applicants—the Kremser Group (consisting of David A. Kremser, Elk Meadows Investments, LLC, Jay Goozh, Richard Martin, Harrison Kornfield, and William D. Felix) represented by Brower Piven, the Yates Group (consisting of Robert Yates, Alan S. Barry, David Young, Carlo Hornsby, and Ed Friedlander) represented by Berger & Montague, and the Rawden Group (consisting of Joseph Rawden, Beth Rawden, Richard and Isabel Bordow, and Niel Nielson — moved, pursuant to 15 U.S.C. §78u-4(a), for appointment as lead plaintiff on March 31, 2008.[3] *See Manson* Action, Dkt. Nos. 10-13. Each competing applicant then filed response briefs on April 17, 2008 (*Manson* Action, Dkt Nos. 26-29).

7. On April 21, 2008, Defendants filed a motion to transfer the *Manson* Action to the

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The Mary L. Kieser Trust v. Berndt, et. al., No. 08-00805 (filed April 1, 2008 in D. Md.); *Harris v. Joseph, et. al.*, No. 08-cv-01258 (transferred to D. Md. on August 13, 2008).

Southern District of New York pursuant to 28 U.S.C. §1407 of the Judicial Panel on Multidistrict Litigation for Coordinated or Consolidated Pretrial Proceedings. *Manson* Action, Dkt. No. 32.

8. Then, on May 1, 2008, the Kremser Group, the Rawden Group, and the Yates Group filed reply briefs in connection with their applications for appointment as lead plaintiff. That same day, FAFN/Slater Group filed a motion to intervene, coupled with a motion for appointment as lead plaintiff. *See Manson* Action, Dkt No. 38. The FAFN/Slater Group refiled their submission on May 9, 2008. The Yates Group and the Kremser Group then filed opposition briefs to the FAFN/Slater Group's motion to intervene on May 19 and May 27, 2008 respectively. *See Manson* Action, Dkt Nos. 54, 55. The FAFN/Slater Group then filed reply briefs on June 3 and June 4. *See Manson* Action, Dkt Nos. 67, 70.

9. On August 13, 2008, the MDL Panel transferred the derivative and class action cases pending in the Southern District of New York to this Court for "coordinated or consolidated pretrial proceedings." *See* Dkt. No. 1.

10. On August 26, 2008, counsel in the five derivative actions submitted a Stipulation and Order (Dkt. No. 8) consolidating the derivative actions and proposing a leadership structure whereby Federman & Sherwood and Sarraf Gentile LLP would serve as Co-Lead Counsel for the consolidated derivative actions and Finkelstein Thompson LLP would serve as Liaison Counsel. That same day, the Court informed the parties that the nature and scope of the case did not require the derivative plaintiffs to be represented by two law firms, and on August 29, 2008, counsel in the derivative actions submitted another Stipulation and Order (Dkt. No. 16) that agreed that only

[3] In the Southern District of New York, two additional applicants moved for appointment as lead plaintiff—Arnold J. Ross and Tony Broy—but those motions were later withdrawn. *See Gelmis* Action, Dkt Nos. 33, 41.

Federman & Sherwood would serve as Lead Counsel for the consolidated derivative actions.

11. On August 27, 2008, the Court entered an order consolidating the action, appointing Robert Yates, Alan S. Barry, David Young, Carlo Hornsby, Ed Friedlander and William D. Felix ("Lead Plaintiffs") as Lead Plaintiffs, and approving the law firms of Brower Piven and Berger & Montague as Co-Lead Counsel, with Brower Piven having principal responsibility for Class members asserting claims under the Securities Act, and Berger & Montague having principal responsibility for Class members asserting claims under the Exchange Act. *See* Dkt. No. 9, at 15. The August 27, 2008 Order also held that the Court would coordinate management of the Class Actions with the Derivative suits. *Id*. at 3-4.

12. On September 11, 2008, the MMA Group and Kenneth Slater (of the FAFN/Slater Group) filed motions for reconsideration of the Court's August 27, 2008 Order (Dkt. Nos. 22, 23). On September 29, 2008, Lead Plaintiffs filed a brief in response to both motions for reconsideration, and the MMA Group filed an opposition to Slater's motion. *See* Dkt Nos. 25, 26. The MMA Group filed a reply brief on October 14, 2008 and Slater filed a reply on November 4, 2008.

13. On November 17, 2008, the Court denied the motions for reconsideration filed by the MMA Group and Slater. Dkt. No. 43.

Co-Lead Counsel Investigates, Researches, Drafts and Files the Complaint

14. Thereafter, Lead Plaintiffs, through Co-Lead Counsel, initiated an intensive and wide-ranging investigation into the facts and circumstances surrounding Defendants' alleged violations of §§11, 12(a)(2), 15 of the Securities Act; §§10(b) and 20(a) of the Exchange Act, and Securities and Exchange Commission ("SEC") Rule 10b-5.

15. In connection with the efforts associated with drafting a new complaint, Co-Lead Counsel, *inter alia*, (a) conducted a full investigation into the facts and circumstances surrounding the allegations against Defendants; (b) thoroughly analyzed and reviewed Defendants' public statements, including SEC filings, and stock trading during the Class Period; (c) thoroughly analyzed and reviewed transcripts of investor conference calls conducted by Defendants; (d) analyzed videotaped interviews given by Defendants; (e) reviewed reports of securities analysts who followed MuniMae; (f) analyzed the ratings given by credit rating agencies that rated MuniMae; (g) analyzed the accounting rules and standards applicable to the Action; and (h) collected and reviewed news coverage concerning MuniMae. Based upon this in-depth investigation and analysis, Co-Lead Counsel prepared the operative Lead Plaintiffs' Class Action Complaint, Dkt. No. 45 ("Complaint").

16. On December 5, 2008, Lead Plaintiffs filed the Complaint consisting of 194 pages and 386 paragraphs. The Complaint names as Defendants: MuniMae; Michael L. Falcone, the Company's Chief Executive Officer ("CEO"); Mark K. Joseph, the Company's CEO prior to Falcone and Chairman of the Company's Board of Directors during the Class Period; William S. Harrison, the Company's Executive Vice President and Chief Financial Officer ("CFO") during relevant times during the Class Period; Melanie M. Lundquist, MuniMae's CFO between December 15, 2005 and July 10, 2007; Charles M. Pinckney, the Company's Chief Operating Officer and CFO from July 10, 2007 to November 8, 2007; David Kay, MuniMae's CFO from November 8, 2007 to the end of the Class Period; MuniMae Board Members Charles C. Baum, Richard O. Berndt, Robert S. Hillman, Douglas A. McGregor, Eddie C. Brown, Fred N. Pratt, Jr., and Arthur S. Mehlman ("Securities Act Defendants"); and Merrill Lynch and RBC Capital (the

"Underwriter Defendants"), the underwriters for MuniMae's February 2, 2005 secondary public offering.

17. Throughout the course of this Action, Co-Lead Counsel continuously supplemented their investigation as additional information was acquired or as news events transpired.

The Allegations of the Complaint

18. The Complaint alleges that Defendants violated the federal securities laws by issuing materially false and misleading statements misrepresenting that MuniMae was in full compliance with accounting standards, and which failed to disclose the substantial cost of correcting the accounting error. In support of these claims, the Complaint alleges the following facts:

19. The low-income housing tax credit program, created by the Tax Reform Act of 1986, provided tax credits ("LIHTCs") to developers when they constructed low income rental housing. Developers often sold these tax credits to syndicators. MuniMae is a financial services company that arranges debt and equity financing for developers and owners of real estate and clean energy projects, as well as investment management and advisory services for institutional investors. It was one of the country's largest syndicators of low income housing tax credits. It formed investment funds ("Funds") and assembled groups of investors to invest in the funds. MuniMae acted as a general partner of the Funds, and received syndication and asset management fees for its services.

