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UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

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|--|----------------------|
| U.S. SECURITIES AND EXCHANGE COMMISSION, | :                    |
|  | :                    |
| Plaintiff                                | :                    |
|  | :                    |
| v.                                       | : 1:04-cv-2322 (GEL) |
|  | :                    |
|  | :                    |
| UNIVERSAL EXPRESS, INC., et al.,         | :                    |
|  | :                    |
| Defendants.                              | :                    |

**PLAINTIFF’S OBJECTIONS TO EVIDENTIARY DESIGNATIONS AND LEGAL  
CONCLUSIONS OF DEFENDANT GEORGE J. SANDHU**

Pursuant to the Court’s Individual Practices, Plaintiff Securities and Exchange Commission (“SEC”) files these objections to the evidentiary designations and legal conclusions filed by defendant George J. Sandhu (“Sandhu”) in this matter.

**A. Plaintiff's Objections to Evidentiary Designations of Sandhu**

**1. Exhibits**

Plaintiff objects to the following Sandhu exhibits on the grounds stated. Plaintiff reserves the right to make additional objections to the exhibits at trial.

| <b>Ex. No.</b> |  | <b>Objections</b>                |
|----------------|--|----------------------------------|
| Sandhu 21:     | Affidavit of Clive Dakin, July 28, 2006 with Exhibit   | Authenticity, hearsay            |
| Sandhu 28:     | Correspondence concerning Mendiratta settlement  | FRE Rule 408.                    |
| Sandhu 30:     | Affidavit of Tarun Mendiratta  | Hearsay                          |
| Sandhu 54:     | IIG Organizational Chart   | Hearsay, authenticity, relevance |
| Sandhu 55:     | The Venezuela Recovery Fund Portfolio-   | Authenticity, hearsay, relevance |
| Sandhu 56:     | Curriculum Vitae, Gian Luigi Longinotti-Buitoni-   | Authenticity, hearsay, relevance |
| Sandhu 58:     | Letter of Intent First International Exchange Group 6/27/02                                  | Relevance                        |
| Sandhu 61:     | Millennium Capital LLC Funds Commitment Principal Terms, fax line dated 6/17/2003            | Relevance                        |
| Sandhu 62:     | New Millennium Financial Corp. letter to Richard Altomare dated 11/20/2002                   | Relevance                        |
| Sandhu 63:     | Transamerica Business Capital letter to Richard Altomare                                     |                                  |
| Sandhu 76:     | Photographs of Universal Express billboard advertisement at New York Mets game, Shea stadium | Authenticity, hearsay, relevance |
| Sandhu 77:     | Photographs of Luggage Express billboard Advertisement at Madison Square Garden NY           | Authenticity, hearsay, relevance |

Sandhu 79: Letter dated October 15, 2007 from Danielle Francis, Livenote World Service to Marla Pinkston, SEC, indicating that Tarun Mendiratta did not review and sign his deposition during the period allowed

Authenticity, hearsay, relevance

## **2. Testimony Excerpts**

Plaintiff objects to the following deposition designations on the grounds stated.

### **a. Hugh Beck**

#### **i. Beck Testimony Concerning Preparation of TRO Affidavit**

Hugh Beck has been listed by Plaintiff as a fact witness as to two areas: (1) statements made by Sandhu in telephone interview with Beck in July 2003 which are inconsistent with statements made by Sandhu in a funding letter provided to Universal Express in March 2002 (Exh. 23) which is at issue in this action; and (2) Beck's issuances of subpoenas for business records as a part of the investigation of this matter, which relates to the admissibility of the business records under FRE Rule 803(6).

FRE Rule 611(b) governs the scope of cross examination, limiting it to "the subject matter of the direct examination and matters affecting the credibility of the witness." "[T]he district court has broad discretion to determine the scope of cross-examination." United States v. Mahaffy, 2007 U.S. Dist. LEXIS 30099, 3-4 (S.D.N.Y. 2007)(citing United States v. Koskerides, 877 F.2d 1129, 1136 (2d Cir. 1989). Reasonable limits on cross-examination are appropriate based on concerns about, among other things, harassment, prejudice, confusion of the issues, the witness' safety, or interrogation that is repetitive or only marginally relevant." Edwards v. Mazzuca, 2007 U.S. Dist. LEXIS 76185 (S. D.N.Y. 2007), citing Delaware v. Van Arsdall, 475 U.S. 673, 679, 106 S. Ct. 1431, 89 L. Ed. 2d 674 (1986) and Woods v. Kuhlmann, 677 F. Supp. 1302, 1306 (S.D.N.Y. 1988).

