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9 UNITED STATES DISTRICT COURT  
10 FOR THE EASTERN DISTRICT OF WASHINGTON

11 KEITH CAUVEL and MARJORIE  
12 CAUVEL, husband and wife; KENT  
13 WEAVER and KATHIE WEAVER,  
14 husband and wife; et al

15 Plaintiffs,

16 v.

17 METROPOLITAN INVESTMENT  
18 SECURITIES COMPANY, INC., a  
19 Washington corporation;  
20 METROPOLITAN MORTGAGE &  
21 SECURITIES COMPANY, INC., a  
22 Washington corporation; SUMMIT  
23 SECURITIES, INC., an Idaho  
24 corporation; and CANTWELL PAUL  
25 SANDIFUR, JR.,

26 Defendants.

CASE NO.

CLASS ACTION COMPLAINT  
FOR VIOLATIONS OF THE  
FEDERAL SECURITIES LAWS

DEMAND FOR JURY TRIAL

INTRODUCTION

The Plaintiffs, on behalf of themselves and others similarly situated, have filed this lawsuit as a class action on behalf of a proposed class of all persons

CLASS ACTION COMPLAINT FOR VIOLATIONS OF FEDERAL  
SECURITIES ACT - 1 of 18  
[CAUVEL Complaint.doc]

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1 who purchased, or otherwise acquired, debentures, preferred stock and  
2 investment certificates (“securities”) issued by defendants Metropolitan  
3 Mortgage & Securities Company, Inc. and Summit Securities, Inc. between  
4 January 1, 2001 and December 15, 2003 (the “Class Period”).

## 5 I. PARTIES

6 1.1 Plaintiffs Marjorie and Keith Cauvel, husband and wife, residing in  
7 Spokane, Washington and Kathie and Kent Weaver, husband and wife, residing  
8 in Spokane, Washington, bring these claims individually and on behalf of their  
9 marital communities, and on behalf of all others who purchased securities of  
10 Defendant Metropolitan Mortgage & Securities Company and of Defendant  
11 Summit Securities, Inc. between January 1, 2001 and December 15, 2003.

12 1.2 Defendant Metropolitan Mortgage & Securities Company, Inc.  
13 (“Metropolitan”) is a Washington corporation doing business in Spokane  
14 County with its principal offices located at 601 West First Avenue, Spokane,  
15 Washington.

16 1.3 Defendant Metropolitan Investment Securities, Inc. (“MIS”) is a  
17 Washington corporation doing business in Spokane County with its principal  
18 offices located at 601 West First Avenue, Spokane, Washington.

19 1.4 Defendant Summit Securities, Inc. (“Summit”) is an Idaho  
20 corporation located and doing business in Spokane County with its principal  
21 offices located at 601 West First Avenue, Spokane, Washington.

22 1.5 Defendant Cantwell Paul Sandifur, Jr. (“Sandifur”) is a resident of  
23 Spokane County, Washington and at all times material hereto controlled  
24 defendants Metropolitan, Summit and MIS.  
25  
26

1 **II. JURISDICTION AND VENUE**

2 2.1 This Court has jurisdiction over this action pursuant to §27 of the  
3 Securities Exchange Act of 1934 (the "Exchange Act"), 15 U.S.C. §78aa and 28  
4 U.S.C. §§1331, 1337 and 1367.

5 2.2 Plaintiffs bring this action pursuant to §§10(b) and 20(a) of the  
6 Securities Exchange Act, 15 U.S.C. §§78j(b) and 78t(a), and Rule 10b-5, 17  
7 C.F.R. §240.10b-5, promulgated thereafter by the Securities and Exchange  
8 Commission ("SEC").

9 2.3 Venue is proper in this District pursuant to §27 of the Exchange  
10 Act, and 28 U.S.C. §§1391(b) and (c). Many of the acts and transactions giving  
11 rise to the violations of law complained of herein occurred in the Eastern  
12 District of Washington. In addition, defendant Sandifur resides in the Eastern  
13 District of Washington and the corporate defendants maintain their corporate  
14 headquarters and executive offices at 601 West First Avenue, Spokane,  
15 Washington in the Eastern District of Washington.

16 2.4 In connection with the acts and conduct alleged in this Complaint,  
17 defendants, directly and indirectly, used the means and instrumentalities of  
18 interstate commerce, including the mails and telephone communication systems,  
19 and the facilities of a national securities market.