20. MuniMae's syndication of Funds generated high-yield, tax-exempt dividends. Defendants recognized that investors purchased MuniMae stock primarily for these dividends and

touted MuniMae's "long track record of steadily growing dividends," claiming it was a "highly attractive investment" for investors.

21. In 2003, in the wake of the Enron scandal, the Financial Accounting Standard Board changed the reporting rules for consolidated financial statements. To ensure that financial risks from "off-balance sheet" entities were identified, it adopted GAAP Financial Interpretation No. ("FIN") 46, and in December 2003, adopted a revision, FIN 46R. In contrast to the previous rule, which required an enterprise's financial statements to consolidate financial data of subsidiaries only where the enterprise had a majority voting interest, FIN 46 and 46R required a company to consolidate investment vehicles known as variable interest entities ("VIEs") onto its financial statement if it was the "primary beneficiary" of the risks and rewards in the assets of the VIE.

22. Lead Plaintiffs alleged claims arising under both the Securities Act and the Exchange Act.

Lead Plaintiffs' Securities Act Claims:

23. On February 2, 2005, through the auspices of a firm commitment underwriting agreement with the Underwriter Defendants, the Securities Act Defendants commenced the SPO of 2,575,000 shares of MuniMae common stock, which netted approximately $65 million in proceeds. The SPO Registration Statement was filed on January 3, 2005. Thereafter, an amendment was filed, and the SPO Registration Statement was initially declared effective on January 14, 2005. On February 1, 2005, the Securities Act Defendants filed a prospectus supplement that stated that the SPO Prospectus would be effective the following day, February 2, 2005, with a closing date of February 8, 2005. Plaintiff Dammeyer alleged that he purchased

shares of MuniMae common stock pursuant and/or traceable to MuniMae's February 2, 2005 SPO Prospectus. His transaction confirmation indicates a price of $26.32 per share on February 3, 2005, which was in the range of share prices stated in the SPO Prospectus. As the Complaint alleges, his purchase confirmation for those shares indicated Dammeyer received his shares on February 8, 2005, the date the SPO closed, the date MuniMae stated that the shares would first be available for distribution. Additionally, the confirmation indicated "PROS UNDER SEP COVER," meaning prospectus under separate cover, which is a traditional indicator on a purchase confirmation of shares purchased in a public offering.

24. In the SPO Prospectus, MuniMae claimed to be in compliance with FIN 46R. In fact, MuniMae had failed to consolidate over 230 VIEs for which it was the primary beneficiary. Also undisclosed in the Prospectus was that MuniMae lacked sufficient processes and procedures to consolidate those VIEs, and that the massive effort needed to restate the Company's financials to comply with Generally Accepted Accounting Principles ("GAAP") and SEC rules would entail exorbitant costs, devastate the Company's cash available for distribution ("CAD"), and jeopardize its high yield, tax-exempt dividends. Because MuniMae had not properly consolidated certain entities, it was continuing to recognize syndication fees and asset management fees from VIEs that should have been eliminated in consolidation – a violation of GAAP. The SPO Prospectus also failed to disclose that MuniMae lacked effective internal controls which would have ensured MuniMae's compliance with GAAP and SEC rules. (*Id*.)

Lead Plaintiffs' Exchange Act Claims:

25. On May 3, 2004, the first reporting period in which FIN 46R was in effect, MuniMae filed a Form 8-K with the SEC, announcing that is was in compliance with FIN 46R

and it had consolidated equity investments in funds for which it determined it was the primary beneficiary. Defendants also claimed that MuniMae's interests in other Funds did not need to be consolidated.

26. MuniMae thereafter represented it was in compliance with FIN 46R for 10 financial quarters until January 2007, when it finally – if obliquely – admitted it had erroneously failed to consolidate substantially all of its Funds. It took another year before defendants meaningfully disclosed that FIN 46R required it to consolidate approximately 200 VIEs involving analysis of thousands of financial statements over 10 reporting periods at an enormous cost – $54.1 million in 2007 alone– resulting in MuniMae's first cut in quarterly dividends in more than a decade. This acknowledgement caused MuniMae's stock to plummet.

27. Compliance with FIN 46R required MuniMae to review financial statements of more than 2,000 partnerships and 6,000 separate financial statements over 10 financial periods. This massive task was made more difficult because MuniMae had inadequate and ill-prepared staff and lacked the necessary systems and automated processes.

28. On March 10, 2006, MuniMae announced its first restatement of financials for 2002-2005, due to accounting errors unrelated to FIN 46R. Despite defendants' awareness of MuniMae's lack of compliance with FIN 46R, the announcement made no mention of the rule or the need to consolidate more than 200 VIEs. Nor did it disclose that MuniMae had inadequate systems to accomplish this hugely complex task, and, thus, had to build a process from scratch at great cost. On the contrary, the press release assured investors that the restatement "does not impact cash available for distribution (CAD) in any period."

29. On September 13, 2006, the Muni Defendants announced issuance of a second

restatement covering fiscal years 2003-2005. Again, there was no mention of FIN 46R compliance issues and the Muni Defendants continued to assure investors that the restatement would not impact CAD or the dividend.

30. On October 26, 2006, MuniMae announced it had fired PwC, claiming that "there were no disagreements with PwC on any matter of accounting principles or practices, financial statement disclosure or audit scope or procedure." The denial of any disagreement with PwC was false; there was a great deal of animosity and frustration" with PwC regarding FIN 46R compliance.

31. On January 31, 2007, MuniMae issued a press release, entitled, "MuniMae Announces 40th Consecutive Increase in Quarterly Distribution," emphasizing its increased dividend. Towards the end of the statement in a section captioned "Other Matters," MuniMae, for the first time, mentioned that "the Company has concluded, among other things, that it will be required to consolidate substantially all of the low income housing tax credit equity funds it has interests in." There were no further details about the consolidation process, with nothing to even suggest to investors that increasing quarterly dividends were in jeopardy because MuniMae did not have adequate systems in place for this massive task and that the costs involved would be substantial.

32. In August 2007, MuniMae held a teleconference in which the Muni Defendants claimed they were "devoting as many resources as possible" to completing their restatement efforts and "certainly expect to finish our efforts within the first two months of 2008." The Muni Defendants noted that there were "approximately 92 people currently working on the restatement," including 20 employees and 72 consultants. MuniMae, however, was "pleased to

announce" another increase in its quarterly dividend and reassured investors that "management plans to ask the Board to maintain the current dividend policy."

33. On November 2, 2007, in announcing its 43rd consecutive dividend increase, defendants noted that "due to the costs incurred" in connection with the restatement, "it is possible that the dividend payout ratio for the 2007 fiscal year may exceed 100% of the Company's net cash generated from operations for the fiscal year 2007."

34. Less than a week later, on November 8, MuniMae stated that management planned to recommend to its board that MuniMae maintain its policy of increasing dividends each quarter despite the possibility that "the dividend payout ratio for the full fiscal year 2007 may exceed 100% of [MuniMae's] net cash." MuniMae acknowledged it had over 100 full-time employees working on the restatement and that the "magnitude and the cost will be very significant," but still touted another increase in quarterly dividends.

35. On January 28, 2008, MuniMae issued a press release announcing it was cutting its quarterly dividend by 37% in part "due to the costs of [MuniMae's] ongoing restatement" and that it would be delisted from the New York Stock Exchange because of its inability to complete its restatement by the NYSE-imposed March 3, 2008 deadline. On this news, MuniMae's share price dropped approximately 47% on unusually heavy trading.

