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FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

OCT 06 2006

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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

In re METROPOLITAN SECURITIES  
LITIGATION

No. CV-04-025-FVS

CLASS ACTION

THIS DOCUMENT RELATES TO:  
ALL ACTIONS

JUDGMENT AND ORDER FINALLY  
APPROVING PARTIAL  
SETTLEMENTS, DISMISSING  
CLAIMS AGAINST SETTLING  
DEFENDANTS, BARRING CLAIMS  
FOR CONTRIBUTION AND  
INDEMNITY, ESTABLISHING A  
SETTLEMENT FUND, AWARDING

JUDGMENT AND ORDER - 1 of 11  
(Case No. CV04-025-FVS)

[1361776 v3.doc]

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COSTS TO SETTLEMENT CLASS  
REPRESENTATIVES AND  
DIRECTING THE ENTRY OF A  
F.R.Civ.P. 54(b) JUDGMENT

THIS MATTER came on for hearing on October 6, 2006 upon the motion of the Settlement Class Representatives for final approval of the participation of the Settlement Class in the following partial settlements: (1) A "Summit Settlement Agreement"; and (2) A "Metropolitan Settlement Agreement" (collectively the "Partial Settlements"). Copies of the Summit and Metropolitan Settlement Agreements are attached to the June 2, 2006 Declaration of Bradley Jones [Docket No. 376].

On August 1, 2006, the Court entered an Order Certifying A Settlement Class, Preliminarily Approving Partial Settlements, Appointing Settlement Class Representatives and Settlement Class Counsel, Approving Form and Manner of Notice, and Scheduling Hearing on Fairness and Final Approval of Partial Settlements Pursuant to Federal Rule of Civil Procedure 23(e) (Docket No. 384). That Order is expressly incorporated herein. Due and adequate notice having been given to the Settlement Class, and the Court having considered the Summit Settlement Agreement and the Metropolitan Settlement Agreement, all papers filed and proceedings had herein, and having reviewed the entire record in this litigation, and good cause appearing,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

JUDGMENT AND ORDER - 2 of 11  
(Case No. CV04-025-FVS)  
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1           1.     The Court, for purposes of this Judgment and Order of Dismissal  
2 (the "Judgment"), adopts all defined terms as set forth in the Summit Settlement  
3 Agreement and Metropolitan Settlement Agreement, with the following  
4 exception. For the purposes of this Judgment, the term "Settling Defendants" is  
5 defined to include Robert K. Potter, Clayton E. Rudd, James V. Hawkins,  
6 Gregory S. Strate, Philip W. Sandifur, Samuel Smith, Bruce J. Blohowiak, B.  
7 Elaine Hoskin, Gary D. Brajcich, the Estate of Harold W. Erfurth, Reuel C.  
8 Swanson, William A. Smith, John T. Trimble and Erik E. Skaggs. The  
9 respective spouses, marital communities and estates of the Settling Defendants  
10 are the "Additional Released Parties."

11  
12           2.     The Court has jurisdiction over the subject matter of this action and  
13 over all parties to this action, including all members of the Settlement Class and  
14 the Settling Defendants. The Court has certified, for settlement purposes only, a  
15 Settlement Class as follows:

16  
17           All persons who purchased investment debentures or  
18 preferred stock issued by Metropolitan or investment  
19 certificates or preferred stock issued by Summit  
20 pursuant to registration statements that became or were  
21 effective during the period from February 13, 2001  
22 through December 15, 2003 (the "Class Period")  
23 (excluded from the proposed Settlement Class are  
24 registered representatives who sold Metropolitan or  
25 Summit securities, defendants, and their immediate  
26 family members, any entity in which they have a  
controlling interests, and the heirs, successors or  
assigns of the same).

