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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

METROPOLITAN MORTGAGE &  
SECURITIES CO., INC. and SUMMIT  
SECURITIES, INC.,

Plaintiffs,

v.

PRICEWATERHOUSECOOPERS, LLP,  
Defendant.

Case No. CV-05-0290-FVS

DEFENDANT  
PRICEWATERHOUSECOOPERS  
LLP'S ANSWER AND  
AFFIRMATIVE DEFENSES TO  
PLAINTIFFS' COMPLAINT FOR  
PROFESSIONAL NEGLIGENCE,  
NEGLIGENT  
MISREPRESENTATION, AND  
BREACH OF CONTRACT

1 Defendant PricewaterhouseCoopers LLP ("PwC") by its attorneys, Orrick,  
2 Herrington & Sutcliffe, LLP and Feltman, Gebhardt, Greer & Zeimantz, P.S.,  
3 answers Metropolitan Mortgage & Securities Co., Inc. ("Metropolitan") and  
4 Summit Securities, Inc.'s ("Summit") (collectively, "Plaintiffs") Complaint for  
5 Professional Negligence, Negligent Misrepresentation, and Breach of Contract  
6 ("Complaint"), by stating that it objects to the captions interspersed throughout the  
7 Complaint as not constituting proper allegations or fit matter for a pleading; and  
8 with respect to the numbered allegations 1 through 81 and the prayer for relief,  
9 answers by stating as follows:

10 1. Paragraph 1 is a preliminary statement to which no response is  
11 required in this answer. To the extent that any response is required to Paragraph 1,  
12 PwC denies the allegations set forth therein.

13 2. PwC admits that it issued audit reports for the fiscal years 1999 and  
14 2000. To the extent that these allegations purport to characterize PwC's audit  
15 opinions, PwC refers to its audit opinions which are the best evidence of their  
16 contents and the statements therein. Except as expressly so admitted, PwC denies  
17 the allegations set forth in Paragraph 2.

18 3. PwC denies the allegations set forth in Paragraph 3.

19 4. PwC admits that C. Paul Sandifur ("Sandifur") is the controlling  
20 common shareholder of both Metropolitan and Summit and has served as  
21 Metropolitan's CEO and Chairman of the Board. Except as expressly so admitted,  
22 PwC denies the allegations set forth in Paragraph 4.

23 5. Paragraph 5 contains conclusions and legal arguments as to which no  
24 response is required.

25 6. Paragraph 6 contains conclusions and legal arguments as to which no  
26 response is required. To the extent any response is required to Paragraph 6, PwC  
27 denies the allegations set forth therein.

28 7. PwC admits the allegations set forth in Paragraph 7.

1           8.     PwC admits the allegations set forth in Paragraph 8.

2           9.     PwC admits the allegations set forth in Paragraph 9, except that it  
3 denies that PwC reviewed and reported on Metropolitan's commercial real estate  
4 lending practices, and denies that PwC resigned as auditor for Metropolitan and  
5 Summit.

6           10.    PwC admits that Sandifur and his family directly and indirectly own  
7 all of Metropolitan and Summit's common stock, and that Sandifur served as  
8 Metropolitan's President, CEO and Chairman of the Board. Except as expressly so  
9 admitted, PwC lacks knowledge or information sufficient to form a belief as to the  
10 truth of the allegations set forth in Paragraph 10.

11          11.    PwC lacks knowledge or information sufficient to form a belief as to  
12 the truth of the allegations set forth in Paragraph 11.

13          12.    Paragraph 12 contains conclusions and legal arguments as to which no  
14 response is required. PwC admits that Metropolitan changed the focus of its  
15 investment activities from residential mortgages to commercial real estate lending  
16 in or around 2000. Except as expressly so admitted, to the extent that any response  
17 is required to Paragraph 12, PwC denies the allegations set forth therein.

18          13.    PwC lacks knowledge or information sufficient to form a belief as to  
19 the truth of the allegations set forth in Paragraph 13.

20          14.    PwC lacks knowledge or information sufficient to form a belief as to  
21 the truth of the allegations set forth in Paragraph 14.

