

PROPOSED FINDINGS OF FACT

1. Individual Defendant Richard A. Altomare is a citizen of the United States, and a resident of the State of Florida. Altomare has been USXP's chief executive officer ("CEO") and a director of USXP since the company emerged from Chapter 11 reorganization in 1992. [Cplt. ¶ 17; USXP Answer ¶ 17; Altomare Tr., 8:21-23; 9:3-10:3.]

2. Individual Defendant Chris G. Gunderson has been USXP's in-house counsel since 1995. [Cplt. ¶ 18; USXP Answer ¶ 18; Gunderson Tr. 4:12-14; 5:4-12.]

3. Defendant Spiga, Ltd. ("Spiga"), is a special purpose investment company organized under the laws of the British Virgin Islands, with its principle location in Bermuda. [Sandhu, Exh. 57 (Bear Stearns' Client Contact Information, Limited Trading Authorization.)]

4. Individual Defendant Tarun Mendiratta is a citizen of the United States and is a resident of the State of Connecticut. [Cplt. ¶ 22; Mendiratta Answer ¶ 22; Sandhu Exh. 31.] Plaintiff Securities and Exchange Commission ("SEC") noticed Mr. Mendiratta's deposition in this case, which was taken on August 29, 2007 at the Plaintiff SEC's offices in Denver, Colorado. According to an October 15, 2007 letter from the court reporter, Livenote World Services, Mr. Mendiratta refused to review and sign the transcript of his deposition.

5. Third party witness Marshall Stanek is employed in sales at TEC International. Plaintiff SEC noticed Mr. Stanek's deposition in this case, which was taken on February 23, 2006. [Stanek Tr. 1:16, 6:24-7:17.]

6. Third party witness Luca Pasqualini is employed as vice president of Capital Funding, Inc., a subsidiary of General Electric Commercial Finance. Plaintiff SEC noticed Mr. Pasqualini's deposition in this case, which was taken on March 2, 2006. [Pasqualini Tr. 1:14, 6:2-20.]

7. Third party witness John Crane is employed as a loan officer at First Choice Finance Service. Plaintiff SEC noticed Mr. Crane's deposition in this case, which was taken on March 7, 2006. [Crane Tr. 1:23, 6:1-5.]

8. Third party witness Robert Longo is employed as Vice President, general counsel for the Western Group, at Waste Management. Plaintiff SEC noticed Mr. Longo's deposition in this case, which was taken on March 10, 2006. [Longo Tr. 1:14, 5:18-22.]

9. Third party witness Sergey Rumyantsev is employed as the President and Chief Executive Officer of NevWest Securities Corporation. Plaintiff SEC noticed Mr. Rumyantsev's deposition in this case, which was taken on March 14, 2006. [Rumyantsev Tr. 1:17, 10:20-11:17.]

10. Third party witness James Parrish is employed as Executive Vice President of Maverick Oil and Gas. Plaintiff SEC noticed Mr. Parrish's deposition in this case, which was taken on March 23, 2006. [Parrish Tr. 1:14; 5:10-12.]

11. Third party witness Byron McGough is the President, Chief Executive Officer, and sole proprietor of Millennium Capital. Plaintiff SEC noticed Mr. McGough's deposition in this case, which was taken on March 24, 2006. [McGough Tr. 1:14, 5:16-6:13.]

12. Third party witness Kevin Thompson is employed as a relationship manager at BB&T Corporation. Plaintiff SEC noticed Mr. Thompson's deposition in this case, which was taken on March 31, 2006. [Thompson Tr. 1:13-14, 8:10-17.]

13. Third party witness Michael Jay Margolis is employed as a sales representative at Oppenheimer & Company. Between 1996 and 2006, Mr. Margolis was employed as a sales representative and branch manager at Bear Stearns & Company ("Bear Stearns"). Plaintiff SEC

noticed Mr. Margolis' deposition in this case, which was taken on April 10, 2006. [Margolis Tr. 1:20; 8:2-9:7.]

