

BARRY SCHAEVITZ, ESQ. (BS-3405)
 JACOB MEDINGER & FINNEGAN, LLP
 Local Counsel for Defendant,
 Richard A. Altomare
 1270 Avenue Americas, 31s FL
 New York, New York 10020
 (212) 332-7773
 (212) 332-7239 (facsimile)
 and
 ARTHUR W. TIFFORD, ESQ.
 TIFFORD AND TIFFORD, P.A.
 Lead Counsel for Defendant,
 Richard A. Altomare
 1385 NW 15 STREET
 MIAMI, FL 33125
 (305) 545-7822
 (305) 325-1825 (facsimile)

UNITED STATES DISTRICT COURT
 FOR THE SOUTHERN DISTRICT OF NEW YORK
CASE NO. 04cv 02322 GEL

-----X
 U.S. SECURITIES AND EXCHANGE COMMISSION :
 :
 Plaintiff, :
 :
 v. :
 :
 UNIVERSAL EXPRESS, INC., RICHARD A. :
 ALTOMARE, CHRIS G. GUNDERSON, MARK :
 S. HEUHAUS, GEORGE J. SANDHU, SPIGA, :
 LTD., AND TARUN MENDIRATTA, :
 :
 Defendants, :
 -----X

AFFIDAVIT OF RICHARD A. ALTOMARE
IN SUPPORT OF ALTERNATIVE MOTION FOR
EXTENSION OF TIME OR STAY OF PROCEEDINGS
PENDING FURTHER EVIDENTIARY HEARING
(Electronically Filed)

State of Florida)
) ss:
 County of West Palm Beach)

Before me, the undersigned authority, authorized to administer oaths and take acknowledgements personally appeared Richard A. Altomare who



(presented) _____

for identification or (personally known to the undersigned), and who, after being duly cautioned and sworn, upon his oath and penalty of perjury states and declares:

1. My name is Richard A. Altomare and I am a party-litigant in the above-styled and numbered proceedings now pending before the Honorable Gerard E. Lynch, United States District Judge. I make this affidavit on personal knowledge except where otherwise expressly indicated.

2. I have read the Opinion and Order of the Honorable Gerard E. Lynch, United States District Judge filed April 18, 2008 and have discussed portions of it with my attorney of record. I submit this affidavit in support a request filed contemporaneously with this affidavit alternatively requesting the Court grant an extension or a temporary stay of proceedings pending further evidentiary hearing on the issue of documenting categorically and in detail the impossibility of my paying additional disgorgement and prejudgment interest, recognizing that I am late in my payment of the monthly installment previously represented to the Court on October 12, 2007 of not less than \$10,000.00 per month for the months of February, March and April, 2008.

3. I also recognize from my reading of the Court's Opinion and Order that the Court began its analysis of the facts adduced thus far relating to the SEC's motion for contempt, that \$1.18 million was deposited into the joint checking account with my wife at Wachovia Bank

RAA

between on or about March 8, 2007 and the February 4, 2008 hearing. I assure the Court, however, that with a forensic accounting analysis of the Wachovia checking account (#5480), the Wachovia Prime Equity Line (#4286), the Washington Mutual Bank [WAMU] mortgage (#9286) the Countrywide Home Loans, Inc., mortgage (line of credit) (#4030), I will be able to document to the Court's satisfaction the source of all funds being deposited into my checking accounts, joint or otherwise, and disbursed from my checking accounts, joint or otherwise, so as to support a finding by the Court that I have documented categorically and in detail my financial circumstances since March 8, 2007 such that further payment beyond that represented on October 12, 2007 is not possible.

4. Before addressing in greater detail below responses to the Court's principle concerns as articulated in its Opinion and Order filed April 18, 2008 ("subject order"), I hereby pledge to this Court or its Court Appointed Receiver, as appropriate and as I may be directed by this Court (i) my personally owned 30% interest in the Jackson Memorabilia Collection and (ii) I personally own 30% interest in collections from the judgment obtained in favor of Universal Express, Inc. ("USXP") in the Circuit Court of the Eleventh Judicial Circuit of Florida in and for Miami-Dade County, Florida known as Case No. 98-8358 CA 01, both of which interests I have made known to the Receiver by formal written submission.