22          15.    PwC admits that it issued audit reports for Metropolitan's 1999 and  
23 2000 fiscal years, and alleges that the audit reports contain the best evidence of  
24 their contents and the statements therein. Except as expressly so admitted, PwC  
25 denies the allegations set forth in Paragraph 15.

26          16.    PwC admits that it issued audit reports for Metropolitan's 1999 and  
27 2000 fiscal years, which audit reports contain the best evidence of their contents  
28

1 and the statements therein. Except as expressly so admitted, PwC denies the  
2 allegations set forth in Paragraph 16.

3 17. PwC admits that it consented to the incorporation by reference of its  
4 audit reports for Metropolitan and Summit's financial statements for fiscal years  
5 1999 and 2000 in certain registration statements filed by Metropolitan and Summit  
6 in 2001 and 2002, which audit reports contain the best evidence of their contents  
7 and the statements therein. Except as expressly so admitted, PwC denies the  
8 allegations set forth in Paragraph 17.

9 18. PwC denies the allegations set forth in Paragraph 18.

10 19. Paragraph 19 contains conclusions and legal arguments as to which no  
11 response is required.

12 20. PwC denies that Metropolitan's accounting in 1999 and 2000 violated  
13 GAAP. Except as expressly so denied, PwC lacks knowledge or information  
14 sufficient to form a belief as to the truth of the remaining allegations set forth in  
15 Paragraph 20, and alleges that its understanding of the transactions referred to  
16 therein is reflected in the financial statements issued by Metropolitan and Summit  
17 for the fiscal years ended September 30, 1999 and 2000.

18 21. PwC lacks knowledge or information sufficient to form a belief as to  
19 the truth of the allegations set forth in Paragraph 21, and alleges that its  
20 understanding of the transactions referred to therein is reflected in the financial  
21 statements issued by Metropolitan and Summit for the fiscal year ending September  
22 30, 2000.

23 22. PwC lacks knowledge or information sufficient to form a belief as to  
24 the truth of the allegations set forth in Paragraph 22, and alleges that its  
25 understanding of the transactions referred to therein is reflected in the financial  
26 statements issued by Metropolitan and Summit for the fiscal year ending September  
27 30, 2000.

1           23. PwC denies the allegations set forth in the last sentence of Paragraph  
2 23. To the extent that the allegations of Paragraph 23 purport to characterize  
3 financial statements issued by Metropolitan and Summit, PwC alleges that the  
4 financial statements are the best evidence of the contents and statements therein.  
5 Except as expressly so denied, PwC lacks knowledge or information sufficient to  
6 form a belief as to the truth of the remaining allegations set forth in Paragraph 23,  
7 and alleges that its understanding of the transactions referred to therein is reflected  
8 in the financial statements issued by Metropolitan and Summit for the fiscal year  
9 ended September 30, 2000.

10           24. PwC admits that the financial statements issued by Metropolitan for  
11 the fiscal year ending September 30, 2000 reflect a gain of \$10.7 million in  
12 connection with the sale of the Timber Harvesting Agreement. Except as expressly  
13 so admitted, PwC denies the allegations set forth in Paragraph 24.

14           25. PwC denies the allegations set forth in Paragraph 25.

15           26. PwC denies the allegations set forth in Paragraph 26.

16           27. PwC admits the "Met/Summit Group" implemented a foreign leverage  
17 investment program in 1998. Except as expressly so admitted, PwC denies the  
18 allegations set forth in Paragraph 27.

19           28. PwC admits that Metropolitan's financial statements reflect a 50%  
20 reserve taken in connection with the "FLIP tax shelter," and that PwC provided  
21 advice and was paid a fee with respect to the FLIP transaction. Except as expressly  
22 so admitted, PwC denies the allegations set forth in Paragraph 28.

23           29. PwC admits that it has been reported that the IRS challenged portions  
24 of the FLIP transaction, and that Metropolitan reached a compromise with the IRS  
25 that reduced the tax benefits obtained by the Metropolitan Group pursuant to the  
26 transaction. PwC denies that its advice was "erroneous." Except as expressly so  
27 admitted and denied, PwC lacks knowledge or information sufficient to form a  
28 belief as to the truth of the allegations set forth in Paragraph 29.