14. Third party witness Jeanette Drayer is retired after selling OTC Corporate Transfer Service Company, of which she was sole proprietor, in 2005. Plaintiff SEC noticed Ms. Drayer's deposition on April 11, 2006, and April 20, 2006. [Drayer Tr. I 1:16, 4:17-5:10; Drayer Tr. II 1:16.]

15. Third party witness Austin Bleich is President of New Millenium Financial Corporation. Plaintiff SEC noticed Mr. Bleich's deposition in this case, which was taken on April 12, 2006. [Bleich Tr. 1:14, 6:22-7:6.]

16. Third party witness Gale Ellsworth is President and Chief Executive Officer of Trailways Transportation System. Plaintiff SEC noticed Ms. Ellsworth's deposition in this case, which was taken on March 28, 2006. [Ellsworth Tr. 1:16, 6:20-7:7.]

17. Hugh Beck is a staff attorney at Plaintiff SEC's office in Denver, Colorado, who participated in the investigation that led to the filing of the Complaint in this Action. Mr. Sandhu noticed Mr. Beck's deposition on April 14, 2006, and April 18, 2006. [Beck Tr. 1:19, 6:8-7:23; 231:20.]

18. The SEC instituted the present Action on March 24, 2004. [Cplt. at p. 26.]

19. On June 16, 2004, Mr. Sandhu moved for Judgment on the Pleadings. [See Court docket sheet.]

20. On November 4, 2004, this Court denied Mr. Sandhu's Motion for Judgment on the Pleadings *sua sponte* and allowed the SEC to proceed with discovery. [See November 4, 2004, Order Denying Motion for Judgment on the Pleadings.]

21. Between November 4, 2004, and January 25, 2006, the SEC conducted no depositions.

22. Non-expert discovery was to be completed in this Action by January 31, 2006. [See March 25, 2005, Case Management Plan.]

23. On January 26, 2006, the SEC asked all parties to consent to its taking 15 non-expert depositions during February - April 2006.

24. On March 3, 2006, the SEC circulated among the parties by email a document titled Revised Rule 26 Persons with Knowledge of Facts Relevant to SEC v. USXP (the "Revised List"), over one month after the date on which non-expert depositions were supposed to have been completed. [Sandhu Exh. 3.]

25. The Revised List contained eight new individuals unidentified by the SEC in either its original Rule 26 list, which was sent Mr. Sandhu on June 27, 2005, or its Notice of Depositions. At least three of the additions to the Revised List were staff employees of the SEC. [Sandhu Exh. 3.]

26. Mr. Sandhu was an investment advisor at International Investment Group ("IIG") through 2005. [Sandhu Tr. 22:12-24:13.]

27. On behalf of IIG, Mr. Sandhu advised the Venezuela Recovery Fund, N.V., Curacao, which had total assets of \$53,900,000 on December 31, 2002. [Beck Tr. 164:12-165:16; Sandhu Exh. 55 (Venezuela Recovery Fund Portfolio of Investments).]

28. On behalf of IIG, Mr. Sandhu advised the IIG Opportunity Trade Fund, which had total assets of \$152,500,000 and total net assets of \$149,588,000 on December 31, 2002, according to an audited financial statement by KPMG. [Beck Tr. 164:1-173:16.]

29. Target Growth Fund Limited ("Target" or "Target Growth Fund") is a Bermuda-based investment fund. [Sandhu Tr. 36:19-36:24.]

30. Since 1999, Mr. Sandhu has been a director of Target. Mr. Sandhu's primary duty as a director is to advise the company regarding investment opportunities. [Sandhu Tr. 36:25-37:11.]

31. Among Target's investors were BNP Paribas, Credite Lyonnais, and Credite Agricole, French "money center" banks. [Sandhu Tr. 172:21-173:9.]

32. Mr. Sandhu provided investment advice to Gian Luigi Longinotti-Buitoni. [Sandhu, Exh. 56 (Buitoni CV); Sandhu Tr. 170:11-172:6.]