36. The next day, MuniMae filed a Form 8-K and conducted a conference call, which disclosed long-concealed details, including that: (i) the reduction in the dividend distribution was due to the ongoing restatement costs; (ii) the restatement involved analyzing over 200 VIEs, which would require analysis of more than 2,000 partnerships and 6,000 separate financial statements; (iii) MuniMae had no process to do this and had to "basically build a process and

implement it," a process that required "highly manual intensive rework"; and (iv) the restatement required analyzing 10 financial periods over three years. In response to these disclosures, its stock price plummeted. MuniMae had not completed the restatement by the time of the filing of the Complaint in November 2008, more than four years after FIN 46R went into effect and more than two years after the September 2006 announcement of the restatement.

The Motions to Dismiss

37. Defendants filed a motion to dismiss the Complaint on March 12, 2009. *See* Dkt. No. 72. The motion to dismiss was accompanied by a fifty-nine-page memorandum in support and by a declaration attaching thirty-one exhibits. *See* Dkt. Nos. 73, 74. The Underwriter Defendants separately filed a motion to dismiss with memorandum that same day. Dkt. No. 70. On March 31, 2009, Defendant Lundquist also filed a motion dismiss with accompanying memorandum. *See* Dkt. Nos. 78, 79. On May 12, 2009, after thoroughly reviewing and analyzing the motions to dismiss and their accompanying documents, Lead Plaintiffs filed a seventy-eight page memorandum in opposition to Defendants' motion to dismiss pertaining to the claims arising under the Exchange Act, and a forty-two page memorandum in opposition to Defendants' motion to dismiss pertaining to claims arising under the Securities Act. *See* Dkt. Nos. 84, 86. On June 18, 2009, Defendants and Underwriter Defendants separately filed reply briefs (Dkt Nos. 97, 98) and on June 22, 2009, Defendant Lundquist filed a reply brief (Dkt. No. 96).

38. On June 3, 2010, MuniMae and the Individual Defendants filed a notice of supplemental authority. Dkt. No. 101. The next day, Lead Plaintiffs filed a response (Dkt. No. 102) and the Underwriters also filed a notice of supplemental authority (Dkt. No. 103). On June 16, 2010, Lead Plaintiffs filed a response to the Underwriter Defendants' notice of supplemental

authority. Dkt. No. 109. On June 18, 2010, Defendants and Underwriter Defendants separately filed reply briefs. Dkt Nos. 110, 111.

39. On June 23, 2010, the Court held a hearing on the various motions to dismiss, and on June 26, 2012, the Court entered an Order granting the Underwriter Defendants' motion to dismiss, and granting in-part and denying in-part the motions to dismiss submitted by MuniMae, and the Individual Defendants. *See* Dkt. No. 123.

40. Specifically, the Court dismissed Count One of the Complaint alleging violations of §10(b) of the Exchange Act and Rule 10b-5 for failure to plead facts giving rise to a strong inference of scienter, though the Court acknowledged that "[t]here is no doubt that these allegations are somewhat supportive of an inference that MuniMae and some of the Individual Defendants acted with fraudulent intent." The Court dismissed Count Two, holding that because the Exchange Act Plaintiffs failed to adequately plead a viable §10(b) violation, they failed to plead a predicate offense for control person liability under §20(a) of the Exchange Act. With respect to the Securities Act claims, despite finding actionable material misrepresentations and omissions, holding the §11 claims in connection with the SPO were pled with particularity, were not barred by the Securities Act's one-year statute of limitations, and should not be dismissed for lack of standing, the Court dismissed Count Six, holding that the §11 claims relating to the SPO were time-barred under the three-year statute of repose of §13 of the Securities Act. The Court dismissed Count Seven, holding that because the Complaint did not adequately plead that plaintiff Dammeyer purchased his shares directly in the SPO, he lacked standing under §12(a)(2) of the Securities Act. The Court dismissed all claims against Underwriter Defendants relating to the SPO in Count Seven finding that plaintiff Dammeyer failed to adequately allege he purchased, or

received solicitation, directly from Underwriter Defendants. In turn, the Court dismissed Count Eight under §15 of the Securities Act in connection with the SPO because plaintiff Dammeyer failed to allege sustainable claims under §§11 and 12(a)(2) of the Securities Act.

41. The Court denied MuniMae and the Individual Defendants' motions to dismiss the DRP Plaintiffs' claims under §§11, 12(a)(2) and 15 of the Securities Act in connection with purchases of MuniMae stock pursuant to MuniMae's DRP, holding that those claims were timely and adequately pled.

42. Following issuance of the Order, the parties agreed and jointly requested the Court issue a Fed. R. Civ. P. 54(b) judgment to permit immediate appeal of the Court's dismissals of the claims under §§10(b) and 20(a) of the Exchange Act and §§11 and 12(a)(2) and 15 of the Securities Act relating to the SPO.

43. Meanwhile, on September 21, 2012, Lead Plaintiffs filed a motion for limited discovery to the Underwriter Defendants seeking names and contact information of direct purchasers of MuniMae common stock. Dkt. No. 134. The Underwriters filed an opposition brief on September 28, 2012 (Dkt. No. 134), and Lead Plaintiffs filed a reply on October 9, 2012 (Dkt. No. 139). The Court denied the motion on November 8, 2012. Dkt. No. 140.

44. Shortly thereafter, on November 14, 2012, the Court issued a Rule 54(b) Determination and a separate Judgment Pursuant to Rule 54(b), ruling that a "final judgment can be entered resolving the claims presented in Counts One, Two, Six, Seven, and Eight of the [] Complaint." Dkt. Nos. 146, 147. The Court retained jurisdiction over the claims under §§11 and 12(a)(2) and 15 of the Securities Act in connection with the DRP, but stayed proceeding with

those claims pending the outcome of the appeal of the dismissal of the other claims in the Complaint.

Appeals

45. On November 30, 2012, Lead Plaintiffs timely appealed from the Order and Judgment to the United States Court of Appeals for the Fourth Circuit ("Fourth Circuit"), and subsequently filed an Amended Notice of Appeal on December 4, 2012. Dkt Nos. 150, 151. On April 29, 2013, Lead Plaintiffs filed their opening brief and a five-volume joint appendix. Lead Plaintiffs raised the following questions on appeal:

- Whether the Court erred in dismissing plaintiff Dammeyer's claims under §11 of the Securities Act as time-barred by the statute of repose of §13 of the Securities Act by concluding that "bona fide offered to the public" as used in §13 means the date a registration statement is declared effective by the SEC regardless of whether the subject securities are actually offered to the public on that date.
- Whether the Court erred in holding plaintiff Dammeyer lacked standing under §12(a)(2) of the Securities Act by not considering his purchase confirmation slip, which was incorporated into the Complaint by reference, and demonstrated he was a direct purchaser in MuniMae's secondary offering.
- Whether the Court erred in dismissing plaintiff Dammeyer's claims under §15 of the Securities Act by erroneously dismissing his underlying §§11 and 12(a)(2) claims.
- Whether the Court erred in misconstruing plaintiffs Yates, Barry, Young, Hornsby, Friedlander, Felix, Kremser, Dammeyer, and Engel's theory of scienter under §10(b) of the Exchange Act, by focusing on whether Defendants knew how to apply the subject

accounting rule, FIN 46R, when the Complaint focuses on Defendants' knowing or reckless failure to apply the rule and their concealment of the adverse financial consequences of compliance.

- Whether the Court erred in finding as to the Complaint's pleading of scienter under §10(b) of the Exchange Act that Defendants' competing, nonculpable inference was more compelling than the inference of scienter.
- Whether the Court erred in dismissing the Complaint's claims under §20(a) of the Exchange Act by erroneously dismissing the underlying §10(b) cliam.

See App. Dkt. No. 48.

46. Defendants filed separate response briefs on June 28, 2013 and Plaintiffs filed an omnibus reply brief on August 13, 2013.