1           30. PwC admits that GAAS consists of guidelines issues by the American  
2 Institute of Certified Public Accountants that are followed by auditors in  
3 conducting audits. Except as expressly so admitted, PwC denies the allegations set  
4 forth in Paragraph 30.

5           31. PwC denies the allegations set forth in Paragraph 31.

6           32. PwC denies the allegations set forth in Paragraph 32.

7           33. PwC denies the allegations set forth in Paragraph 33.

8           34. PwC denies the allegations set forth in Paragraph 34.

9           35. PwC denies the allegations set forth in Paragraph 35.

10          36. PwC denies the allegations set forth in Paragraph 36.

11          37. PwC denies the allegations set forth in Paragraph 37.

12          38. PwC denies the allegations set forth in Paragraph 38.

13          39. PwC denies the allegations set forth in Paragraph 39.

14          40. PwC denies the allegations set forth in Paragraph 40.

15          41. PwC denies the allegations set forth in Paragraph 41.

16          42. PwC denies the allegations set forth in Paragraph 42.

17          43. PwC denies the allegations set forth in Paragraph 43.

18          44. PwC lacks knowledge or information sufficient to form a belief as to  
19 the truth of the allegations set forth in Paragraph 44.

20          45. PwC admits that the DFI entered into a memorandum of understanding  
21 with Metropolitan in or about 1996, and alleges that the memorandum provides the  
22 best evidence of its content. Except as expressly so admitted, PwC lacks  
23 knowledge or information sufficient to form a belief as to the truth of the  
24 allegations set forth in Paragraph 45.

25          46. The allegations set forth in Paragraph 46 consist largely of conclusions  
26 and legal arguments to which no response is required. To the extent that any  
27 response is required, PwC lacks knowledge or information sufficient to form a  
28 belief as to the truth of the allegations set forth in Paragraph 46.

1 47. PwC denies the allegations set forth in the last sentence of Paragraph  
2 47. PwC lacks knowledge or information sufficient to form a belief as to the truth  
3 of the remaining allegations set forth in Paragraph 47.

4 48. PwC admits that Metropolitan's preferred stock was classified as  
5 equity for accounting purposes, and that in many respects it had the substance and  
6 character of variable-rate debt instruments. Except as expressly so admitted, PwC  
7 alleges that the remaining allegations set forth in Paragraph 48 are conclusions and  
8 legal arguments to which no response is required. To the extent that any response  
9 is required, PwC lacks knowledge or information sufficient to form a belief as to  
10 the truth of the allegations set forth in Paragraph 48.

11 49. PwC admits that Sundifur is the companies' predominant common  
12 shareholder. Except as expressly so admitted, PwC alleges that the remaining  
13 allegations set forth in Paragraph 49 are conclusions and legal arguments to which  
14 no response is required. To the extent that any response is required, PwC lacks  
15 knowledge or information sufficient to form a belief as to the truth of the  
16 allegations set forth in Paragraph 49.

17 50. The allegations set forth in Paragraph 50 consist largely of conclusions  
18 and legal arguments to which no response is required. To the extent that any  
19 response is required, PwC lacks knowledge or information sufficient to form a  
20 belief as to the truth of the allegations set forth in Paragraph 50.

21 51. PwC admits that Metropolitan's debentures were listed on the Pacific  
22 Stock Exchange in or about January 2000. Except as expressly so admitted, PwC  
23 alleges that the remaining allegations set forth in Paragraph 51 are conclusions and  
24 legal arguments to which no response is required. To the extent that any response  
25 is required, PwC lacks knowledge or information sufficient to form a belief as to  
26 the truth of the allegations set forth in Paragraph 51.

27 52. The allegations set forth in Paragraph 52 consist largely of conclusions  
28 and legal arguments to which no response is required. To the extent that any

1 response is required, PwC lacks knowledge or information sufficient to form a  
2 belief as to the truth of the allegations set forth in Paragraph 52.