33. Mr. Buitoni was at one time the president of North American Ferrari (a \$2.5 billion company) and was later the president and chief operating officer of Polo Ralph Lauren Europe. [Sandhu Exh. 56 (Buitoni CV); Sandhu Tr. 171:14-172:2.]

34. Mr. Buitoni is part of the family that founded the Perugina chocolate company and the Buitoni pasta company. [Sandhu Exh. 56 (Buitoni CV); Sandhu Tr. 170:21-23.]

35. Mr. Buitoni attended Insead. [Sandhu Exh. 56 (Buitoni CV); Sandhu Tr. 170:24-171:13.]

36. Mr. Sandhu typically advised investors of Mr. Buitoni's stature from Italy and elsewhere. [Sandhu Tr. 172:3-6.]

37. Azure Capital Holdings, LLC ("Azure" or "Azure Capital") is based in Delaware and was originally created by the public company CDK Net. [Sandhu Tr. 25:14-26:3.]

38. The principals of Spiga were wealthy individuals and institutions. [Sandhu Tr. 28:9-29:18.]

39. Among Spiga's individual investors was Alberto Ardisonne, Mr. Sandhu's brother-in-law. [Sandhu Tr. 168:23-169:7.]

40. Mr Ardisonne has a personal net worth in excess of \$50,000,000, which he earned as the principal owner of a company that supplied manufactured truck parts and door panels to many car manufacturers throughout the world. [Sandhu Tr. 169:8-17.]

41. Mr. Ardisonne's first wife was a member of one of the founding families of Fiat. [Sandhu Tr. 169:18-170:4.]

42. Spiga did not maintain a large amount of capital, instead calling on its high net-worth investors when there was a proposition that seemed interesting. [Sandhu Tr. 30:5-13.]

43. Mr. Beck joined the SEC staff as a non-lawyer, and was assigned to the USXP investigation in May 2003. [Beck Tr. 7:12-11:13.]

44. Mr. Beck sat for the Colorado bar exam in July 2003. [Beck Tr. 194:11-16.]

45. Mr. Sandhu informed Mr. Beck that he advised clients worth tens of millions of dollars and that the data reflecting the wealth of these clients was in materials that IIG had produced to the SEC's New York office. [Beck Tr. 165:7-173:24.]

46. The SEC had failed to provide this information to Mr. Beck or to make it known to him. [Beck Tr. 166:6-173:24.]

47. Spiga opened an account at Bear Stearns on September 29, 1999. [Margolis Tr. 9:25-10:2; Sandhu Exh. 57 (Bear Stearns Client Contact Information).]

48. On September 29, 1999, Spiga executed a Trading Authorization Limited to Purchases and Sales of Securities and Commodities ("Limited Trading Authorization"). [Sandhu Exh. 57 (Limited Trading Authorization).]

49. Mr. Sandhu had only a *limited* trading authority over Spiga's Bear Stearns account. [Sandhu Tr. 129:3-8; Sandhu Exh. 57 (Bear Stearns Documents, Limited Trading Authorization).]

50. The Limited Trading Authorization was signed by Mr. Clive Dakin, the managing director, president, and CEO of Spiga, who delivered it to Mr. Margolis, Spiga's Broker at Bear Stearns. [Margolis Tr. 54:21-55:1; Sandhu Exh. 57 (Limited Trading Authorization).]

51. Confirmations, monthly statements, and other Bear Stearns documents were sent to Spiga and Mr. Dakin. [Sandhu Exh. 57 (Bear Stearns' Client Contact Information); Margolis Tr. 81:16-22.]

52. Mr. Beck, the SEC's employee and agent, testified that monthly statements and confirmations went to "Spiga's representative in Bermuda." [Beck Tr. 102:1-18.]

53. No address was listed under the name "George Sandhu" in Bear Stearns' files. [Margolis Tr. 12:21-14:4-6.] The account opening documentation for Spiga's Bear Stearns account was signed by Mr. Dakin, not Mr. Sandhu. [Margolis Tr. 54:21-55:1.] The Bear Stearns Client Contact Information cited was *signed by Mr. Dakin on behalf of Spiga*.