47. Oral argument on the issues was heard by a Panel of the Fourth Circuit on October 30, 2013, after which the Fourth Circuit issued an opinion on March 7, 2014 affirming the dismissal order of the Court.

48. After Plaintiffs thoroughly assessed the law of various Circuits and the legislative history of the Securities Act, plaintiff Dammeyer petitioned the Supreme Court for a writ of certiorari on June 5, 2014 relating to the §§11, 12(a)(2) and 15 issues under the Securities Act raised to the Fourth Circuit. The petition was denied on October 6, 2014.

Settlement Negotiations

49. Following the denial of the petition, DRP Counsel began negotiating with Defendants the manner in which discovery requests and responses would be approached. While discovery negotiations were underway, the parties engaged in extensive, arm's-length settlement

negotiations, resulting in this settlement on behalf of Plaintiffs, whose DRP claims were the only ones sustained by the District Court. After extensive negotiations between the Parties, exchanges of information regarding share issuances pursuant to the DRP, and balancing the risks and rewards of the Parties' respective positions in continued litigation, the Parties reached an agreement in principle to settle the litigation in its entirety.

50. The settlement negotiations that lead to this settlement took place at arm's-length, were not in any sense collusive, and were procedurally fair.

Preliminary Approval of Settlement and Notice to the Class

51. On April 20, 2015, Plaintiffs filed their Stipulation for Entry of Order Preliminarily Approving the Proposed Class Settlement. *See* Dkt. No. 181 (the "Preliminary Approval Stipulation"). The Preliminary Approval Stipulation was accompanied by the Stipulation of Settlement, as well as the proposed forms of the Summary Notice, Notice, Proof of Claim and Release, [Proposed] Final Judgment and Order of Dismissal With Prejudice, and a draft Preliminarily Approval Order providing for: certification of the Class for settlement purposes, preliminarily approving Settlement, approving forms and methods for dissemination of notice to the Class and setting a date for hearing on final approval of the Settlement, the Plan of Allocation and Co-Lead Counsel's application for an award of attorneys' fees and reimbursement of expenses. Dkt. No. 181-2. The Preliminary Approval Order also sought to have GCG approved as the claims administrator. Dkt. No. 181-2.

52. After issuing an Order re scheduling for the fairness hearing, on May 21, 2015, the Court entered the Preliminary Approval Order, granting all relief sought. Dkt. No. 183. The

next day, the Court issued a Revised Order preliminarily approving the settlement and providing for notice.

The Notice Program

53. On or about June 5, 2015, GCG received data from Co-Lead Counsel containing the names and last known addresses as well as the number of shares of common stock of MuniMae purchased in the DRP during the Class Period for 1,313 shareholders of record of MuniMae. *See* Affidavit of Jose C. Fraga Regarding Mailing of Notice of Proposed Settlement of Class Action and Claim Form, Publication, and Requests for Exclusion Received to Date ("Fraga Aff."), dated July 24, 2015, at ¶3. Upon receipt of the data, the data was loaded into the database created by GCG and GCG performed an initial analysis of the data and removed all duplicate records and incomplete records. As a result, GCG eliminated 971 records. *Id.* at ¶4.

54. Thereafter, on or about June 19, 2015, GCG mailed, by first-class U.S. mail, copies of the Notice and Proof of Claim ("Claim Packets") to each of the 342 shareholders identified from these records. *Id.* at ¶5. In addition, GCG mailed a cover letter that included each shareholder's purchases in the DRP. *Id.* Additionally, on June 19, 2015, in accordance with its normal practice of providing notice to beneficial owners, GCG mailed Claim Packets to the 1,970 nominee names and addresses in the Nominee Database as of that date (the "Broker Mailing," and together with the Class Mailing, the "Initial Mailing"). *Id.* at ¶6.

55. Also pursuant to the Preliminary Approval Order, GCG disseminated the Summary Notice in the form of a press release over *BusinessWire* on June 29, 2015, July 1, 2015 and July 6, 2015. *See* Fraga Aff. at ¶9 & Ex. C.

56. Further, from 20, 2015 to July 24, 2015, GCG has mailed an additional 7,456 names and addresses of potential Class members. GCG also sent nominee holders 422 packets to be forwarded to their clients. *Id.* at ¶7.

57. In the aggregate, as of July 24, 2015, GCG mailed 10,273 Claim Packets to potential members of the Class by first-class mail. Fraga Aff. at ¶8. This includes 83 Claim Packets that were remailed due to updated addresses provide by the U.S. Postal Service.

58. Further, all relevant documents related to the Settlement were posted in full on the website established for the Settlement (www.gardencitygroup.com/cases-info/MME/). GCG also maintained a toll-free number to accommodate inquiries from Class Members. ¶¶10-11

Requests For Exclusion

59. The Notice informed members of the Class that written requests for exclusion from the Class must be mailed to In re MuniMae Securities Litigation, c/o GCG, P.O. Box 9349, Dublin, OH 43017-5668, by first-class mail, postmarked no later than August 10, 2015. GCG has monitored all mail sent to this P.O. Box. As of July 24, 2015, GCG has received no requests for exclusion, *See* Fraga Aff. at ¶12.

60. This indicates the Settlement meets with the approval of members of the Class and further supports approval of the Settlement and Plan of Allocation.

THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE

61. Plaintiffs' Counsel respectfully submits that the Settlement represents, by any measure, an excellent result for the Class. The Settlement will provide the members of the Class with a concrete, immediate financial benefit without the very real risk of a no-recovery if the Action was to continue.

62. The pertinent criteria for evaluating the fairness, reasonableness, and adequacy of a proposed class action settlement include the following factors: the relative strengths of plaintiff's case, the existence of any difficulties of proof or strong defenses the plaintiffs are likely to encounter if the case goes to trial, the anticipated duration and expense of additional litigation, the solvency of the defendants, the likelihood of recovery on a litigated judgment,[4] the degree of opposition to the settlement, the posture of the case at the time the settlement was proposed, the extent of discovery that had been conducted, the circumstances surrounding the negotiations, and the experience of counsel in the area of securities class action litigation. The circumstances in this Action compel the conclusion that the Settlement meets – and indeed far exceeds – all of these criteria.

63. The relative strength of Plaintiffs' case and the existence of any difficulties of proof or strong defenses favor the Settlement. As a result of Plaintiffs' extensive investigation, Plaintiffs and their counsel were able to assess the risks attendant with this case, including, but not limited to, the likelihood of attaining class certification, the probability of obtaining strong evidence in support of the claims and defeating Defendants' likely summary judgment motions, the substantial expense and delay inherent in continued litigation with no guarantee of a successful result for the Class through trial and the inevitable subsequent appeal(s), the difficulties in proving loss causation and damages, and the ever changing legal environment for plaintiffs in securities actions. Plaintiffs and their Counsel also considered the monetary benefit provided by the Settlement in light of those, and many other, risks and balanced that almost 100%

[4] Plaintiffs do not make any representations concerning Defendants' ability to withstand a larger judgment, but this factor is of little consequence here, where, the Settlement provides approximately 100% compensation award for Class damages.

recover here against those risks. An analysis of just a few of those risks against the factual context of this Action demonstrates that the Settlement merits approval.

64. The Complaint alleged that at the time Plaintiffs Felix and Engel reinvested their dividend distributions pursuant to the Company's DRP Registration Statement and Prospectus, the amendments thereto, and the documents incorporated therein and thereafter by reference (collectively, the "DRP Registration Statement"), the Company's statements therein were materially false and/or misleading because they failed to disclose that MuniMae did not consolidate interest in VIEs as required by FIN46R, that the Company had improperly recognized syndication fees, asset management and other fees from the entities that should have been consolidated, and that the Company would be forced to cut its dividend due to the restatements. Although, the Court found that the statements were materially false and/or misleading at the motion to dismiss stage, a significant risk existed that the trier of fact could find that some or all of the alleged misstatements were not materially false and/or misleading when made. If so, Plaintiffs would not have succeeded on the merits as to those alleged statements which could have reduced the size of the Class (and, correspondingly, the recovery) or resulted in no recovery at all.

