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UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

U.S. SECURITIES AND EXCHANGE COMMISSION,	:	
	:	
Plaintiff	:	
	:	
v.	:	04 Civ. 2322 (GEL)
	:	
UNIVERSAL EXPRESS, INC.,	:	
RICHARD A. ALTOMARE,	:	
CHRIS G. GUNDERSON,	:	
MARK S. NEUHAUS,	:	
GEORGE J. SANDHU,	:	
SPIGA, LTD.,	:	
TARUN MENDIRATTA,	:	
	:	
Defendants.	:	

**MOTION IN THE NATURE OF INTERPLEADER FOR AN ORDER DIRECTING  
MARSHAL TO SELL PROPERTY BEING HELD BY THE RECEIVER**

Plaintiff U.S. Securities and Exchange Commission ("SEC"), respectfully moves this court for an order: 1) setting aside the fraudulent transfer of jewelry, watches and precious metals from Richard A. Altomare; 2) directing the United States Marshals Service for the Southern District of Florida to sell Mr. Altomare's fraudulently conveyed property seized from Kravit Estate Buyers d/b/a/ The Estate Department, Inc.; 3) directing the deposit of the proceeds

from the sale into the registry of the court; and 4) determining the proper application of the proceeds. In support of this Motion, the SEC relies upon the Declaration of Leslie J. Hughes with exhibits attached, the Memorandum submitted with this motion, and the following grounds:

### **I. Background**

1. SEC commenced this action on March 24, 2004 against defendants, including defendant Richard A. Altomare (“Altomare”), Universal Express Inc., (the “Company”) and others, alleging violations of the federal securities laws [Doc. No. 1]. This Motion pertains to Altomare and the Company.

2. On March 8, 2007, this court entered Final Judgment Against Universal Express, Inc., Richard A. Altomare, and Chris G. Gunderson, [Doc. No. 179]. (“Judgment”). The Judgment ordered Altomare to pay disgorgement of \$1,419,025 plus prejudgment interest of \$283,073, and a civil penalty of \$1,419,025. The Judgment remains wholly unpaid.

3. On September 4, 2007, this court appointed a Receiver to take custody, control and possession of the property and other assets of Universal Express, Inc. (the “Company”). [Doc. No. 203].

4. On October 4, 2007, a Writ of Execution was issued as to Altomare for judgment #07,0605 in the amount of \$1,419,025. (“Writ”) The Writ was signed by the Clerk of the Court, J. Michael McMahon, on October 4, 2007.

### **II. Execution of the Writ**

5. Pursuant to Fed. R. Civ. P. 5, notice of issuance of the Writ was served electronically through the Electronic Court Filing System on Altomare on October 4, 2007. The Writ commanded the Marshals Service to seize the goods and chattels of Richard A. Altomare including jewelry possessed by Kravit Estate Buyers, Inc. to pay the Judgment.

6. On October 4, 2007, counsel for the SEC faxed a copy of the Writ to the Marshals Service in Boca Raton, Florida.

7. On October 10, 2007, the Marshal served the Writ on The Estate Department, Inc., located at 7775 Glades Road, Boca Raton, Florida 33434, and seized the following twenty-four items of property which The Estate Department had obtained from Richard Altomare (collectively referred to as the “Seized Property”):

1. Diamond necklace 13.00 ct	9. Diamond Ring 9.00 ct	17. 18 K Yellow Gold Necklace
2. Diamond Bracelet 9.00 ct	10. Breguet Watch	18. Diamond Bracelet 2.00 ct
3. Pearl Shaped Diamond Ring 1.85 ct	11. Arnold & Sons Steel Watch	19. Pearl and Diamond Earrings and Necklace
4. Pearl Necklace	12. A. Langhe & Sohne Watch	20. Loose Emerald cut diamond 11.02 ct
5. Pearl Earrings	13. Corum Yellow Gold Watch	21. Fancy Yellow Diamond ring 7.00 ct
6. A. Langhe & Sohne Watch	14. F.P. Journe Watch	22. Aquamarine Broach/pendant
7. Jaeger LeCoultre Watch	15. Audemars Piguet Watch	23. Two Silver Bars
8. Franck Muller Steel Watch	16. Rolex Cellini Watch	24. Diamond Bracelet 17.5 ct

A report titled Seized Property and Evidence Control with photographs prepared by the Marshal on October 10, 2007, is attached as Exhibit C.