54. Requests to wire funds from Spiga's Bear Stearns account were made by Mr. Dakin. [Margolis Tr. 56:3-5.]

55. The consulting agreement between Spiga and USXP, and its amendments, were signed by Mr. Clive Dakin, Spiga's managing director, president and CEO, on behalf of Spiga. [Sandhu Tr. 99:2-104:16; SEC Deposition Exh. 7b.]

56. Mr. Sandhu was an agent for a disclosed principal, Spiga.

57. There is no evidence that Mr. Sandhu acted in any capacity other than as Spiga's agent. [Sandhu Tr. 98:2-11.]

58. All documentary evidence in this case shows that the USXP shares are registered in the name of "Spiga, Ltd" and provides the company's Bermuda address. All of the relevant stock and wire transfer instructions in this case bear Mr. Dakin's name and signature. Generally brokerage firms do not accept verbal wire instructions.

59. Mr. Sandhu received no transfers of USXP shares from Spiga. Upon receiving USXP shares, Mr. Sandhu delivered the shares to Spiga's brokerage accounts or sent them to Spiga's office in Bermuda. [Sandhu Tr. 109:11-19, 109:20-24; Beck Tr. 17:9-11; SEC Deposition Exh. 175.]

60. Mr. Margolis was and is aware of the "know your customer" rule and other legal requirements regarding foreign customers to which brokers and broker-dealers are subject. [Margolis Tr. 71:24-73:10.]

61. Mr. Margolis and/or Bear Stearns conducted appropriate due diligence to fulfill their legal obligations under these rules and ensure that both Mr. Sandhu was a legitimate investor and Spiga was a "legitimate, honest, reputable entity." [Margolis Tr. 73:6-74:12.]

62. For each Spiga stock certificate that came in, Bear Stearns would conduct a legal and due diligence review in order to make sure that the transfer was legitimate and that it met the appropriate legal requirements. [Margolis Tr. 68:21-69:19.]

63. Spiga did not open its Bear Stearns account for the purpose of trading USXP stock. [Margolis Tr. 70:11-71:8; 115:10-117:8.]

64. The SEC sent Mr. Margolis a copy of its notes supposedly reflecting what Mr. Margolis said during his SEC interview prior to his deposition. [Margolis Tr. 113:19-115:1.]

65. These notes were written by Hugh Beck. [10/9/07 SEC Letter Opposition Brief to Court at p. 12 n.3.]

66. Mr. Margolis wrote "no" next to the text in those notes that falsely represented that he had said that Spiga opened the account for the purpose of trading USXP shares. [Margolis Tr. 115:10-117:8.]

67. Spiga began trading USXP stock in 2001, which was approximately 2 years after it opened its Bear Stearns account. [Margolis Tr. 70:15-25.]

68. When Spiga began trading USXP stock, it delivered to Bear Stearns "legended" stock certificates [also known as "restricted shares"], which had been obtained by Spiga at an earlier time and held for the requisite time frame required by § 4(6), Regulation D and Rule 144 under the Securities Act of 1933. [Margolis Tr. 74:13-78:13.]

69. Bear Stearns has a separate group of lawyers to address transactions involving shares issued under SEC Rule 144. [Margolis Tr. 76:14-18.]

70. It is not unusual for customers to receive restricted shares. [Margolis Tr. 78:21-79:25.]

71. Upon receiving a request to sell USXP shares bearing a restrictive legend, Mr. Margolis was required to send the stock certificates to the legal department at Bear Stearns in order for the legal department to investigate the circumstances, satisfy itself that the legal requirements to sell such shares had been met by the seller, and then to clear the stock for sale by Bear Stearns. [Margolis Tr. 74:13-78:20.]