5. In the subject order one of the Court's principal concerns was that many of the deposits into my Wachovia Bank checking account did not seem to correspond in date or amount to recorded payments made by USXP to

A handwritten signature in black ink, appearing to be the initials 'RAA', is located in the bottom right corner of the page.

me or payable to my bank. I can assure the Court that my only sources of revenue were USXP and various financing of my Bocaire marital residence or the Toscano (Highland Beach) condominium. All four of the forms of indebtedness, two secured by the Bocaire residence and the other two secured by the Toscano condominium are, in fact, secured through mortgage encumbrances encumbering the title to the two properties. My attorney is in the process of obtaining the documentary evidence of these encumbrances. Moreover, a forensic accounting will document to the Court's satisfaction categorically and in detail, my exact financial posture about which I endeavored to testify during the February 4, 2008 hearing.

6. The next principal concern of the Court regarded the SEC's calculation that \$747,175.46 deposited into my accounts during the year 2007 did not originate from USXP. (subject order at 5, n. 4). To such concern I repeat that any deposit into my accounts not traceable directly to a USXP payment was derived from one of the credit facilities previously identified to the Court and about which I testified. During my February 4, 2008 testimony I may not have been able to identify a particular source of particular funds at a particular time, but a forensic accountant will confirm that the general statement previously made, namely the sole sources of funds deposited or transferred from one account to another included only USXP or the credit facilities secured by the residence and the condominium.

7. The Court seemed very concerned with the absence of

documentation confirming the disposition of the \$160,466.00 net proceeds from the WAMU mortgage dated January 30, 2007 (DX-8, 270 and additional public record filings in the process of being obtained). See subject order at 6, n. 5 and n. 6. I again assure the Court that this credit facility is a secured interest evidenced by a mortgage encumbering title to the property. (DX-8, 258, 263, 268, 269, 270). This home equity credit facility was known as Account **#9286**. Obtaining it required the opening of an additional, individual account known as Account **#1791**. (DX-8, 280). However, no funds were deposited into or drawn from Account **#1791**, as can be evidenced through a forensic accounting and the delivery to the Court of a copy of the "starter" checking account pamphlet which I sent to my attorney immediately upon locating it. A visual inspection of the document will satisfy the Court that Account **#1791** was not used to receive monies from the disbursements of the \$160,466.00 net proceeds or to disburse any of it. Instead, disbursement of the \$160,466.00 was accomplished with additional checks provided by WAMU bearing Account **#9286**. Additional documents that I can and will present to the Court document disbursements from Account **#9286** as follows:

- (a) \$100,000.00 to Weinstein, etc.
- (b) \$45,000.00 to Weinstein, etc.
- (c) \$3,000.00 to Closet, etc.
- (d) \$18,500.00 to Benchworks
- (e) \$3,966.00 remaining require additional documentation from WAMU which I will obtain in time to present into evidence if further

2AA

evidentiary proceedings are allowed by the Court. By separate filing my attorney of record will file for record and serve on SEC counsel and the Receiver copies of the **#1791** account unused "starter" check pamphlet contents and **#9286** checks as indicated above.

8. Another of the Court's principal concerns was the Wachovia Bank Prime Credit Line documentation. (Order @ 6, n. 6). The Wachovia Bank Prime Credit Line was known as Account **#4286**. The account history from January 9, 2007 through January 8, 2008 appeared in Wachovia's consolidated statements covering both Account **#4286** and checking account **#5480**, my joint checking account with my wife, which my wife overwhelmingly, principally managed. (DX-1, 0001-0076). Intra account transfers between Accounts **#4286** and **#5480**, inter account transfers, if any, elsewhere, and all disbursements from either account are reflected on each of the monthly statements. (DX-1, 0001-0076). At a further evidentiary proceeding now requested I will offer into evidence and serve previously copies of all bank items but additional time will be required to obtain them from the bank as they have not been routinely sent with monthly statements as a matter of bank policy.