1           3.     The Court finds that the distribution of the Notice of Pendency and  
2 Partial Settlement of Class Action, and publication of both the Notice and the  
3 Summary Notice of Proposed Partial Class Action Settlements and Settlement  
4 Hearing (as provided for in the Court's August 1, 2006 Order), constituted the  
5 best notice practicable under the circumstances to apprise all Settlement Class  
6 Members of the pendency of this action, the terms of the proposed partial  
7 settlements of this action, and their rights with respect to the foregoing, and  
8 afforded Settlement Class Members with an opportunity to present their  
9 objections, if any, to the Proposed Settlements. The Court finds that the  
10 provision of notice to Settlement Class Members fully met the requirements of  
11 Rule 23 of the Federal Rules of Civil Procedure, federal law, due process, the  
12 United States Constitution, and any other applicable law.  
13

14           4.     The Court finds that all Settlement Class Members have been  
15 adequately provided with an opportunity to remove themselves from the  
16 Settlement Class by executing and returning a "request for exclusion" in  
17 conformance with the terms of the Summit Settlement Agreement and the  
18 Metropolitan Settlement Agreement. The Court further finds that those persons  
19 identified in Exhibit 1 hereto have timely and validly requested exclusion from  
20 the Settlement.  
21

22           5.     The Court approves the partial settlement of this action, as set forth  
23 in the Summit Settlement Agreement and Metropolitan Settlement Agreement,  
24 including the releases contained therein, the relative contributions of the Settling  
25  
26

1 Defendants, and all other terms, as fair, just, reasonable, and adequate to the  
2 Settlement Class.

3  
4 6. The record before the Court demonstrates that the potential  
5 damages alleged by the Plaintiffs in this litigation greatly exceed the Settling  
6 Defendants' assets available to satisfy a judgment against them. In addition, the  
7 insurance policies which are funding the Partial Settlements have already been  
8 partially depleted by payment of covered defense costs. Those policy proceeds  
9 now available for settlement purposes would certainly be exhausted through  
10 reimbursement of additional defense costs in the absence of the Partial  
11 Settlements. Finally, the record before the Court amply demonstrates that the  
12 Partial Settlements were reached as the result of vigorous, protracted and arm's-  
13 length negotiations and that the Partial Settlements have been entered into in  
14 good faith.

15  
16 7. Except as to any individual claim of those persons (identified in  
17 Exhibit 1 attached hereto) who have validly and timely requested exclusion from  
18 the Settlement Class, all claims of the Settlement Class Representatives and the  
19 members of the Settlement Class referred to in Sections IV(A)(1) and (2) and  
20 Section IV (C) of the Summit Settlement Agreement and the Metropolitan  
21 Settlement Agreement are dismissed with prejudice as to each of the Settling  
22 Defendants and Additional Released Parties.

23  
24 8. Pursuant to 15 U.S.C. §78u-4(f)(7)(A), the Metropolitan Settlement  
25 Agreement and the Summit Settlement Agreement, any and all claims for  
26 contribution arising out of any claims under the federal securities laws released

JUDGMENT AND ORDER - 5 of 11  
(Case No. CV04-025-FVS)

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1 by the Settlement Class, including, but not limited to any claims that are based  
2 upon, arise out of or relate to the Class Action, and/or any claims that were  
3 alleged or could have been alleged in the initial Complaint, the Amended  
4 Complaint or the Second Amended Complaint, (a) by any person against a  
5 Settling Defendant, and (b) by any Settling Defendant, except as set out in 15  
6 U.S.C. §78u-4(f)(7)(A)(ii), are hereby permanently barred, extinguished,  
7 discharged, satisfied and unenforceable. This contribution bar shall apply  
8 whether or not the Settling Defendant is a "covered person" as defined in 15  
9 U.S.C. §78u-4(f)(10). Accordingly, without limiting the above, any person  
10 (including any defendant in the Class Action who is not a Settling Defendant  
11 and all persons purporting to act on his, its or their behalf and all persons  
12 purporting to claim by or through him, it or them whether under a subrogation  
13 theory or otherwise) is hereby permanently enjoined from commencing,  
14 prosecuting or asserting against any of the Settling Defendants any such claim  
15 for contribution, and each Settling Defendant is hereby permanently enjoined  
16 from commencing, prosecuting, or asserting against any person (including any  
17 defendant in the Class Action who is not a Settling Defendant) any such claim  
18 for contribution.  
19  
20

21 9. Any final verdict or judgment to which 15 U.S.C. §78u-4(f)(7)(B)  
22 applies that may be obtained by or on behalf of the Settlement Class or a  
23 Settlement Class Member against any defendant in the Class Action who is not a  
24 Settling Defendant shall be reduced by the greater of (a) an amount that  
25 corresponds to the percentage of responsibility of the Settling Defendants for the  
26

JUDGMENT AND ORDER - 6 of 11  
(Case No. CV04-025-FVS)