72. Bear Stearns' legal department had procedures that it followed to make sure all stock certificates with Rule 144 restrictions placed on them were cleared appropriately, the legends lawfully removed, and the shares legally tradable. [Margolis Tr. 23:2-20, 73:20-78:9.]

73. Bear Stearns' legal department examined the USXP stock certificates, the length of time Spiga had owned them, and other factors to determine the legitimacy of the underlying transaction. [Margolis Tr. 73:20-78:9.]

74. Bear Stearns' legal department determined that the restrictive legends on the USXP stock could lawfully be removed. [Margolis Tr. 78:10-13.]

75. Bear Stearns' legal department authorized Mr. Margolis to execute Spiga's trade of USXP stock. [Margolis Tr. 78:14-20.]

76. Bear Stearns' legal department never told Mr. Margolis that any restricted USXP shares held by Spiga could not be lawfully traded or that there was any question about whether Bear Stearns could remove the restrictive legend on any of Spiga's USXP stock. [Margolis Tr. 78:10-20.]

77. Occasionally, Spiga instructed Mr. Margolis to transfer some of its USXP shares to one of its accounts in another firm. On those occasions, Mr. Margolis received written instructions not from Mr. Sandhu, but from Spiga's managing director, president, and CEO Mr. Dakin. [Margolis Tr. 58:25-59:11.]

78. Mr. Beck, the SEC's employee and agent, testified that he did not find any USXP shares issued to Mr. Sandhu personally. [Beck Tr. 17:3-11.]

79. Mr. Beck, the SEC's employee and agent, testified that he did not find any money given personally from Mr. Sandhu to USXP. [Beck Tr. 19:16-20:8, 21:2-7.]

80. Mr. Beck, the SEC's employee and agent, testified that USXP filed registration statements with the SEC for S-8 stock prior to April 2001. [Beck Tr. 48-55.]

81. Mr. Beck, the SEC's employee and agent, testified that USXP, then known as Packaging Plus, had gone through a bankruptcy reorganization with its plan approved by the late

Chief Bankruptcy Judge Conrad Duberstein of the United States Bankruptcy Court for the Eastern District of New York. [Beck Tr. 46:10-47:4.]

82. Mr. Beck, the SEC's employee and agent, testified that Spiga paid USXP approximately \$2,500,000 for stock between 2001 and the end of 2003. [Beck Tr. 59:21-60:10.]

83. Spiga was a bona fide purchaser for value of USXP stock.

84. Mr. Beck, the SEC's employee and agent, testified that the "Target Growth Fund" letter spoke of then unknown "future" investments by USXP which still had to be "approved" by Mr. Sandhu's clients, and that such non-binding letters of interest were common in investment banking and were different from "firm commitments." [Beck Tr. 70-71:19.]

85. Mr. Beck, the SEC's employee and agent, testified that his TRO Declaration made on "personal knowledge," was actually based in significant part upon what staff in the SEC's New York office told him. [Beck Tr. 75:22-76:22; 90:14-97:15.]

86. Mr. Beck, the SEC's employee and agent, testified that "[e]ven on their face, Sandhu's letters did not state a commitment to invest." [Beck Tr. 88:8-18; 89:7-16.]

87. Yet, notwithstanding his personal knowledge as aforesaid, Mr. Beck, the SEC's employee and agent, made the unfounded statement in his TRO Declaration filed with this Court, *innuendo*, that Mr. Sandhu had some ownership interest in, and received money from, the Spiga accounts in Canada. [Beck TRO Declaration ¶ 42.]

88. Mr. Beck, the SEC's employee and agent, testified that, during the course of the SEC's investigation, he contacted Canadian broker-dealers and Canadian securities regulators to obtain information about Spiga's accounts in Canada. [Beck Tr. 106:19-107:14.]

89. Mr. Beck, the SEC's employee and agent, testified that "he didn't have [the documents]" related to the Canadian accounts and "was waiting for those to arrive." [Beck Tr. 106:19-107:10.]