In addition to interviewing Sandhu, Beck prepared an affidavit in support of the SEC's motion for entry of a temporary restraining order which was filed simultaneously with the SEC's complaint in this action in March 2004. During discovery, defense counsel deposed Beck for two days, focusing primarily on the preparation of the TRO affidavit. Plaintiff objects to Sandhu's designations which focus on the methodology used to create the affidavit because they are not relevant to the facts at issue in the case, exceed the scope of Beck's direct testimony and do not bear on his credibility. For example, citations to designations which confirm that Beck did not have personal knowledge of all facts set forth in his affidavit (see, e.g., Beck, pp. 21-36) are irrelevant<sup>1</sup> and do not affect his credibility because such affidavits are entirely proper on a motion for preliminary injunction. See, e.g., Bracco v. Lackner, 462 F. Supp. 436, 442 (N. D. Cal. 1978):

The Court notes that the submission of affidavits in support of or opposition to a preliminary injunction is both customary and appropriate. Such affidavits need not meet the standards of Fed.R.Civ.P. 56(e) or of the Federal Rules of Evidence. The urgency necessitating the prompt determination of the preliminary injunction; the purpose of a preliminary injunction, to preserve the status quo without adjudicating the merits; and the Court's discretion to issue or deny a preliminary injunction are all factors supporting the considerations of affidavits. The weight to be given such evidence is a matter for the Court's discretion, upon consideration of the competence, personal knowledge and credibility of the affiant. See generally, C. Wright and A. Miller, 11 Federal Practice and Procedure § 2949 at 469-473.

Plaintiff thus objects to Sandhu's designations of the Beck deposition at pp. at pp. 21-36; 62-65; 96-97; 106-109; 111; 137; 166-173.

## **ii. Beck Opinion Evidence**

Over the SEC's objections, defense counsel sought to elicit ostensible "expert" testimony from Beck concerning various matter as to which no foundation was laid that Beck has any basis

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<sup>1</sup> The Court noted the irrelevance of this line of questions at a status conference on May 1, 2006 following the close of discovery in this case, at which defense counsel sought to examine Beck for a third day on the preparation of his TRO affidavit.

upon which to opine. Plaintiff objects to this designated testimony because it exceeds the scope of Beck's direct testimony, does not bear on his credibility, is irrelevant and is without foundation. For example, Beck's knowledge concerning private investments in public entities (PIPES) (Beck pp. 63-63), and his definitions of legal terms such as "beneficial ownership" are patently irrelevant. For these reasons, Plaintiff objects to designations of Beck testimony at pp. 62-63; 66; 71-72; 87; 100-101; 106-109; 111; 137 and 173.

**iii. Other Irrelevant Testimony and/or Misleading Designations**

Beck was asked numerous questions by counsel for Sandhu about various of Sandhu's ostensible business ventures that have nothing to do with the issues in this case. These include International Investment Group ("IIG"), its purported investments and access to capital, and various other entities. See, e.g., Sandhu designation of Beck testimony at pp. 166-173 (IIG); p. 164-173 (IIG Opportunity Fund); pp. 164 (Venezuela Recovery Fund). This deposition testimony as to entities not involved in the case exceeds the scope of Beck's direct testimony, does not bear on Beck's credibility, and is irrelevant. In addition, counsel's citation to the testimony concerning the other entities is affirmatively misleading to the Court. Counsel's summaries suggest that Beck affirmatively acknowledged certain facts, whereas Beck's actual testimony is that he has no such knowledge and the cited facts are therefore completely without foundation. For example, counsel's asserted "summary" of Beck deposition at p. 164 -166 is:

Sandhu advised the Venezuela Recovery Fund N.V. of Curacao which had total assets of \$53,900,000 on December 31, 2002.

Beck's actual testimony was that he was not familiar with the Venezuela Recovery Fund, did not recall ever hearing Sandhu mention any figure about that Fund's net assets, and did not recall Sandhu saying anything more specific about his other ventures than that Sandhu was an investment adviser to certain unspecified clients who had wealth.

Plaintiff therefore objects to these irrelevant and misstated Beck deposition excerpts: pp. 18-20;62; 137; 164-173.