8. On October 10, 2007, the Marshal delivered the Seized Property to the Receiver for safekeeping.

**III. Richard Altomare Purchased Some of the Seized Property**  
**with Funds Stolen from Universal Express, Inc.**

9. On or about April 13, 2006, Richard Altomare purchased an 11.02 ct emerald-cut diamond from Les Bijoux LLC in Boca Raton, Florida for approximately \$500,000. (Item 20 of the Seized Property listed above in paragraph 7.) Richard Altomare paid Les Bijoux for the diamond with wire transfers from the bank account of Universal Express, Inc. in the following

amounts: on April 13, 2006 a wire for \$325,000, on April 26, 2006 two wires for \$30,000 and \$40,000, on June 5, 2006 a wire for \$33,900, on July 27, 2006 a wire for \$30,000 and on August 21, 2006 a wire for \$50,000. Richard Altomare misappropriated these funds from Universal Express, Inc. to pay for this diamond. In the annual report for Universal Express that Mr. Altomare signed on March 27, 2007, he did not list any of the payments to Les Bijoux as part of his annual compensation. See the Summary Compensation Table at page 41 of 49 in the Company's annual report on Form 10-K for the year ending June 30, 2006, which is attached as Exhibit H. The only compensation that Mr. Altomare identified for 2006 in Exhibit H is his cash salary of \$650,000, which was paid to him in bi-weekly payroll checks.

10. On or about January 26, 2007, Richard Altomare purchased from Les Bijoux a 7.00 ct radiant cut fancy yellow SI1 diamond ring set in platinum for \$85,000 (Item 21 of the Seized Property listed above in paragraph 7), a Jaeger LeCoultre Atmos Clock for \$40,000,<sup>1</sup> and a FP Journe Chronometre Souverain platinum watch for \$20,000 (Item 14 of the Seized Property listed above in paragraph 7). Richard Altomare made partial payment for these items in three wire transfers of funds from the bank account of Universal Express in the following amounts: \$20,000 and \$40,000 on January 26, 2007, and \$20,000 on May 16, 2007. As of approximately September, 2007, Altomare owed Les Bijoux \$65,000 for these three items. Richard Altomare misappropriated the funds from Universal Express, Inc. to pay for these three items. In the annual report on Form 10-K for the year ending June 30, 2006, which was filed on March 26, 2007, Altomare represented that he was currently employed under an employment contract that provides an annual base salary of \$650,000. See Exhibit H at page 42 of 49.

11. On October 31, 2007, the Receiver made demand upon Altomare, through counsel, to reimburse the Company for \$558,900, the amount misappropriated from the

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<sup>1</sup> The Jaeger LeCoultre Atmos Clock was not seized on October 10, 2007.

Company to purchase the Property. Exhibit G. Altomare has not reimbursed the Company, so the Property belongs to the Company.

#### **IV. Altomare Fraudulently Conveyed Property to The Estate Department Inc.**

12. The Estate Department is a Second Hand Dealer licensed and doing business at 7775 Glades Road, Boca Raton, Florida 33434. On an unknown date in September 2007, Richard Altomare signed a Second Hand Dealers Property Form with The Estate Department selling them a “Fancy Yellow Diamond Ring 7.85 approx ct” for \$56,000 “with GIA cert.<sup>2</sup> needed – without [GIA cert.] full refund on ring,” an aquamarine broach for \$10,000, two silver bars for \$2,400 and a diamond straight line bracelet for \$21,600, which together total of \$90,000. When Mr. Altomare signed the Form he represented that:

“I verify that I am eighteen years or older, and I am the rightful owner of the above described property which is being sold or pledged, or that I am entitled to sell or pledge such property; and that the property is clear of all liens and encumbrances, including liens for past due child support, if proven otherwise, I promise full restitution, and understand that I will be criminally prosecuted to the fullest extent of the law.”

The Form also appears to be signed by Mark Kravit on behalf of The Estate Department.

13. The \$56,000 price the Estate Department paid for the fancy yellow diamond ring is substantially less than its purchase price of \$85,000 or the diamond straight line bracelet purchased for approximately \$100,000. The price of the aquamarine broach, and silver bars is currently unknown.

14. At the time of Mr. Kravit’s purchase, on behalf of The Estate Department, of the items listed above in paragraph 12 from Mr. Altomare, Mr. Kravit telephoned Greg Osipov, one of the managing members of Les Bijoux, LLC. Mr. Kravit was known to Mr. Osipov through previous business dealings and identified himself as the person speaking during the telephone call. Mr. Kravit informed Mr. Osipov that Richard Altomare was in the office of Mr. Kravit and

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<sup>2</sup> GIA cert. refers to a report from the Gemological Institute of America.

trying to sell a ring and that Mr. Kravit needed the GIA certificate from Les Bijoux for the diamond ring that it had sold to Mr. Altomare. Mr. Osipov advised Mr. Kravit during the telephone conversation that Mr. Altomare could not sell the ring because Mr. Altomare still owed \$65,000 on the purchase price of the ring.