90. Mr. Beck, the SEC's employee and agent, testified that after the documents arrived from the Canadian brokerage firm, they did not "have a letter [in] which George Sandhu instructed someone to sell the shares." [Beck Tr. 107:11-108:16.]

91. "Sandhu did not have trading authorization over Spiga's accounts at Research Capital" in Canada. [SEC statement of facts Pursuant to Rule 56.1 ¶ 73; Sandhu Tr. 110:8-24, 112:5-13.]

92. At his deposition, Mr. Beck, the SEC's employee and agent, testified that he never saw a power of attorney in Mr. Sandhu's name, nor did he find any money given from the Spiga account to Mr. Sandhu. [Beck Tr. 110:8-25.]

93. At his deposition, Mr. Beck, the SEC's employee and agent, could not state that he had any evidence to prove that money from the USXP sales by Spiga ever went to Mr. Sandhu. [Beck Tr. 111:1-10.]

94. Yet in Mr. Beck's Declaration, without any support, he affirmatively swore to this Court that "Sandhu" received money from the sale of shares. [Beck TRO Declaration ¶ 42.]

95. Mr. Sandhu did not receive any money from Spiga's sales of USXP stock.

96. Mr. Beck, the SEC's employee and agent, testified that he knew that Target had paid USXP in excess of \$500,000 over a period of several years for convertible notes or convertible debentures. [Beck Tr. 131:21-133:23.] "Convertible" securities (notes and debentures) carry with them a legal right in the owner to convert them into stock of the issuer.

97. Mr. Beck, the SEC's employee and agent, testified that he had never determined the source of the shares "used to honor convertible debentures." [Beck Tr. 153:19-22.]

98. Target was a bona fide purchaser.

99. At his deposition, Mr. Beck, the SEC's employee and agent, testified that "[f]or the most part," the allegations of the SEC's Complaint against Mr. Sandhu are really allegations against Spiga. [Beck Tr. 20:9-12.]

100. Jeanette Drayer, USXP's transfer agent, testified that "the thought never crossed [her] mind that Mr. Sandhu or anyone at Spiga would have any reason to believe that the transaction with USXP was anything other than a legitimate transaction and complying with Securities Laws." [Drayer Tr. II, 123:23-124:5.]

101. On behalf of Spiga, Mr. Sandhu asked Mr. Gunderson, and Mr. Gunderson told Mr. Sandhu, that the USXP shares were properly registered with the SEC. [Gunderson Tr. 165:12-24.]

102. Mr. Sandhu and Spiga were told that all of the shares issued to Spiga were "legal and appropriate." [Gunderson Tr. 168:9-15.]

103. USXP filed registration statements with the SEC on Form S-8 and pursuant to Section 12(g) of the Securities Exchange Act of 1934. USXP claimed it was allowed to issue and sell such shares to purchasers pursuant to the Bankruptcy Reorganization Plan approved by the United States Bankruptcy Court. [Sandhu Exh. 66 (Form 10-KSB reflecting Section 12(g) registration by USXP with SEC); Sandhu Exh. 67 (S-8 registration statement); Gunderson Tr. 158:7-14, 176:3-24.]

104. These registration statements and other documents were publicly available and accessible. [Altomare Tr. 32: 1-11.]

105. USXP's shares were listed and traded on the National Association of Securities Dealers' Over The Counter Bulletin Board ("OTCBB"). [Sandhu Exhs. 69-75.]

106. There is no evidence that prior to the investigation leading to the filing of the Complaint in this Action, the SEC ever issued a stop order, suspended trading in USXP shares, or moved to cancel the 12(g) registrations.

107. Mr. Sandhu did not know that Spiga's USXP shares were not properly registered or not exempt from registration [See, e.g., Sandhu Tr. 121:4-122:13, 151:14-153:5, 213:14-214:15.]

108. Mr. Sandhu believed Spiga's USXP shares were properly registered or exempt from registration. [See, e.g., Sandhu Tr. 151:14-153:5.]