**iv. Designated Beck Exhibits**

Sandhu's deposition designations as to Beck are followed by a list of "designated" Beck exhibits, though only certain of the exhibits are reflected on Sandhu's Exhibit List. Plaintiff has noted above its objections to GS 006 (Sandhu 54), and GS 007 (part of which is Sandhu 55) on the grounds of hearsay, authenticity, and relevance. Plaintiff lodges the same objections to Exhibits GS 007 (parts not included in Sandhu 55), GS 008, GS 010 and GS 011 on the same grounds. Plaintiff objects to GS 005 (Beck March 24, 2004 Affidavit in Support of TRO) on relevance grounds.

**b. Jeannette Drayer**

Plaintiff objects to Sandhu's characterization of Drayer's testimony as to Exhibits 11A-D (at. pp. 74, 91) Drayer testified that she created Exhibits 11A-D in the format they appear from data which she kept in the ordinary course of business:

Q Exhibit 11A, B, D and 212, each and all are documents that you specially made to answer specific questions for certain information put to you by Mr. Beck; is that true?

A Yes.

Q That each of Exhibits 11A, B, D and 212 are not regularly made in the course of the business of OTC Transfer Service Co.; is that right?

A No, just upon request.

Q And it's simply comprised of data that was retrieved from the computer's hard drive based upon a program designed for you by your

company's computer programmer?

JEANETTE DRAYER

A Correct.

Drayer, 4/20/06, pg. 74.

Plaintiff further objects to Sandhu's assertion that Exhibits 11A-D are not complete. Drayer testified that Exhibits 11A-D are printouts of a portion of her records and that her complete records were on her computer. Drayer, 4/20/06, p. 111, l. 10 - p. 112, l. 18.

Plaintiff objects to Sandhu's assertion that Drayer testified that she kept no log of documents sent to the SEC. Her testimony was that she did keep such a log. Drayer, 4/20/06, p. 91, l. 18-20.

**A. Plaintiff's Objections to Conclusions of Law of Sandhu**

Plaintiff objects to a number of Sandhu's conclusions of law ("Sandhu conclusions") which either misstate the relevant legal standard or are irrelevant to the facts of this case. Without waiving any of its objections, Plaintiff notes the following specific examples:

**1. Sandhu misstates the law concerning scienter (Sandhu Conclusion IA.).**

Sandhu misstates the scienter requirement Plaintiff need not show that Sandhu intended to deceive anyone. Knowing or reckless conduct meets the scienter requirement. Resnick v. Touche Ross & Co., 470 F. Supp. 1020, 1022 (S.D.N.Y. 1979); Rolf v. Blythe, Eastman Dillon & Co., 570 F. 2d 38 (2d Cir. 1978), cert. denied, 439 U.S. 1039 (1978). [See Plaintiff' Conclusions of Law 21-27].

The case cited by Sandhu, U.S. v. Schlisser, 168 Fed. Appx. 483 , 485-86 (2d Cir. 2006) is a criminal case which does not support Sandhu's assertion that the SEC must prove an absence of good faith on Sandhu's part.

**2. Sandhu misstates the “in connection with” requirement (Sandhu conclusions III.E, IV.E).**

Sandhu's actions in providing false and misleading letters to Altomare were part of a fraudulent scheme designed to disseminate false and misleading information. Sandhu's action were “in connection with” the purchase and sale of securities. SEC v. Texas Gulf Sulphur Co., 401 F.2d 833, 862 (2<sup>nd</sup> Cir. 1968) (en banc) (“In connection with” requirement satisfied “whenever assertions are made, as here, in a manner reasonably calculated to influence the investing public”); SEC v. Rana Research, Inc., 8 F.3d 1358, 1362 (9<sup>th</sup> Cir. 1993); SEC v. Joseph Schlitz Brewing Co., 452 F.Supp. 824, 829 (E.D. Wis. 1978). In SEC enforcement actions, the “in connection with” requirement “remains as broad and flexible as is necessary to accomplish the statute's purpose of protecting investors.” Rana Research, Inc., 8 F.3d at 1362.