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1 loss to the Settlement Class or the Settlement Class Member, or (b) the amount  
2 paid by or on behalf of the Settling Defendants to the Settlement Class in  
3 connection with the Summit Settlement Agreement and the Metropolitan  
4 Settlement Agreement except to the extent, if any, that such reduction may be  
5 affected by the provisions of 15 U.S.C. §77(k)(f)(1). If any final verdict or  
6 judgment under the federal securities laws that is not subject to 15 U.S.C. §78u-  
7 4(f)(7)(B) is obtained by or on behalf of the Settlement Class or a Settlement  
8 Class Member against any defendant in the Class Action who is not a Settling  
9 Defendant, then such final verdict or judgment shall be reduced according to the  
10 judgment reduction provisions applicable under Ninth Circuit law as set forth in  
11 *Franklin v. Kaypro Corp.*, 884 F.2d 1222 (9th Cir. 1989) and/or, to the extent  
12 applicable, the provisions of U.S.C. § 77(k)(f)(1).  
13

14 10. The Court finds that the Partial Settlements represent a reasonable  
15 and good faith settlement of all claims arising under state law or federal non-  
16 securities law released by the Securities Claimants under the Summit Settlement  
17 Agreement and the Metropolitan Settlement Agreement and is sufficient to  
18 discharge the Settling Defendants and Additional Released Parties from all such  
19 claims. The Court further finds that the Settling Defendants and Additional  
20 Released Parties are entitled to protection to the fullest extent permitted by  
21 applicable state law and federal non-securities law from liability to third parties  
22 for contribution or indemnification or any other claim where the claimant's  
23 injury is the claimant's liability to the Securities Claimants. These protections  
24 include, without limitation, those provided by RCW 4.22.060, Sections 877 and  
25  
26

JUDGMENT AND ORDER - 7 of 11  
(Case No. CV04-025-FVS)

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1 877.6 of the California Code of Civil Procedure and any comparable statute or  
2 common law of any other state (the "Additional Contribution Protections"). To  
3 extent such Additional Contribution Protections apply, any defendant in the  
4 Class Action who is not a Settling Defendant shall have any final verdict or  
5 judgment obtained by or on behalf of the Settlement Class against such non-  
6 settling defendant reduced according to the corresponding judgment reduction  
7 provisions applicable under such state law or federal non-securities law,  
8 including, but not limited to, those provided by RCW 4.22.060, Sections 877  
9 and 877.6 of the California Code of Civil Procedure and any comparable statute  
10 or common law of any other state.

11  
12 To effect the Settlements, the Court orders that:

13 (a) Any and all defendants in the Class Action who are not  
14 Settling Defendants are permanently barred, enjoined and restrained from  
15 commencing, prosecuting or asserting any claim against the Settling Defendants,  
16 however styled, whether legal or equitable, known or unknown, whether arising  
17 under state law or federal non-securities law, whether for indemnification or  
18 contribution or otherwise denominated (including claims for breach of contract  
19 or misrepresentation), where the claim is based on, arises out of or relates to the  
20 Class Action including, without limitation, any claim in which such non-settling  
21 defendant seeks to recover from any of the Settling Defendants or the Additional  
22 Released Parties (1) any amounts that a non-settling defendant has paid, become  
23 liable to pay or may become liable to pay in the Class Action or in any  
24 proceeding commenced by a Settlement Class Member or (2) any costs,  
25  
26

JUDGMENT AND ORDER - 8 of 11  
(Case No. CV04-025-FVS)

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1 expenses or attorney fees that a non-settling defendant has incurred or may incur  
2 in defending against any claim asserted in the Class Action or in any proceeding  
3 commenced by a Settlement Class Member (hereafter "Barred Claims"). All  
4 Barred Claims are hereby extinguished, discharged, satisfied and made  
5 unenforceable.  
6

7 (b) Because the non-settling defendants are barred from asserting  
8 any Barred Claims against the Settling Defendants and the Additional Released  
9 Parties, any final verdict or judgment entered against the non-settling defendants  
10 by the Settlement Class or a Settlement Class Member shall be reduced as  
11 determined by and provided for under the state law or federal non-securities law  
12 applicable to such Barred Claims.