65. Further, although Plaintiffs, on the motion to dismiss, were not obligated to plead or prove causation under §11 and §12(a)(2), and the burden is on Defendants to prove, on the merits, "negative causation" as an affirmative defense, rebutting Defendants' anticipated negative causation defense posed a significant risk to Plaintiffs' claims. *See* 15 U.S.C. §77k(e) ("That if the defendant proves that any portion or all of such damages represents other than the depreciation in value of such security resulting from such part of the registration statement, with respect to which his liability is asserted, not being true or omitting to state a material fact required

to be stated therein or necessary to make the statements therein not misleading, such portion of or all such damages shall not be recoverable."); 15 U.S.C. §77l(b) ("Loss causation. In an action described in subsection (a)(2), if the person who offered or sold such security proves that any portion or all of the amount recoverable under subsection (a)(2) represents other than the depreciation in value of the subject security resulting from such part of the prospectus or oral communication, with respect to which the liability of that person is asserted, not being true or omitting to state a material fact required to be stated therein or necessary to make the statement not misleading, then such portion or amount, as the case may be, shall not be recoverable.").

66. Although Plaintiffs would contend that Defendants shouldered the burden of demonstrating that the price declines during the relevant period were the result of events or circumstances other than the revelation of information regarding the alleged misstatements or omissions on January 28 and 29, 2008, the trier of fact could have found otherwise. Indeed, Defendants spent a great portion of their motion to dismiss of the Exchange Act claims arguing that Plaintiffs did not adequately allege loss causation (similar arguments would have been put forth here). Thus, not only would Plaintiffs have had to demonstrate, by a preponderance of the evidence to the trier of fact, that Defendants made misrepresentations and omissions of material facts issued in connection with its DRP Registration Statement, Plaintiffs would have also credibly had to rebut Defendants' "negative causation" defense.

67. Further, §11 states that "[i]n case any part of the registration statement . . . contained an untrue statement . . . any person acquiring such security . . . may . . . sue." 15 U.S.C. § 77k(a). Section 12(a)(2) provides that any person who "offers or sells" a security by means of a prospectus containing a materially false statement or material omission shall be liable to any

"person purchasing such security from him." At the motion to dismiss stage, before discovery takes place, plaintiffs are not required to explain how their shares were "traceable to" the registration statement. However, at later stages of litigation, Plaintiffs would have faced significant hurdles regarding traceability. Based on the Plaintiffs' Counsel's investigation, Defendants possess colorable arguments that the shares distributed under the DRP were not, in fact, traceable to the DRP Registration Statement, but shares purchased by MuniMae on the open market and then redistributed as dividends to DRP participants. Thus, Plaintiffs could have faced a significant risk to the standing of Class members to sue under §11. *See, e.g., In re Global Crossing, Ltd. Sec. Litig.*, 313 F. Supp. 2d 189, 206 (S.D.N.Y. 2003) ("While, as noted above, the law is clear that purchasers of securities issued pursuant to a misleading registration statement can assert a section 11 claim whether they purchase their shares directly in the public offering or in the general securities markets, it is equally clear that they may only sue so long as the security was indeed issued under that registration statement and not another.") (citations omitted); *Krim v. PCOrder.com*, 402 F.3d 489, 495-96 (5th Cir. 2005) ("Aftermarket purchasers do not inevitably lack standing under Section 11, so long as they can demonstrate their ability to "trace" their shares to the faulty registration."); *In re Wells Fargo Mortgage-Backed Certificates Litig.*, 712 F. Supp. 2d 958, 966 (N.D. Cal. 2010).

68. Additionally, although Plaintiffs here were not obligated to plead or prove reliance under §11 or §12(a)(2), and the burden was on Defendants to prove, on the merits, "negative reliance" as an affirmative defense, rebutting Defendants' inevitable negative reliance defense posed a risk to class certification. At the motion to dismiss stage, in the brief attacking the Exchange Act claims, Defendants argued that the market knew the truth of the matters that

Plaintiffs allege Defendants misrepresented or concealed. They would have made similar arguments at the class certification stage here to challenge certification of the Securities Act claims, and may have succeeded. In a recent case, the Court in *Steginsky v. Xcelera, Inc*., No. 3:12-188, 2015 U.S. Dist. LEXIS 28733 (D. Conn. Mar. 10, 2015), denied class certification because of the presence of the defense of negative reliance by the class representative that subjected "her to unique defenses that will unacceptably detract from the focus of the litigation to the detriment of absent class members," and made her atypical. *Id.*, at *18-*19 (citation omitted). Moreover, the Court could have found the negative reliance defense under the Securities Act which Defendants could potentially attempt to assert against each member of the Class would have made the individual issue of reliance predominate and rendered the action unmanageable under Fed. R. Civ. P. 23(b)(3). That would clearly have been the Death Knell of the case.

69. While Plaintiffs remain confident that they would have succeeded on the Class's claims, as in any lawsuit, predicting ultimate victory on the merits is, at best, speculative, and the risk of losing at trial or on appellate review was a relevant consideration that weighed in favor of the immediate benefits of settlement. The Settlement here greatly outweighs such risk, as the recovery for the Class's claims approaches 100% of damages. Thus, even assuming a complete success on all issues of liability and damages against the Defendants at trial and through the appellate process for the Class, the end result could very well be a smaller recovery for the Class after costs and expenses are taken into account.

70. In balancing the foregoing risks against the amount offered in Settlement, it becomes clear the scales drop entirely on the side of the Settlement consisting of an aggregate

cash benefit of $826.820.00, allocated as $676,820 as the Class common fund recovery and an additional $150,000 as a contribution towards Plaintiffs' Counsel's attorneys' fees.

71. Damages to the DRP Class members is based on a statutory formula. For §11, that formula provides:

> Measure of damages; undertaking for payment of costs. The suit authorized under subsection (a) may be to recover such damages as shall represent the difference between the amount paid for the security (not exceeding the price at which the security was offered to the public) and (1) the value thereof as of the time such suit was brought, or (2) the price at which such security shall have been disposed of in the market before suit, or (3) the price at which such security shall have been disposed of after suit but before judgment if such damages shall be less than the damages representing the difference between the amount paid for the security (not exceeding the price at which the security was offered to the public) and the value thereof as of the time such suit was brought . . .

15 U.S.C. §77k(e).

For §12(a)(2), that formula provides:

> [A person may] recover the consideration paid for such security with interest thereon, less the amount of any income received thereon, upon the tender of such security, or for damages if he no longer owns the security.