109. Mr. Sandhu believed that Spiga's USXP shares could be lawfully transferred and sold. [See, e.g., Sandhu Tr. 121:4-122:13, 151:14-152:9, 213:14-214:15.]

110. The SEC has alleged that Mr. Sandhu sent USXP two letters "expressing commitments to fund Universal's proposed acquisition of a transportation company." [Cplt. ¶ 43; Sandhu Exh. 60 (Letter dated March 25, 2002); Sandhu Exh. 59 (Letter dated May 21, 2002).]

111. Mr. Beck, the SEC's employee and agent, testified that those letters were not commitments. [Beck Tr. 88:8-18, 89:7-16.]

112. The SEC's Complaint states that "on their face, Sandhu's letters did not state a 'commitment' to invest, but instead stated only that Sandhu was prepared 'based upon due diligence and proper collateral' to arrange financing and that Sandhu would be committed to the funding of the combined company 'if the acquisition worked out'". [Cplt. ¶ 47.]

113. No witness who the SEC noticed and deposed in this case testified that they ever believed that these letters were binding commitments by Target, Azure, or Mr. Sandhu to invest in any transaction.

114. These letters were not a commitment to invest.

115. These letters were not fraudulent or deceiving.

116. Ms. Ellsworth testified that the letters that Trailways received from USXP, including the Azure letters signed by Mr. Sandhu, were from "legitimate financial institutions." [Ellsworth Tr. 177:9-13, 178:15-18.]

117. Mr. Altomare sent the Azure letters signed by Mr. Sandhu to Ms. Ellsworth. [Ellsworth Tr. 7:3-7.]

118. Ms. Ellsworth called Mr. Sandhu after receiving the Azure letters. [Ellsworth Tr. 54:22-24.]

119. At no time did Ms. Ellsworth believe that the two letters were a binding commitment by Azure that it would invest in the Trailways transaction. [Ellsworth Tr. 145:25-146:7.]

120. Ms. Ellsworth recognized that Azure conditioned its letters on its completion of due diligence and its satisfaction with the results of that due diligence. [Ellsworth Tr. 172:4-7; 177:5-178:18.]

121. As the CEO of Trailways, Ms. Ellsworth would not commit her company's funds without reserving its right to conduct due diligence, and she would have to be satisfied with the results of Trailways' due diligence before she would commit her company's funds to any project. [Ellsworth Tr. 172:16-173:14.]

122. Ms. Ellsworth understood that Azure's letter stated that it was expressly "based upon the initial proposed letter of intent" between Trailways and USXP. [Ellsworth Tr. 185:9-19.]

123. The initial letter of intent between Trailways and USXP was changed numerous times. [Ellsworth Tr. 145:25-146:7.]

124. Ms. Ellsworth knew Mr. Sandhu's telephone number and had called him herself. [Ellsworth Tr. 167:19-168:4.]

125. Ms. Ellsworth never called Mr. Sandhu or Azure to inform them that the letter of intent had changed or to inquire whether Azure was still interested in the possible transaction despite the changed letter of intent. [Ellsworth Tr. 185:20-186:18.]

126. The proposed Trailways/USXP transaction was a private transaction.

127. The Trailways/USXP transaction was never consummated or closed.

128. Mr. Sandhu did not obtain any money in connection with the Trailways/USXP due diligence and negotiations.

129. The SEC's Complaint alleges that Mr. Altomare misrepresented the content of the letters signed by Mr. Sandhu in USXP's public press releases. [Cplt. ¶ 46.]

130. The SEC's Complaint alleges that "[f]rom May 2002 to April 2003, Altomare issued four false and misleading press releases that announced Universal's receipt of large funding commitments for acquisitions." [Cplt. ¶¶ 39, 46, 52, 58, 67.]

131. Mr. Sandhu neither drafted nor reviewed the allegedly false text in those USXP press releases before they were made public. [Altomare Tr., 87:21-88:7, 89:24-90:7; Gunderson Tr. 171:11-12.]