20 **III. FACTS**

21 3.1 Plaintiffs Keith W. and Marjorie L. Cauvel acquired the following  
22 debentures issued by Metropolitan:

Certificate No.:	Issued:	Maturity:	Principal:	12/9/03 Value:
DBU04769	9/3/2000	9/3/2005	\$ 5,392.85	\$ 5,915.34
DBU04816	9/10/2000	9/10/2005	\$ 46,713.28	\$ 53,377.63

1	DBU07242	1/17/2002	1/17/2007	\$ 17,396.91	\$ 17,460.73
2	DBU08028	7/30/2002	7/30/2007	\$ 33,477.07	\$ 33,608.07
3	DBU08967	1/31/2003	1/31/2008	\$ 19,022.86	\$ 19,097.13
4	SBU00520	4/5/1999	4/5/2004	\$ 4,651.20	\$ 5,462.66
5	DBU04768	9/3/2000	9/3/2005	\$ 5,392.85	\$ 6,166.30
6	DBU07243	1/17/2002	1/17/2007	\$ 17,396.71	\$ 17,425.27
7	DBU08968	1/31/2003	1/31/2008	\$ 20,164.91	\$ 20,199.98

8           3.2 Plaintiffs Keith and Marjorie Cauvel acquired the following  
9 debenture issued by Summit:

10	Certificate No.:	Issued:	Maturity:	Principal:	9/03 Value:
11	SBU00521	4/5/1999	4/5/2004	\$ 4,651.20	\$ 5,668.80

12           3.3 Plaintiffs Kent and Kathie Weaver acquired the following  
13 debentures on the following dates:

14	Certificate No.:	Issued:	Maturity	Principal:	Balance
15			Date:		9/30/03:
16	DBU01608	03/02/00	03/02/05	\$ 4,651.22	\$ 6,020.56
17	DBU02128	04/27/00	04/27/05	\$ 2,521.49	\$ 12,722.56
18	DBU02352	08/04/00	08/04/05	\$ 1,174.28	\$ 5,757.36
19	DBU06987	12/31/01	12/31/06	\$ 3,326.88	\$ 3,451.63
20	DBU07110	01/16/02	01/16/07	\$ 8,530.01	\$ 8,849.89
21	DBU08644	11/19/02	11/19/07	\$ 4,367.72	\$ 4,367.72
22	DBU08684	12/04/02	12/04/07	\$ 6,946.56	\$ 6,946.56
23	DBU00195	04/12/99	04/12/04	\$ 2,000.00	\$ 3,111.75
24	DBU02686	04/12/99	09/08/04	\$ 24,671.34	\$ 33,270.68

1           3.4 Defendant Metropolitan was incorporated in the State of  
2 Washington in January, 1953. Metropolitan's controlling shareholder is  
3 defendant Sandifur. Mr. Sandifur has control of Metropolitan through his voting  
4 power over a family trust and through his direct ownership of Metropolitan  
5 common stock.

6           3.5 National Summit Corp. ("National"), a Washington corporation,  
7 owns 100% of defendant Summit Securities, Inc. National acquired Summit in  
8 1994. Defendant Sandifur is the controlling shareholder of National.

9           3.6 Until 1995 Defendant MIS was owned by defendant Metropolitan.  
10 However, in 1995 defendant Summit acquired defendant MIS.

11           3.7 National and defendants Metropolitan, Summit and MIS are in the  
12 common control of defendant Sandifur.

13           3.8 Defendant MIS is a broker-dealer and has been a member of the  
14 National Association of Security Dealers ("NASD") since approximately 1983.

15           3.9 During the period material hereto, defendant MIS's principal  
16 business was to market and sell securities issued by defendants Metropolitan and  
17 Summit. According to their SEC filings, defendants Metropolitan and Summit  
18 relied entirely upon the efforts of defendant MIS to sell their preferred stock,  
19 debentures and investment certificates. Neither Metropolitan nor Summit  
20 maintained any other relationships for the sale of their securities other than their  
21 relationship with or through MIS.

22           3.10 Metropolitan and Summit relied upon funds generated by MIS  
23 through the sale of their securities in order to satisfy payment of debenture  
24 interest, maturing debentures, investment certificates and to pay preferred stock  
25 dividends. At all times material hereto defendants knew that without sufficient  
26

1 sales by MIS of equity securities in Metropolitan and Summit, neither  
2 Metropolitan nor Summit would have sufficient revenues to meet debenture,  
3 investment certificate and preferred stock dividend obligations.

4 3.11 Defendant MIS marketed Metropolitan and Summit securities as a  
5 safe, conservative investment suited for investors who had a low risk tolerance  
6 and who identified “preservation of capital” as a principle investment objective.

7 3.12 Contrary to these representations, securities in Metropolitan and  
8 Summit involved a significant degree of risk and were not a liquid investment.

9 3.13 During 2003 the NASD conducted an investigation of MIS and its  
10 acts and practices in the marketing and sale of Metropolitan and Summit  
11 securities.

12 3.14 In October 2003 defendant MIS entered into a letter of acceptance,  
13 waiver and consent (AWC) with the NASD which contained a number of  
14 findings. MIS agreed that it “may not take any action or make or permit to be  
15 made any public statement . . . denying, directly or indirectly, any allegation in  
16 this AWC or create the impression that the AWC is without factual basis.” *See*  
17 Exhibit 1 attached hereto, p. 2. Defendant MIS further agreed that it “may not  
18 deny the charges or make any statement that is inconsistent with the AWC.” *Id.*  
19 at p. 15.