3 53. PwC admits that the OIC issued a report concerning WULA in or  
4 about 1999, and alleges that the report is the best evidence of its content. Except as  
5 expressly so admitted, PwC alleges that the remaining allegations set forth in  
6 Paragraph 53 are conclusions and legal arguments to which no response is required.  
7 To the extent that any response is required, PwC lacks knowledge or information  
8 sufficient to form a belief as to the truth of the allegations set forth in Paragraph 53.

9 54. PwC admits that the OIC issued a report concerning WULA in or  
10 about 1999, and alleges that the report is the best evidence of its content. Except as  
11 expressly so admitted, PwC lacks knowledge or information sufficient to form a  
12 belief as to the truth of the allegations set forth in Paragraph 54.

13 55. PwC admits that the OIC issued a report concerning WULA in or  
14 about 1999, and alleges that the report is the best evidence of its content. Except as  
15 expressly so admitted, PwC alleges that the remaining allegations set forth in  
16 Paragraph 55 are conclusions and legal arguments to which no response is required.  
17 To the extent that any response is required, PwC lacks knowledge or information  
18 sufficient to form a belief as to the truth of the allegations set forth in Paragraph 55.

19 56. PwC admits that the OIC issued a report concerning WULA in or  
20 about 1999, and alleges that the report is the best evidence of its content. Except as  
21 expressly so admitted, PwC alleges that the remaining allegations set forth in  
22 Paragraph 56 consist largely of conclusions and legal arguments to which no  
23 response is required. To the extent that any response is required, PwC lacks  
24 knowledge or information sufficient to form a belief as to the truth of the  
25 allegations set forth in Paragraph 56, except that PwC denies having issued an  
26 "unqualified" opinion on WULA's financial statements for the 1999 fiscal year.  
27  
28

1           57. The allegations set forth in Paragraph 57 consist largely of conclusions  
2 and legal arguments to which no response is required. To the extent that any  
3 response is required, PwC denies the allegations set forth in Paragraph 57.

4           58. PwC denies the allegations set forth in Paragraph 58.

5           59. PwC denies the allegations set forth in Paragraph 59.

6           60. PwC repeats and reasserts each response set forth in the foregoing  
7 Paragraphs as if fully set forth in this Paragraph 60.

8           61. PwC admits the allegations set forth in Paragraph 61.

9           62. Paragraph 62 contains conclusions and legal arguments as to which no  
10 response is required. To the extent that any response is required to Paragraph 62,  
11 PwC denies the allegations set forth therein.

12           63. PwC denies the allegations set forth in Paragraph 63.

13           64. PwC denies the allegations set forth in Paragraph 64.

14           65. PwC denies the allegations set forth in Paragraph 65.

15           66. PwC repeats and reasserts each response set forth in the foregoing  
16 Paragraphs as if fully set forth in this Paragraph 66.

17           67. PwC admits that it issued audit reports on the financial statements  
18 issued by Metropolitan and Summit for the fiscal year ended September 30 1999  
19 and 2000, and alleges that the audit reports are the best evidence of their contents  
20 and the statements therein. Except as expressly so admitted, PwC denies the  
21 allegations set forth in Paragraph 67.

22           68. PwC denies the allegations set forth in Paragraph 68.

23           69. PwC denies the allegations set forth in Paragraph 69.

24           70. PwC denies the allegations set forth in Paragraph 70.

25           71. PwC repeats and reasserts each response set forth in the foregoing  
26 Paragraphs as if fully set forth in this Paragraph 71.

27           72. PwC admits that it executed engagement letters with Metropolitan and  
28 Summit to serve as their auditor for fiscal years 1999 and 2000, and alleges that the

1 engagement letters contain the best evidence of their contents and the statements  
2 therein. Except as expressly so admitted, PwC denies the allegations set forth in  
3 Paragraph 72.

4 73. PwC admits that it executed engagement letters with Metropolitan and  
5 Summit to serve as their auditor for fiscal years 1999 and 2000, and alleges that the  
6 engagement letters contain the best evidence of their contents and the statements  
7 therein. Except as expressly so admitted, PwC denies the allegations set forth in  
8 Paragraph 73.