**3. Sandhu's argument that the pleading requirement Fed. R. Civ. P. 9(b) heighten the scienter requirement of the underlying cause of action is wrong. (Sandhu conclusions VII.B).**

Sandhu's argument that pleading Exchange Act Section 17(a)(2) and 17(a)(3) violations in a complaint by incorporating facts alleged to support a separate fraud claim can elevate the scienter requirements of the non-fraud claims under Sections 17(a)(2) and 17(a)(3) is not supported by the case he cites and is legally wrong. Hampshire Equity Partners II, 2005 WL 736217 (S.D.N.Y. March 30, 2007), deals only with the pleadings requirements under Fed. R. Civ. P. 9(b) in the context of a motion to dismiss. The case law is well settled that those sections do not require a showing of scienter. No scienter

need be proved to establish a violation of the antifraud provisions of Sections 17(a) (2) and (3) of the Securities Act. Aaron v. SEC, 446 U.S. 680, 697 (1980).

**4. Sandhu Misstates the Obvious Scope of Rule 140 under the Securities Act (Sandhu Conclusion VIII.2 (A))**

Sandhu's citation to Securities Act Rule 140, 17 C.F.R. §230.140, is affirmatively misleading, in that on its face, the Rule only purports to define the term "distribution" as to "certain transactions." A distribution has long been defined in this Circuit as "the entire process by which in the course of a public offering the block of securities is dispersed and ultimately comes to rest in the hands of the investing public." R.A. Holman & Co., Inc. v. SEC, 366 F.2d. 446, 449 (2d Cir. 1966).

**5. Sandhu's Citation to purported "Effective Registration Statements" has no factual basis (Sandhu Conclusion VIII.B.)**

It is undisputed that Universal Express filed only two Forms S-8 during the relevant period that registered a combined total of 50 million shares, and that neither contained a reoffer prospectus. Issuances to Spiga totaling 152,389,115 shares far exceed the amount covered by the company's two Forms S-8. Similarly, Sandhu's argument that Section of the Securities Act applies only to new issuances of stock is simply legally wrong under well established case law in this Circuit as well as the prior order of this Court. Each sale of a security must either be made pursuant to a registration statement or fall under a registration exemption. Opinion, p. 14; see also SEC v. Cavanagh, 2004 U.S. Dist. LEXIS 13372, \*50-51 (S.D.N.Y 2004), aff'd, 445 F.3d 105 (2d Cir. 2006).

**6. Sandhu's suggestion that there is no "legally permissible" way to calculate disgorgement as to him is wrong.**

The sole requirement is that the disgorgement sought be a reasonable approximation of the profits causally related to the wrongdoing. SEC v. First Jersey Securities, Inc., 101 F.3d 1450, 1475 (2d Cir.1996), cert. denied, 522 U.S. 812 (1997). Where disgorgement calculations are

difficult to determine or cannot be exact, “any risk of uncertainty . . . should fall on the wrongdoer whose illegal conduct created that uncertainty.” SEC v. Lorin, 76 F. 3d 458, 462 (2d Cir. 1996) (citations omitted). Further, an order holding Sandhu jointly and severally liable for any disgorgement ordered against Spiga is appropriate. “Courts have held that joint-and-several liability is appropriate in securities cases when two or more individuals or entities collaborate or have close relationships in engaging in the illegal conduct.” SEC v. Breed, 2004 U.S. Dist. LEXIS 7336 (S. D.N.Y. 2004); SEC v. Hughes Capital Corp., 124 F.3d 449, 455 (3d Cir. 1997), citing SEC v. First Jersey Sec., Inc., 101 F.3d 1450, 1475 (2d Cir. 1996); cert. denied, 522 U.S. 812, 139 L. Ed. 2d 21, 118 S. Ct. 57 (1997)); SEC v. Sekhri, 2002 U.S. Dist. LEXIS 13289, 98 Civ. 2320, 2002 WL 31100823 at \*17 (S.D.N.Y. July 22, 2002) (citing cases).

### **C. Conclusion**

Without waiving further objections, Plaintiff objects to the Sandhu’s deposition designations and legal conclusions on the grounds stated above.

Dated: November 19, 2007

Respectfully submitted,

s/ Julie K. Lutz      JL9404  
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Leslie J. Hughes  
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Securities and Exchange Commission

## CERTIFICATE OF SERVICE

I hereby certify that on November 19, 2007, I electronically filed the **PLAINTIFF'S OBJECTIONS TO EVIDENTIARY DESIGNATIONS AND LEGAL CONCLUSIONS OF DEFENDANT GEORGE J. SANDHU** with the Clerk of the Court for filing and uploading to the CM/ECF system which will send notification to the following as indicated to the parties listed below.

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Dated: November 19, 2007

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