15 U.S.C. §77l(a)(2).

72. Based on that formula, damages to DRP Class members recoverable at trial under §§11 and 12(a)(2), respectively, are as follows:

§11		Damages = avg. purchase price minus $7.09		
DATE	**PRICE**	**SHARES**	**PER SHARE DAMAGE**	**DAMAGES**
5/13/2005	$24.32	2,997	$17.22	$51,608.34
5/13/2005	$24.30	3,510	$17.22	$60,442.20
8/12/2005	$26.39	6,313	$19.30	$121,840.90
11/11/2005	$24.73	6,838	$17.64	$120,622.32
2/10/2006	$26.80	4,626	$19.74	$91,317.24
2/10/2006	$26.85	2,395	$19.74	$47,277.30
		TOTAL		**TOTAL**
		26,679		**$493,108.30**
§12		Damages = avg. purchase price		
DATE	**PRICE**	**SHARES**	**PER SHARE DAMAGE**	**DAMAGES**
5/13/2005	$24.32	2,997	$24.31	$72,857.07
5/13/2005	$24.30	3,510	$24.31	$85,328.10
8/12/2005	$26.39	6,313	$26.39	$166,581.13
11/11/2005	$24.73	6,838	$24.73	$169,117.42
2/10/2006	$26.80	4,626	$26.83	$124,115.58
2/10/2006	$26.85	2,395	$26.83	$64,257.85
				TOTAL
				$682,257.15

73. However, each of the two alternate Securities Act damages formulas, as indicated above, has different requirements and a double recovery is not permitted. Rather, Class members would need to qualify for payment under §11 of the Securities Act by holding the shares on the date the suit was brought (assuming that price was lower than the price at which the shares were sold). Here that price was $7.09. Even more difficult, for Class members to recover more than they could recover under §11, under §12(a)(2), they must continue through the end of the case to still hold the shares received in the DRP distributions and tender those shares back to MuniMae to

receive the amount paid for them. Thus, in the course of the negotiations, Plaintiffs' Counsel estimated that, at most, approximately 25% of the Class members were still eligible to recover recessionary damages under §12(a)(2). The chart below shows the amount that Plaintiffs' Counsel estimated, assuming a 100% claims rate, would be necessary to pay Class members under §12(a)(2):

§12		Damages = avg. purchase price			
DATE	**PRICE**	**SHARES**	**PER SHARE DAMAGE**	**DAMAGES**	**CLAIM ESTIMATE (25%)**
5/13/2005	$24.32	2,997	$24.31	$72,857.07	$18,214.27
5/13/2005	$24.30	3,510	$24.31	$85,328.10	$21,332.03
8/12/2005	$26.39	6,313	$26.39	$166,581.13	$41,645.28
11/11/2005	$24.73	6,838	$24.73	$169,117.42	$42,279.35
2/10/2006	$26.80	4,626	$26.83	$124,115.58	$31,028.90
2/10/2006	$26.85	2,395	$26.83	$64,257.85	$16,064.46
				TOTAL	**TOTAL**
				$682,257.15	**$170,564.29**

74. As the chart above demonstrates, the Class common fund approximates the maximum recovery possible if all eligible Class members make claims, continue to hold the shares received from the DRP, and are willing to tender those shares to MuniMae. Importantly, in any federal securities action, following the entry of judgment against defendants on a per share basis, a claims process must be conducted to identify class members and for those class members to prove the amount of their claim. Defendants do not pay on the judgment until that process is complete and then are only required to pay on the amount of claims that are actually submitted and proven. In the course of the negotiations of the Settlement, Plaintiffs' Counsel recognized that generally in securities class actions, all those who can make claims do not make claims. This

"take rate" varies from case to case depending on the notoriety of the case, the age of the case and the demographics of the class. Typically, the take rate is approximately 30% of individuals and 70% of institutions that can make a claim do so. In this case, that rate may be even smaller. First, this case was not an Enron-type well-publicized national scandal. Second, the transactions at issue occurred almost 10 years ago. Third, institutional investors do not typically participate in dividend reinvestment programs and, thus, the Class will be predominantly individual investors. Fourth, the likelihood that a large number of Class members retained their shares received in the DRP from issuance to date is very small.

75. Based on the factors discussed above, Plaintiffs' Counsel anticipates that only between 30-40% of Class members who can make a claim will make a claim and that of those claiming Class members less than 20% of them will be eligible for and seek a recovery under the §12(a)(2) formula. Nevertheless, the Settlement essentially provides for a recovery based on every Class member filing a claim, is eligible to claim §12(a)(2) damages, and seeks to receive payment under that formula. In effect, the Settlement Fund reflects a 100% recovery of the best possible result the Class could have obtained if the case was tried to judgment and the judgment survived years of appellate review without the inherent risk in the trial and appellate phases of a complex securities case; every Class member was still eligible to recover the highest recoverable amount possible under the strict §12(a)(2) formula; and every Class members made a claim.

76. Indeed, based on Plaintiffs' Counsel's calculations, it is likely that all claiming Class members will receive 100% of their best possible recovery at trial based on their eligibility under §11 or 12(a)(2) as the case may be even after the $676,820 Settlement Fund is reduced by Plaintiffs' proposed application for 30% of that amount in attorneys' fees and reimbursement of

litigation expenses. That is, as demonstrated in the accompanying memorandum in support of the settlement, an unprecedented recovery in a securities class action.

77. The length and complexity of continued litigation also militates in favor of the Settlement. This is a complex securities fraud litigation that has now been actively litigated for more than seven years. The litigation, however, is far from over. Substantial numbers of depositions would have been taken, expert reports would have been prepared, and class certification and summary judgment motions would have been filed and litigated before the case was ready for trial.

78. Moreover, if the Settlement is not approved, it will be many months (if not years) before the case would be tried before a jury. Then, regardless of who succeeds on the merits, appellate proceedings would almost certainly follow. Thus, it would be years, even assuming Plaintiffs' complete victory in the Action, before a final judgment would be entered against Defendants.

79. Furthermore, proceeding forward in a litigation posture would necessitate the expenditure of substantial judicial economic resources without any guarantee of a better resolution for the Class to obtain no possible better recovery and risk a smaller recovery or none at all.

80. While even a large number of objections to a securities class action settlement is not dispositive of its fairness or reasonableness, the lack of objections and opt-outs to the Settlement strongly support the fairness of the Settlement. To date no objections or requests for exclusion from the Class have been received notwithstanding that the Notice was initially mailed to Class members on June 19, 2015. Plaintiffs' counsel will report to the Court again on this issue

after expiration of the deadline for Class members to object or opt-out on August 10, 2015.

81. The opinion of competent counsel also favors the Settlement. Plaintiffs' Counsel are nationally recognized for their experience and expertise in successfully representing investors in complex securities class action litigation. *See* Exhibits A to Exhibits 2 and 5; Exhibits C to Exhibits 3 and 4 (firm resumes of Plaintiffs' Counsel). Plaintiffs' Counsel strongly believe the Settlement is in the best interests of the Class.

82. Furthermore, the circumstances surrounding the negotiations favors the Settlement. The Settlement was reached only after hard-fought litigation, and adversarial negotiations between the parties. Further, throughout the course of this Action, all parties were represented by counsel with extensive experience in securities class action litigation. As discussed above, Plaintiffs' Counsel who negotiated this Settlement are well-known and respected nationally for representing plaintiffs in securities class actions. Further, Defendants were represented by the largest and most highly skilled international law firms in the world, including Gibson, Dunn & Crutcher LLP, Clifford Chance LLP and Goodwin Procter LLP, that spared no effort, resources or expense in their vigorous advocacy for Defendants' positions. In sum, there can be no question that the Settlement was the result of vigorous arm's-length negotiations between qualified counsel zealously representing their respective clients' interests.

83. The posture of the case and the amount of discovery undertaken at the time also counsels in favor of approval of the Settlement. This Settlement was reached after the Court declined to dismiss the surviving claims upon Defendants' motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6) and the completion of a very extensive investigation of the facts, including the review of public filings, news articles, analyst reports and extensive damages analyses.

84. Plaintiffs' Counsel believe they were, therefore, well prepared to intelligently assess Plaintiffs' claims and negotiate with Defendants' counsel on an informed basis and to evaluate the strengths and weaknesses of the claims of the Class vis-à-vis an appropriate amount to accept in a settlement of those claims. Plaintiffs' Counsel does not believe that further discovery or prolonged litigation was likely to result in a higher pre-trial settlement or post-trial verdict.

85. Finally, the approval of the Settlement is clearly in the public interest. Complex class actions of this nature impose significant burdens on judicial resources, which can be reduced through voluntary settlements.