20 3.15 The findings in the AWC cover a portion of the Class Period from  
21 January 1, 2001 to March 31, 2003 (the AWC period). Among the findings  
22 made in the AWC consented to by defendant MIS were the following, which  
23 plaintiffs incorporate as their own factual allegations:

- 24 a. During the AWC period MIS violated multiple  
25 NASD conduct rules by engaging in fraudulent,  
26 deceptive and unethical practices relating to the sale of

1 securities issued by Metropolitan and Summit. *Id.* at  
2 p. 3.

3 b. “MIS, acting through its agents, engaged in  
4 fraudulent and deceptive sales practices by making  
5 material misrepresentations and omitting material facts  
6 in connection with the sale of [Metropolitan and  
7 Summit securities] to customers.” *Id.* at p. 6.

8 c. “MIS, acting through its agents, used misleading  
9 advertising and sales literature to sell [securities in  
10 Metropolitan and Summit]. . . Some of the  
11 promotional materials compared the securities [of  
12 Metropolitan and Summit] with bank rates, a  
13 comparison that was misleading. In addition, the  
14 advertisements and sales literature contain phrases that  
15 were false and misleading and omitted material  
16 information as follows:

- 17 1. “Tired of **LOW** Bank Rate? **Compare**  
18 **Ours.**”
- 19 2. “Why put up with LOW Bank Rates.  
20 You’ve Got Better Things To Do.  
21 Compare Ours!”
- 22 3. “Lock In a Great Rate.”
- 23 4. “Would you like to leave market volatility  
24 behind?”
- 25 5. “FALLING RATES TAKING A BITE  
26 OUT OF YOUR RETIREMENT?”
6. “While it is anticipated that the interest  
rates will continue to decline [sic]. This  
is an excellent rate to help stabilize your  
investments.”

(Emphasis in originals).

1 . . . [T]hese advertisements did not include adequate  
2 language regarding the risks associated with the  
3 [Metropolitan and Summit securities] and omitted the  
4 principle risk factors associated with the investments.  
5 . . . References to locking in rates and leaving market  
6 volatility behind are promissory and failed to reflect  
7 the risk of loss of investment due to the issuers'  
8 insufficient current earnings." *Id.* at p. 8.

9 d. Defendant MIS "acting through its agents,  
10 disseminated sales scripts to its [registered  
11 representatives] that were, among other things  
12 materially misleading in that they emphasized only the  
13 positive features of the [Metropolitan and Summit  
14 securities] and omitted the principle risk factors." *Id.*  
15 at p. 9.

16 e. Defendant MIS "acting through its agents,  
17 utilized form letters that were, among other things,  
18 materially misleading in that they emphasized only the  
19 positive features of the [Metropolitan and Summit  
20 securities] and omitted the principle risk factors.  
21 Additionally, the form letters failed to provide a sound  
22 basis for a evaluating the facts in regard to the  
23 [Metropolitan and Summit securities] being offered."  
24 *Id.*

25 f. Defendant MIS "acting through its agents, did  
26 not have reasonable grounds to believe the  
recommendations to customers [to purchase  
Metropolitan and Summit securities] were reasonable."  
*Id.* at p. 11.

3.16 As a result of the findings in the AWC, defendant MIS stipulated to a censure and fine. MIS agreed to pay \$500,000 in fines, direct restitution to specific customers in the amount of \$2,882,000 and to establish a five-year Special Escrow Account and maintain a minimum end-of-quarter balance in the

1 account of \$1,000,000. The purpose of the Special Escrow Account was to  
2 compensate persons who acquired Metropolitan or Summit securities between  
3 January 1, 2001 and March 31, 2003.

4 3.17 In the AWC defendant MIS agreed that it “specifically and  
5 voluntarily waive[s] any right to claim that we are unable to pay, now or at any  
6 time hereafter, any monetary sanction imposed in this matter.” *Id.* at p. 16.

7 3.18 From April 1, 2003 to December 15, 2003, MIS continued to  
8 market and sell Metropolitan and Summit securities by the use of fraudulent and  
9 deceptive sales practices and by making material misrepresentations and  
10 omitting material facts regarding the risks of the securities and by emphasizing  
11 only the positive features of the securities.

12 3.19 The statements disseminated to the investing public during the  
13 Class Period by defendants Metropolitan and Summit, including but not limited  
14 to public financial reports, filings with the SEC and prospectuses, contained  
15 untrue statements of material fact and failed to state material facts necessary in  
16 order to make statements made not misleading.

17 3.20 The statutory safe harbor provided for forward-looking statements  
18 under certain circumstances does not apply to the allegedly false statements  
19 pleaded in this Complaint, as the statutory safe harbor does not apply to the  
20 defendants’ misrepresentations of currently existing or historical facts, including  
21 defendants’ dissemination of false statements regarding Metropolitan’s and  
22 Summit’s reported financial results.

23 3.21 Effective Monday, December 15, 2003, defendant MIS ceased  
24 operations and customer transactions.  
25  
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