9 74. PwC admits that it executed engagement letters with Metropolitan and  
10 Summit to serve as their auditor for fiscal years 1999 and 2000, and alleges that the  
11 engagement letters contain the best evidence of their contents and the statements  
12 therein. Except as expressly so admitted, PwC denies the allegations set forth in  
13 Paragraph 74.

14 75. PwC admits that it executed engagement letters with Metropolitan and  
15 Summit to serve as their auditor for fiscal years 1999 and 2000, and alleges that the  
16 engagement letters contain the best evidence of their contents and the statements  
17 therein. Except as expressly so admitted, PwC denies the allegations set forth in  
18 Paragraph 75.

19 76. PwC admits that it executed engagement letters with Metropolitan and  
20 Summit to serve as their auditor for fiscal years 1999 and 2000, and alleges that the  
21 engagement letters contain the best evidence of their contents and the statements  
22 therein. Except as expressly so admitted, PwC denies the allegations set forth in  
23 Paragraph 76.

24 77. PwC admits that it executed engagement letters with Metropolitan and  
25 Summit to serve as their auditor for fiscal years 1999 and 2000, and alleges that the  
26 engagement letters contain the best evidence of their contents and the statements  
27 therein. Except as expressly so admitted, PwC denies the allegations set forth in  
28 Paragraph 77.

1           78. PwC admits that it executed engagement letters with Metropolitan and  
2 Summit to serve as their auditor for fiscal years 1999 and 2000, and alleges that the  
3 engagement letters contain the best evidence of their contents and the statements  
4 therein. Except as expressly so admitted, PwC denies the allegations set forth in  
5 Paragraph 78.

6           79. PwC denies the allegations set forth in Paragraph 79.

7           80. PwC denies the allegations set forth in Paragraph 80.

8           81. PwC denies that Plaintiffs are entitled to any of the relief set forth in  
9 the Prayer, or any other form of relief.

10  
11                               \*\*\*\*\*

12           PwC has endeavored to specifically address each averment of the Complaint.  
13 To the extent any averment remains unaddressed, PwC denies each and every such  
14 averment, and incorporates by reference this response into each paragraph above as  
15 if fully set forth therein.

16  
17                               **AFFIRMATIVE DEFENSES**

18           As further and separate defenses to the Complaint, and each claim pled  
19 therein, PwC alleges the following separate and independent affirmative defenses,  
20 none of which constitutes an admission of or concurrence in the allegations set forth  
21 in the Complaint. In pleading these affirmative defenses, PwC does not assume any  
22 burden of proof not otherwise imposed upon them by law.

23                               **FIRST AFFIRMATIVE DEFENSE**

24           The Complaint, and each claim alleged therein, fails to state a claim upon  
25 which relief can be granted.

1 SECOND AFFIRMATIVE DEFENSE

2 Each purported claim set forth in the Complaint is barred, in whole or in part,  
3 because PwC complied with and performed any and all obligations imposed by law  
4 or contract to the full extent of its responsibilities.

5 THIRD AFFIRMATIVE DEFENSE

6 Each purported claim set forth in the Complaint is barred, in whole or part,  
7 by the terms of PwC's engagement letters with Plaintiffs.

8 FORTH AFFIRMATIVE DEFENSE

9 Each purported claim set forth in the Complaint is barred, in whole or in part,  
10 because PwC acted at all times in good faith, without knowledge of wrongdoing by  
11 any third parties, and without any basis for such knowledge.

12 FIFTH AFFIRMATIVE DEFENSE

13 The purported claim for breach of contract is barred, in whole or in part,  
14 because Plaintiffs prevented and/or substantially impaired PwC's performance.

15 SIXTH AFFIRMATIVE DEFENSE

16 Each purported claim set forth in the Complaint is barred by the doctrine of  
17 *in pari delicto* as a result of the fraudulent, reckless, improper and/or negligent acts  
18 of Sandifur and other representatives, management, employees and agents of the  
19 Plaintiffs.

20 SEVENTH AFFIRMATIVE DEFENSE

21 Plaintiffs' financial statements were prepared by Plaintiffs' management who  
22 affirmatively represented that management was responsible for the fair presentation  
23 of the financial position, results of operations, and cash flows in conformity with  
24 GAAP.