THE PLAN OF ALLOCATION IS FAIR AND REASONABLE

86. Plaintiffs also seek approval of the Plan of Allocation for distributing the Settlement proceeds.

87. Co-Lead Counsel worked extensively to prepare a plan to allocate the Net Settlement Fund (*i.e.*, the Gross Settlement Fund less all fees and expenses) to Authorized Claimants (*i.e.*, eligible claiming members of the Class) that would reflect, as near as possible, the per share damages that claiming members of the Class would recover after a successful trial in a post-trial claims administration process.

88. The Plan of Allocation provides that the Net Settlement Fund will be distributed among Authorized Claimants as follows:

> 1. Recognized losses are available for publicly traded shares of MuniMae common stock pursuant to MuniMae's DRP between May 3, 2004 and January 29, 2008.

2. If claims are received for all common stock in MuniMae pursuant to MuniMae's DRP, the average per-share benefit after deduction of court-awarded fees and expenses would be $25.37.

3. The total Settlement Fund of $676,820.00, less attorneys' fees and reimbursement of out-of-pocket litigations expenses, the costs of notice and administration, and taxes due, shall be distributed to Class Members who submit Recognized Claims.

4. Each eligible claimant's "Recognized Claim" will be calculated depending on whether the claimant chooses to recover under Section 11 Claims (*see* POOL 1) or Section 12(a)(2) Claims (*see* POOL 2), and meets the requirements for a recovery under Section 12(a)(2). Any claimant who cannot meet the requirements for a Section 12(a)(2) Claims recovery will be assigned to the Section 11 Claims (POOL 1). Claimants who acquired MuniMae stock pursuant to the MuniMae DRP on the dates indicated below, and have retained that stock, may elect between POOL 1 **or** POOL 2 for determining their Recognized Loss in connection with that stock. Recoveries for those eligible to participate in POOL 2 will recover a larger amount, but in order to participate in POOL 2, Claimants must agree to tender their MuniMae stock acquired pursuant to the MuniMae DRP back to the Company. If a Claimant fails to make any election, or elects to participate in POOL 2 but fails to tender their MuniMae stock, their Recognized Loss will determined as a POOL 1 claim.

POOL 1 - For Class Members Who Have Sold Their DRP Shares

If you acquired MuniMae stock pursuant to the DRP and have already sold that stock, or if you wish to retain that stock, your recognized loss will be calculated as follows:

(i) For each share acquired pursuant to the dividend reinvestment on May 13, 2005, the recognized loss per share is the *lesser* of:

(a) $17.22; or

(b) if the stock has already been sold, the difference between $24.31 and the price received.

(ii) For each share acquired pursuant to the dividend reinvestment on August 12, 2005, the recognized loss per share is the *lesser* of:

(a) $19.30; or

(b) if the stock has already been sold, the difference between $26.39 and the price received.

(iii) For each share acquired pursuant to the dividend reinvestment on November 11, 2005, the recognized loss per share is the *lesser* of:

(a) $17.64; or
(b) if the stock has already been sold, the difference between $24.73 and the price received.

(iv) For each share acquired pursuant to the dividend reinvestment on February 10, 2006, the recognized loss per share is the *lesser* of:
(a) $19.74; or
(b) if the stock has already been sold, the difference between $26.83 and the price received.

POOL 2 – For Those Class Members Who Have Retained Their DRP Shares

If you acquired MuniMae stock pursuant to the MuniMae DRP, have retained that stock, and now wish to tender that stock back to the Company, your recognized loss will be calculated as follows:

(i) For each share acquired pursuant to the MuniMae DRP on May 13, 2005, the recognized loss per share is $24.31 less any dividends received.

(ii) For each share acquired for $26.39 pursuant to the MuniMae DRP on August 12, 2005, the recognized loss per share is $26.39 less any dividends received.
(iii) For each share acquired for $24.73 pursuant to the MuniMae DRP on November 11, 2005, the recognized loss per share is $24.73 less any dividends received.

(iv) For each share acquired pursuant to the MuniMae DRP on February 10, 2006, the recognized loss per share is $26.83 less any dividends received.

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89. Because the proposed allocation mirrors the damage theories that would most likely have been proffered at trial by Plaintiffs, Plaintiffs' Counsel submits it is eminently fair, reasonable and equitable.

90. Further, the Notice disseminated to potential members of the Class detailed the Plan of Allocation at great length and estimated the impact on individual Class Member's claim. Class Members were provided with the opportunity to object or otherwise express their views concerning the Plan of Allocation to the Court. The deadline for such objections is August 10, 2015. As of the date of this declaration, no objections have been filed in opposition to the

proposed Plan of Allocation.

PLAINTIFFS' COUNSEL'S APPLICATION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES

91. Plaintiffs' Counsel is seeking a total of 30% of the Settlement Fund as attorneys' fees and reimbursement of litigation expenses combined, plus the additional $150,000 Fee Contribution to be separately paid by Defendants, or a total of $232,904.88 in attorneys' fees plus $120,141.12 in out-of-pocket litigation expenses. Plaintiffs' Counsel respectfully submits that amount is fair and reasonable and comparable to a market-rate fee, and is also consistent with the preference for the percentage-of-the-recovery approach in common fund cases in this Circuit and under the PSLRA.

92. Plaintiffs' Counsel firmly believe that the Settlement reflects their skill and reputations built over decades as attorneys. Here, Plaintiffs' claims were based on complex legal and factual issues, which were opposed by highly skilled and experienced defense counsel, and Plaintiffs' Counsel succeeded in securing an exceptional result for the Class.

93. Plaintiffs' Counsel have recovered a substantial common fund for the benefit of the Class, $676,820 (plus an additional $150,000 to be paid by Defendants to Co-Lead Counsel), and are, therefore, entitled to payment from that fund created by their labor.

94. The Settlement was reached only after hard-fought litigation, and adversarial negotiations between the parties. As a result, Plaintiffs' Counsel submit that, under any recognized methodology for awarding successful plaintiff's attorneys fees in class actions, the requested fee is fair and reasonable.

95. Attached hereto as Exhibits 2, 3, 4 and 5 are the declarations of Plaintiffs' Counsel identifying the attorneys and paraprofessionals who worked on this Action, their current

billing rates, and the number of hours devoted to this Action. Based upon these declarations, the total hourly charges of Plaintiffs' Counsel in this Action on a current basis (*i.e.*, their "lodestars") is $4,936,589.75 based on 7,880 hours of time.

96. Plaintiffs' Counsel undertook this Action on a wholly contingent basis and have, to date, received no compensation for their efforts on behalf of the Class. As set forth in detail above and in the accompanying memoranda, at the outset, each of the attorneys representing Plaintiffs understood they were embarking on a difficult, complex, expensive and lengthy litigation. Plaintiffs' Counsel understood that Defendants would (and, in fact, did) retain a highly experienced large corporate defense firms to vigorously mount a defense, and that there was no guarantee of ever being compensated for the anticipated enormous investment of time and money prosecution of the case would require. Had Plaintiffs not prevailed or achieved a favorable settlement in the Action, Plaintiffs' Counsel would have sustained a substantial financial loss. Clearly, Plaintiffs' Counsel undertook a significant risk to represent the Class here against Defendants.

97. Given the complexity and duration of the Action, the responsibility undertaken by Plaintiffs' Counsel and the highly risky contingent nature of the fee arrangement under which Plaintiffs' Counsel agreed to be retained in the Action, Plaintiffs' Counsel submit the requested fee award is fully justified.