15. After the telephone call, Mr. Kravit came to the business location of Les Bijoux and demanded that Mr. Osipov produce the GIA certificates for the diamond ring and the emerald cut diamond bracelet, and turn over an old diamond that Mr. Osipov possessed as collateral for the amounts owed by Mr. Altomare. Mr. Kravit asked Mr. Osipov to come to his car, where he produced the Jaeger LeCoultre Atmos Clock, which Mr. Altomare had previously purchased for \$40,000. Mr. Osipov was angered by Mr. Kravit's demand and called Mr. Altomare who confirmed that he had told Mark Kravit to return the clock, which was damaged in transport back, to Les Bijoux. As a result of his conversations with Mr. Osipov, Mr. Kravit knew that Mr. Altomare owed money to Les Bijoux for his purchase of the yellow diamond ring.

16. On or about September 24, 2007, Richard Altomare entered into a second transaction with The Estate Department, in which he sold twenty-one additional items including his collection of expensive watches for \$481,000. The items included 1) a diamond necklace, 2) diamond bracelet, 3) pear-shaped diamond ring, 4) cultured pearl necklace and 5) pearl earrings, 6) A. Lange & Sohne watch, 7) Jaeger LeCoultre watch, 8) Franck Muller steel watch, 9) diamond eternity band ring 9 ct, 10) Breguet 18 K yellow gold watch, 11) Rolex 18k gold watch, 12) A. Lange & Sohne steel watch, 13) A. Lange & Sohne watch, 14) Corum 18k yellow gold watch, 15) F.P. Journe watch, 16) Audemars Piguet watch, 17) Rolex Cellini watch, 18) 18K yellow gold necklace, 19) Diamond Bracelet, 20) cultured pearl and diamond necklace, and 21) loose emerald cut diamond 11.02 ct. Mr. Altomare signed another Second Hand Dealers

Property Form in which he acknowledged receipt of \$411,000 in cash with the balance of \$70,000 due on October 5, 2007. This Form was subsequently signed by Barbara Altomare when she received the additional \$70,000 in cash.

17. The price that The Estate Department paid for the 11.02 ct emerald cut diamond (along the other twenty items) of \$481,000 is substantially less than the purchase price of the diamond alone which was approximately \$500,000, and the F.P. Journe platinum watch which was purchased for \$20,000.

18. Mr. Altomare's conveyance of these items of jewelry, watches and precious metals were made without fair consideration at a time while he was a defendant in an action for money damages and a judgment had been docketed against him. He knew at the time of the transactions that he had not satisfied the Judgment entered against him on March 8, 2007.

19. Mr. Altomare conveyed these items of jewelry, watches, and precious metals with actual intent to hinder, delay or defraud the Securities and Exchange Commission, which is a present creditor. He and his wife requested payment for the items be made in cash rather than a check. Although Altomare clearly represented on the Second Hand Dealer's Property Form that the property was his to sell, he did not advise The Estate Department of the existing Judgment obtained by the Securities and Exchange Commission on March 8, 2007. Moreover, at the hearing on October 12, 2007, Mr. Altomare's attorney misrepresented to the Court that proceeds from the jewelry sales belonged to Barbara Altomare, when in fact Mr. Altomare had purchased part of the jewelry with money stolen from Universal Express, and he represented in the transactions with The Estate Department that these items were his property. He placed his thumb print on the report as the seller of the property. Upon information and belief, Mr. Altomare paid part of the proceeds from these sales to his attorney for legal services in this case.

**V. Multiple Claimants Claim an Interest in the Property**

20. The SEC claims an interest in the Property to satisfy the Judgment.

21. The Receiver claims the Property belongs to the Company.

22. The Estate Department claims to have an interest in the Property.

23. The SEC has given notice of this Motion to The Estate Department, who is represented by counsel. The Estate Department's counsel has informed the SEC that The Estate Department will intervene to be heard on this Motion. The SEC will not object to The Estate Department's motion to intervene.

24. This matter is in the nature of an interpleader and pursuant to 28 U.S.C. § 2361, the SEC requests that the Court enter an Order restraining all claimants from instituting proceedings affecting the property until further order of the court.

WHEREFORE, SEC requests entry of an Order: 1) setting aside the fraudulent transfer of jewelry, watches and precious metals from Richard A. Altomare; 2) directing the United States Marshals Service for the Southern District of Florida to sell Mr. Altomare's fraudulently conveyed property seized from Kravit Estate Buyers d/b/a/ The Estate Department, Inc.; 3) directing the deposit of the proceeds from the sale into the registry of the court; 4) determining the proper application of the proceeds and 5) restraining all claimants from instituting proceedings affecting the property until further order of the court.

Dated November 5, 2007.

s/ Leslie J. Hughes  
Leslie J. Hughes  
Attorney for the Plaintiff  
U.S. Securities and Exchange Commission

## CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the **MOTION IN THE NATURE OF INTERPLEADER FOR AN ORDER DIRECTING MARSHAL TO SELL PROPERTY BEING HELD BY THE RECEIVER** to be served on November 5, 2007 by electronic filing to the following persons at the following addresses and by Federal Express courier to counsel for The Estate Department and its counsel:

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By Federal Express

s/ Leslie J. Hughes  
Leslie J. Hughes