25 EIGHTH AFFIRMATIVE DEFENSE

26 Each purported claim set forth in the Complaint is barred, in whole or in part,  
27 because the alleged conduct attributable to PwC did not cause any legally  
28 cognizable injury or damage.

1                                    NINTH AFFIRMATIVE DEFENSE

2            Each purported claim set forth in the Complaint is barred, in whole or in part,  
3    because any damage or injury to Plaintiffs was caused in whole or in part by  
4    Plaintiffs' own conduct, omissions, intentional or reckless misconduct and/or  
5    negligence.

6                                    TENTH AFFIRMATIVE DEFENSE

7            Each purported claim set forth in the Complaint is barred in whole or in part  
8    because their alleged injuries and damages, if any, are the result of independent,  
9    unforeseeable, superseding, and/or intervening causes, and/or the result of the  
10   negligence, breach of duty, and acts or omissions of other parties or persons over  
11   whom PwC had no control, who substantially impeded PwC's ability to perform its  
12   audits, and for whom PwC is not responsible in law.

13                                  ELEVENTH AFFIRMATIVE DEFENSE

14           Each purported claim set forth in the Complaint is barred, in whole or in part,  
15   by the doctrine of comparative negligence. Any recovery is barred, or must be  
16   reduced to the extent Plaintiffs' alleged harm, if any, was not caused by PwC.

17                                  TWELFTH AFFIRMATIVE DEFENSE

18           Each purported claim set forth in the Complaint is barred, in whole or in part,  
19   because Plaintiffs consented, approved, acquiesced in, and/or ratified some or all of  
20   the conduct alleged in the complaint.

21                                  THIRTEENTH AFFIRMATIVE DEFENSE

22           Each purported claim set forth in the Complaint is barred, in whole or in part,  
23   because Plaintiffs lack standing to assert the claims set forth in the complaint.

24                                  FOURTEENTH AFFIRMATIVE DEFENSE

25           Each purported claim set forth in the Complaint is barred by the applicable  
26   statutes of limitations, including but not limited to Section 4.16.080 of the Revised  
27   Code of Washington.

1 FIFTEENTH AFFIRMATIVE DEFENSE

2 Each purported claim set forth in the Complaint is barred, in whole or in part,  
3 by the doctrine of unclean hands.

4 SIXTEENTH AFFIRMATIVE DEFENSE

5 Each purported claim set forth in the Complaint is barred, in whole or in part,  
6 by the doctrines of estoppel, laches and/or waiver.

7 SEVENTEENTH AFFIRMATIVE DEFENSE

8 Each purported claim set forth in the Complaint is barred, in whole or in part,  
9 because Plaintiffs failed to make reasonable efforts to mitigate any injury or  
10 damages they may have suffered, and could have prevented such injury or damages.

11 EIGHTEENTH AFFIRMATIVE DEFENSE

12 Each purported claim set forth in the Complaint is barred, in whole or in part,  
13 because Plaintiffs would be unjustly enriched if they were allowed to recover  
14 anything in this action.

15 NINETEENTH AFFIRMATIVE DEFENSE

16 Each purported claim set forth in the Complaint is barred, in whole or in part,  
17 because Plaintiffs are not entitled to recover their costs and expenses incurred in  
18 this action, including without limitation, attorneys' fees, from PwC.

19 RESERVATION OF RIGHT TO ASSERT ADDITIONAL  
20 AFFIRMATIVE DEFENSES

21 PwC may have further and additional affirmative defenses to the claims set  
22 forth in the Complaint and therefore reserves the right to assert such defenses at the  
23 appropriate time.



**CERTIFICATE OF SERVICE**

I, M. Todd Scott, hereby certify that on January 6, 2006 I caused the foregoing document to be electronically filed with the Clerk of the Court using the CM/ECF System which will send notification to all CM/ECF subscribers, and caused a true and correct copy to be sent via U.S. Mail to any and all non-CM/ECF participants who are required to be manually served in this case.

/s/ M. Todd Scott  
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