13 (c) If the Settlement Class obtains a settlement, judgment or  
14 verdict based upon, arising out of or relating to the Class Action against a  
15 person, and, notwithstanding the provisions in Paragraphs 8, 9, 10(a) and 10(b)  
16 above, that person obtains a recovery against a Settling Defendant or an  
17 Additional Released Party for (1) amounts that person has become liable to pay  
18 or may become liable to pay to the Settlement Class and/or (2) any costs,  
19 expenses or attorney fees that person has incurred in defending such claims, the  
20 Settlement Class shall reduce or credit any judgment or settlement against that  
21 person by the amount of that person's recovery against the Settling Defendant or  
22 the Additional Released Party, which amount shall then be credited to the  
23 recovery against the Settling Defendant or the Additional Released Party.  
24  
25  
26

JUDGMENT AND ORDER - 9 of 11  
(Case No. CV04-025-FVS)

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1           11. The Court approves the creation of a Settlement Fund in the amount  
2 of \$1,000,000 to be funded out of the proceeds of the Summit and Metropolitan  
3 Settlement Agreements. The Settlement Fund shall be maintained in an interest-  
4 bearing account, and shall be used exclusively to reimburse Settlement Class  
5 Representatives and Settlement Class Counsel for out-of-pocket expenses  
6 incurred by Settlement Class Representatives and Settlement Class Counsel on  
7 behalf of the Settlement Class. All distributions out of the Settlement Fund shall  
8 be subject to Paragraph 12 of this Order and to further Order of the Court.  
9

10           12. Litigation expenses are compensable in a common fund case if the  
11 particular costs are reasonable and if they are of the type typically billed by  
12 attorneys to paying clients in the market place. *See, e.g., Vincent v. Hughes Air*  
13 *West*, 557 F.2d 759, 769 (9<sup>th</sup> Cir. 1977); *In re Bankamerica Corp. Securities*  
14 *Litigation*, 228 F.Supp.2d 1061, 1066-67 (E.D. Mo. 2002); *In re Media Vision*  
15 *Technology Sec. Litigation*, 930 F.Supp. 1362, 1366 (N.D. Cal. 1996).  
16 Settlement Class Representatives and Seattle Class Counsel seek an award of  
17 \$647,398.63 at this time. Having reviewed the expenses for which  
18 reimbursement is sought, and mindful of the extensive litigation and work that  
19 has been performed to date, the Court finds that these expenses are reasonable,  
20 and they are the types of expenses routinely charged to hourly paying clients  
21 and, therefore, should be reimbursed out of the Settlement Fund at this time.  
22

23           13. The Settlements do not result in final adjudication of the matter as  
24 to all defendants. Therefore, the Court reserves making the findings required by  
25 15 U.S.C. 78u-4(c)(i)  
26

JUDGMENT AND ORDER - 10 of 11  
(Case No. CV04-025-FVS)

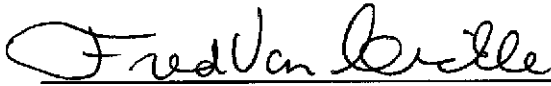
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1 14. This Court shall retain jurisdiction of all matters relating to the  
2 interpretation, administration, implementation, effectuation and enforcement of  
3 the Partial Settlements.

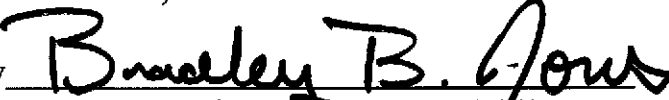
4 15. The Court hereby finds that, pursuant to Federal Rule of Civil  
5 Procedure 54(b), there is no just reason for delay of entry of this Final Judgment,  
6 and therefore the Court hereby directs that Final Judgment be entered approving  
7 the Partial Settlements and directing performance of the terms of the Partial  
8 Settlements.

9  
10 IT IS SO ORDERED this <sup>A</sup>6 day of October, 2006.

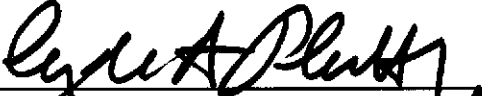
11   
12 \_\_\_\_\_  
13 UNITED STATES DISTRICT JUDGE

14 Presented by:

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16 MALANCA, PETERSON & DAHEIM LLP

17 By   
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26 JUDGMENT AND ORDER - 11 of 11  
(Case No. CV04-025-FVS)

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## **EXHIBIT 1 EXCLUSIONS**

1. Schwartz, Margaret  
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2. Jeanroy, Donald  
Boise, Idaho
3. Hundhausen, Mr. and Mrs. William  
Spokane, Washington
4. Ayers, Katheen  
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