132. Mr. Sandhu was not provided with or informed of USXP press releases before their publication. [Altomare Tr. II, 87:21-90:7; Gunderson Tr. II, 170:24-171:13; Sandhu Tr. 73:21-74:8.]

133. Mr. Sandhu was never sent drafts of USXP press releases, he was never asked for language to include in USXP press releases, and he never received copies of press releases issued by USXP. [Sandhu Tr. 73:21-74:8.]

134. Mr. Sandhu was never told by Mr. Altomare, Mr. Gunderson, USXP, or anyone else that the USXP press releases referred to himself, Azure, or Target. [Altomare Tr. II, 84:4-9; Sandhu Tr. 74:16-80:8.]

135. Mr Sandhu did not see the USXP press releases at issue in the Complaint until after they were disseminated publicly. [Altomare Tr. II, 87:21-90:7; Gunderson Tr. II, 170:24-171:13; Sandhu Tr. 73:21-74:8.]

136. The press releases do not mention Mr. Sandhu, Spiga, Target, or Azure. [Sandhu Aff., Exh. 72,73,74,75 (Press Releases dated May 23, 2002; July 10, 2002; November 21, 2002; and April 9, 2003).]

137. After the press releases were issued publicly and Mr. Sandhu saw them, Mr. Sandhu called USXP to make sure that the press releases did not refer to Target or Azure. [Sandhu Tr. 78:7-22; Gunderson Tr. 172:23- 174:5.]

138. Mr. Sandhu was told that the press releases did not refer to Target or Azure. [Sandhu Tr. 78:7-22; Altomare Tr., 84:4-9; Gunderson Tr. 170:24-171:3.]

139. In response to Mr. Sandhu's inquiry, Mr. Sandhu was shown what was represented to be a firm commitment letter to USXP, and which appeared on its face to be a firm commitment letter to USXP, from a company in the amount of \$400 million dollars, upon which

USXP supposedly relied in making its press release. [Sandhu Tr. 78:7-22; Sandhu Exh. 58 (Letter of Intent of First International Exchange Group).]

140. Mr. Bleich does not recognize George Sandhu's name. [Bleich Tr. 51:6-8.]

141. Mr. Crane does not know Mr. Sandhu or Spiga. [Crane Tr. 53:12-15.]

142. Mr. Sandhu's name was not mentioned during the deposition of Mr. Houston.
[Houston Tr. generally.]

143. Mr. Longo is not familiar with Mr. Sandhu. [Longo Tr. 51:6-8.]

144. Mr. McGough does not know Mr. Sandhu. [McGough Tr. 79:21-23.]

145. Mr. Parrish has never had contact with Mr. Sandhu and has never heard of Spiga.
[Parrish Tr. 28:8-15.]

146. Mr. Pasqualini can not recollect Mr. Sandhu's name. [Pasqualini Tr. 50:14-22.]

147. Mr. Rumyantsev has never met, spoken to, or corresponded with Mr. Sandhu.
[Rumyantsev Tr. 100:2-9; 103:24-104:21.]

148. Mr. Stanek has never met or spoken with Mr. Sandhu and he does not know of Spiga. [Stanek Tr. 95:5-9; 95:12-21.]

149. Mr. Thompson does not know Mr. Sandhu. [Thompson Tr. 64:7-8.]

150. Mr. Altomare testified that Mr. Sandhu is "a very, very influential, bright, individual" and the sort of person "you genuinely feel your company will be better off if [he is] in your life as a consultant." [Altomare Tr. I, 87: 12-19.]

151. Mr. Sandhu has not been accused by any regulator or the government of any prior violations of securities laws.

152. The record does not support a finding that Mr. Sandhu is, or is a threat to be, a recidivist.

153. In view Mr. Sandhu's activities advising wealthy offshore investors, an injunction would be destructive of his livelihood, and would be an unjustified and unduly harsh event.

154. Mr. Sandhu has had no dealings with USXP, Mr. Altomare, or Mr. Gunderson for at least four years, since before the Complaint in this case was filed.