98. As discussed above, over an almost seven-year period, Plaintiffs' Counsel performed a wide range of services necessitated by the complexity of both the underlying facts presented by this case and the sophisticated legal issues arising under the various claims asserted in this Action. These efforts included, among other things, substantial factual investigation and

legal research concerning the merits of the case; drafting the comprehensive operative Complaint; opposing a lengthy and complex motion to dismiss; drafting appellate briefs, participating in appellate oral argument, drafting a petition for a writ of certiorari, hard-fought settlement negotiations with Defendants; negotiating a complicated and lengthy formal Stipulation, along with its accompanying notices, orders and judgment; obtaining preliminary approval of the Settlement and Court approval of the notice program; developing and supervising the notice program; and administering the Settlement and overseeing settlement administration process. The volume of the work completed was substantial.

99. The quality, skill, and efficiency expertise of Plaintiffs' Counsel is another important factor in setting a fair fee. As demonstrated by the declarations of Plaintiffs' Counsel, these counsel are among the most experienced and skilled practitioners in the field of securities class action litigation. Similarly, the quality of work performed by Plaintiffs' Counsel in attaining the Settlement should also be evaluated in light of the quality of the opposition. Defendants are represented by prominent, experienced, and extremely capable international powerhouse law firms. The caliber and vigor of the legal work performed by these defense attorneys strongly militates in favor of the Settlement.

100. The responsibility undertaken by Plaintiffs' Counsel in agreeing to represent the Class meant foregoing other potential employment during the Action to ensure that significant resources could be dedicated to prosecuting this Action. Another consideration is the contingent fee and contingent recovery of money invested by Plaintiffs' Counsel necessary and reasonable to prosecute the Action. Lawyers representing hourly fee-paying clients are paid immediately, with

the money available for investment and the creation of additional revenues, a benefit not available to contingent fee lawyers.

101. Given the complexity and magnitude of the Action, the responsibility undertaken by Plaintiffs' Counsel, and the highly risky contingent nature of the fee arrangement under which Plaintiffs' Counsel agreed to be retained, Plaintiffs' Counsel respectfully submit that the requested fee award is more than justified.

102. Plaintiffs' fee request is also well within the range of awards typically granted for cases that have been hotly contested for this length of time. In private contingent litigation, plaintiffs' attorneys generally undertake representation for fees of one-third to fifty percent of the potential recovery, plus expenses. Indeed, the requested fee here closely mimics the marketplace for contingency attorneys' fee arrangements. Thus, as discussed in the accompanying fee memorandum, courts routinely award percentage-of-the-recovery fees to successful plaintiffs' counsel in class actions equal to, and indeed, in excess of the one-third that Plaintiffs' Counsel is requesting there.

103. Furthermore, as a cross-check, the lodestar/multiplier analysis also supports the fee requested here. Plaintiffs' Counsel are requesting a total of $82,904.88 in attorneys' fees from the Settlement Fund *(i.e.*, 30% of $676,820.00 minus the expenses of $120,141.12).[5] Plaintiffs' Counsel also are requesting the $150,000 Fee Contribution agreed to be paid by Defendants. Plaintiffs' Counsel have a combined "lodestar" of $4,936,589.75 (hours billed times their current regular billing rates). Thus, the attorneys' fee requested here represents a huge ***negative*** multiplier of 0.047 of their lodestar. As demonstrated in the accompanying fee memorandum, this

[5] Settlement Fund ($676,820) x 30% ($203,046) – litigation expenses ($120,141.12) = $82,904.88.

multiplier is well-below multipliers routinely awarded to successful plaintiff's counsel in complex securities class action litigation who recover a common fund as compensation for the contingent nature of their fee arrangement.

104. Under these circumstances, Plaintiffs' Counsel submit that the requested fee award is more than reasonable and should be granted in full.[6]

The Requested Reimbursement of Litigation Expenses

105. The portion of Plaintiffs' Counsel's fee and expense request attributable to the out-of-pocket expenses necessarily incurred and advanced by them in prosecuting the Action is $120,141.12. In summary, these expenses are as follows:

[6] Furthermore, more than 10,273 copies of the Notice (including 83 that were remailed), setting forth Plaintiffs' Counsel's intention to apply to the Court for 30% of the Settlement Fund as an award of attorneys' fees and expenses, were mailed to the potential members of the Class. The lack of a significant number or absence of objections is typically considered a vote of confidence by the class members for a proposed attorneys' fee request. To date, ***not a single objection*** to that proposed attorneys' fee and expense reimbursement request has been raised yet. The time to object, however, has not expired. Plaintiffs' Counsel will report to the Court on whether any objections are received in advance of the final settlement hearing.

From Inception to July 27, 2015

Description	Amount
Reproduction Costs/Printing/ Express Mail/Messenger/Postage	$17,948.80
Computer Research/Pacer/Lexis/Westlaw	$30,493.35
Travel/Meals/Lodging	$8,264.25
Long Distance Telephone/Telecopier	$349.78
Court Reporter/Transcripts/Court Costs/PSLRA Notice	$8,856.86
Expert Fees	$43,420.88
Local Counsel	$10,807.20
TOTAL EXPENSES	**$120,141.12**

106. The foregoing summary of expenses incurred in prosecuting this Action are described in further detail by the firm which paid or incurred such expenses in the individual firm declarations attached as Exhibits 2 and 5 hereto. Plaintiffs' Counsel believe that these expenses were reasonably and necessarily incurred and were, in fact, essential to Plaintiffs' ability to obtain the recovery here.

107. Further, efforts were made to contain costs whenever possible. Indeed, by virtue of Plaintiffs' Counsel advancing the cost of the Action for their clients, and the uncertainty of recovery, Plaintiffs' Counsel had every incentive to "penny-pinch" wherever possible, but, of course, never at the cost of not providing the Class with the most vigorous representation at every juncture.

108. The above described expenses do not include the fees or expenses for GCG, the Court-appointed Claims Administrator, for providing the Court-ordered Notice to the Class, administering claims or ultimately distributing the Net Settlement Fund. To date, GCG has

incurred fee and costs for, *inter alia*, set-up and preparation costs for the notice and administration; printing the Notice and Proof of Claim Form; postage; renting lists of names and addresses of potential members of the Class for disseminating the Notice; publishing the Summary Notice; computer programming and processing claims; maintenance of the web site; and responding to inquiries from potential claimants. As permitted by the Preliminary Approval Order, to date, GCG has billed $31,602.86 in fees and expenses relating to its services in connection with providing notice to the Class and administrating the Settlement. Plaintiffs' Counsel has reviewed GCG's billings and believe that they are commercially competitive and that the fees and expenses were reasonably and necessarily incurred and request Court approval to pay that bill. A copy of GCG's detailed bill is annexed to Exhibit 1 hereto as Exhibit D.

109. Plaintiffs' Counsel believe that GCG will have additional fees and expenses as the settlement administration process progresses, and Plaintiffs' Counsel will seek Court approval before making any such payments to GCG.

CONCLUSION

110. Based upon the foregoing, including the exhibits annexed hereto, the memoranda submitted herewith in support of the Settlement, the Plan of Allocation and the award of attorneys' fees and reimbursement of expenses to Plaintiffs' Counsel, we respectfully submit that (i) the proposed Settlement of $826,820.00 in cash should be approved as fair, reasonable and adequate, (ii) the proposed Plan of Allocation of the net proceeds of the Settlement should be approved as fair and equitable; the request by Plaintiffs' Counsel for an award of attorneys' fees equal to $82,904.88 should be awarded; (iii) out-of-pocket expenses in the amount of $120,141.12 should be awarded; (iv) Defendants' agreed upon additional Fee Contribution to Plaintiffs'

Counsel in the amount of $150,000.00 should be awarded; and (v) Plaintiffs' Counsel's request for GCG's reimbursement of the fees and expenses for dissemination of the notice to the Class and administration of the Settlement in the amount of $31,602.86 should be allowed.

I declare under the penalty of perjury that the foregoing is true and correct.

Executed this 27th day of July 2015.

/s/ Charles J. Piven
CHARLES J. PIVEN