Since receiving the Court's subject order my attorney and I prepared a summary or overview of the Wachovia Prime Equity Line (Account **#4286**) showing deposits and disbursements starting January, 2005. See Exhibit 25 (Exhibits 1-24 were introduced in evidence on February 4, 2008. A forensic accounting of **#4286** will provide the Court with precise source

and payee information relating to every deposit into and disbursement from that account, as well as the interrelationship between it and the Wachovia checking Account **#5480**.

9. The Court articulated equal concern regarding the disposition of \$571,000.00 received in September 2007 from the sale of my wife's and my jewelry and watches. A forensic accounting will document precisely all deposits into which bank account and all disbursements. Of the net sales proceeds, \$200,000.00 was deposited into Mrs. Altomare's account at Commerce Bank. (DX-19, 501-502). Most of that sum was devoted to pay legal fees for these proceedings and the appeal currently prosecuted in the United States Court of Appeals for the Second Circuit. (DX-19, 502). In November and early December, 2007, \$12,000.00 was paid to Benchmark Building (check #1002), \$12,129.34 to pay Weinstein Design Group (check # 1006), \$10,000.00 to pay Harmony Home Systems for past due arrearages (check #1003). Additional miscellaneous disbursements were documented at DX-19, 497-498. In early January, 2008, \$2,526.18 was paid to Toscano Homeowners Association (check #1008), \$280.00 for grounds maintenance (check #1007), and various electronic payments for credit card debts. (DX-19, 495-96). In addition, on September 26, 2007 \$150,000.00 was deposited by Mrs. Altomare into the Wachovia account **(#5480)**, as was several additional deposits between October 15 and November 2, 2007 totaling \$46,100.00 (DX-1, 58). Later in November and early December, 2007, \$52,000.00, more or less, was deposited into the Wachovia account **(#5480)**. (DX-1, 65). Likewise, deposits into the Wachovia account from

RAA

the sale proceeds were made in December and early January 2007-08, totaling \$19,200.00. (DX-1, 71). Additional deposits and disbursements between January 9, 2008 and April 8, 2008 documented by a forensic accounting will unequivocally, clearly, categorically and in detail document my financial circumstances such as to prevent additional payment of the disgorgement and prejudgment interest ordered by this Court.

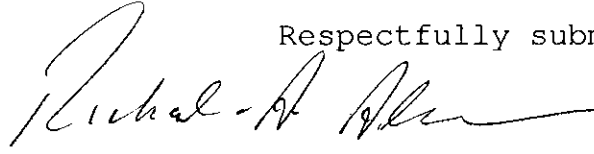
10. In the subject order at 7-14 the Court indicated a number of additional concerns regarding inadequate demonstrating that the credit line on my Bocaire residence actually encumbers the property by mortgage or other security interest, inadequately evidencing efforts to reduce my expenses, not providing a recent appraisal of the Toscano condominium so as to support by document its current worth as between \$2.5 and \$2.8 million, make productive use of the condominium until it is sold, reduce the expenditures to vendors, mechanics and specialists associated with the build out of the condominium, and efforts to liquidate other personal property to generate additional payments in further partial satisfaction of the disgorgement and prejudgment interest. (See, for example, Order at 14, n. 13). I can provide additional documentation relating to the Court's concerns along with the forensic accounting discussed more fully above. Time constraints between the January 18 and February 4, 2008 hearings prevented accumulating additional documents for use in evidence and my bank's informed that each required not less than 30 days to obtain records from its storage systems so as to replicate the front and reverse side of checks and other debit items and deposit items, relegating my



documentation at the February 4, 2008 hearing as to the bank account activity to the monthly statements.

Further your Affiant sayeth not.

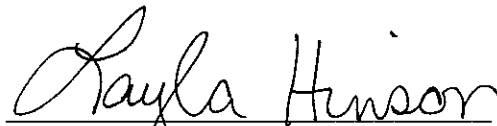
Respectfully submitted,



RICHARD A. ALTOMARE

Sworn to and subscribed
Before me this 1st day
Of May, 2008.

My commission expires:



Notary Public
State of Florida at Large

