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MONEX DEPOSIT COMPANY and MONEX
7 CREDIT COMPANY

8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT
10 (SOUTHERN DIVISION – SANTA ANA)

12 MONEX DEPOSIT COMPANY, et al.,
13 Plaintiffs,
14 v.
15 JASON GILLIAM, et al.,
16 Defendants.

Case No. 8:09-CV-00287-JVS-RNBx

**FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
PRELIMINARY INJUNCTION**

Time: 3:00 p.m.
Date: April 7, 2009
Location: Courtroom 10C

The Hon. James V. Selna

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19 The Court has read all documents submitted in support of, in return to, and/or
20 in opposition to entry of the temporary restraining order, the order to show cause,
21 and/or the preliminary injunction. The Court also has considered all other
22 evidence, documents, and argument of counsel and of pro se parties. Based on the
23 foregoing material, and the entire file in this civil action, the Court finds that good
24 cause exists to grant the preliminary injunction described in the Order to Show
25 Cause.

26 The Court finds the following facts:

27 1. A number of customers and potential customers of Monex Deposit
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1 Company and Monex Credit Company (collectively, “Monex”) have decided not to
2 do business with the company because of what they have read about Monex on
3 websites operated by or contributed to by defendants Jason Gilliam, Richard
4 Gilliam, and Steven Bowman (collectively “defendants.”) Those websites include
5 www.MonexFRAUD.com.

6 2. Defendants have threatened to publish additional negative material
7 about Monex on www.MonexFRAUD.com and to report Monex’s activities to
8 government and the news media, and to continue to do so, unless Monex pays them
9 \$20 million. Defendants’ statements were not protected communications under
10 California Civil Code Section 47(b), in that (a) the statements were not made as a
11 demand with an intent to proceed with litigation; and (b) defendants did not
12 represent and did not have a relationship with the vast majority of investors whom
13 they purported to represent. To the extent that a facial threat of RICO litigation
14 may be deemed within the scope of Section 47(b), defendants nevertheless
15 threatened other conduct not within the scope of the privilege and not related to the
16 litigation process.

17 3. Since the Court’s March 24, 2009 Order, the Webhost GoDaddy has
18 removed defendants MonexFRAUD website, advising the parties that GoDaddy
19 would revisit the issue after this Court ruled on the Order to Show Cause for a
20 Preliminary Injunction.

21 4. Other websites operated by or contributed to by defendants publishing
22 negative material about Monex remain in operation.

23 5. Since this Court’s March 24, 2009 Order in this matter, defendants
24 have not retracted their extortionate demands or their threats: (a) to publish
25 additional negative material about Monex on www.MonexFRAUD.com and other
26 websites, (b) to report Monex’s activities to government and the news media, and
27 (c) to continue to do so, unless Monex pays them \$20 million.

28 6. Also since this Court’s March 24, 2009 Order defendant Jason Gilliam

1 has testified that his mission short of compelling Monex to pay his extortionate
2 demand of \$15 million (his father defendant Richard Gilliam demanded \$20
3 million) was to completely destroy Monex through a relentless marketing and
4 awareness campaign to persuade Monex customers and potential customers to
5 avoid transacting business with Monex, and to consider instead investing with
6 Monex's competitors.

7 7. Also since this Courts' March 24, 2009 Order, defendant Jason
8 Gilliam has again stated that he wants \$15 million from Monex.

9 8. Jason Gilliam has testified that his damages flowing from the shut
10 down of the MonexFRAUD cite are injury to his pride, credibility and morale.
11 Richard Gilliam has testified that he'd prefer the site remain shut down. Since the
12 March 24, 2009 Order, Monex has deposited \$20,000 cash with the Clerk of the
13 Central District.

14 9. Defendants are likely to continue publishing negative material on those
15 websites, including www.MonexFRAUD.com, at least if web-services provider
16 GoDaddy.com reinstates the website, and to keep their extortionate threats in place
17 because Monex has refused to pay them.

18 10. The websites, and particularly the resurrection of the
19 MonexFRAUD.com website, are likely to harm Monex immediately by damaging
20 its reputation, customer relationships, business, revenues, and goodwill.

21 11. Such harm will not be compensable through money damages because
22 the amount of damage will not be determinable with sufficient precision.

23 12. Defendants will not suffer any cognizable harm if they are enjoined
24 from extorting, and attempting to extort, money from Monex by means of
25 threatening to publish — and then publishing — negative statements about Monex.

26 13. Defendants will not suffer any cognizable harm if they are
27 preliminarily enjoined from running their websites pending a judgment in this
28 action.

1 14. All defendants plaintiffs received actual notice of the Order to Show
2 Cause.

3 15. Defendant Steven Bowman has not responded to the Order to Show
4 Cause or to any other emailed communications from plaintiffs or defendants.

5 The Court makes the following conclusions of law:

6 1. Plaintiffs have a reasonable probability of success in this action on one
7 or more theories which would support injunctive relief, including defamation,
8 extortion, trade libel, and interference with contract and with economic advantage.

9 2. To the extent that defendants' statements about Monex are fraudulent,
10 they are not protected by the First Amendment. San Antonio Community Hospital
11 v. Southern California District Council of Carpenters, 125 F.3d 1230, 1239 (9th Cir.
12 1997); see Peel v. Attorney Registration and Disciplinary Comm'n of Ill., 496 U.S.
13 91, 107 n. 14 (1990); Gehl Group v. Koby, 63 F.3d 1528, 1534 (10th Cir.1995).

14 As the California Supreme Court has noted: "The policy of this state which
15 characterizes the use of false or fraudulent statements in picketing as unlawful is
16 within the permissible limits which a state may impose upon industrial combatants
17 without impairing the right of free speech." Magill Bros., Inc. v. Building Serv.
18 Employees' Int'l Union, 20 Cal.2d 506, 127 P.2d 542, 545 (1942) (citing Thornhill
19 v. Alabama, 310 U.S. 88, 1043 (1940)).

20 3. The balance of equities in considering entry of a preliminary
21 injunction tips in Monex's favor. There is no apparent economic or other harm
22 which defendants will sustain if injunctive relief is granted.

23 4. This preliminary injunction is in the public interest.

24 IT IS ORDERED THAT:

25 A. Defendants and anyone acting in concert with them or on their behalf
26 ARE HEREBY RESTRAINED AND ENJOINED FROM:

27 i. Any efforts to extort consideration from Monex, including any
28 efforts to persuade Monex to pay defendants money which directly or

1 indirectly involves: (1) threats against Monex or its employees to publish in
2 any forum or to share information about Monex with third parties, or
3 (2) threats to defame Monex or its employees, unless Monex pays
4 defendants.

5 ii. Operating, directly or indirectly, www.MonexFRAUD.com, or
6 any other website address using the name Monex in combination any
7 modifier which implies illegal, unlawful or unethical conduct.

8 iii. Publishing or republishing on any website, including, but not
9 limited to, www.MonexFRAUD.com, www.youtube.com, <http://digg.com>,
10 <http://goldismoney.info>, and <http://americannepali.blogspot.com>, or in any
11 other manner any statement that Money does not have title to or the ability to
12 deliver precious metals sold under contract to any Monex customer; that
13 Monex was expelled from the National Futures Association for fraud; that
14 Monex operates as a boiler room; that Monex violates any federal or state
15 statutes regulating the business operations of Monex; that Monex has been
16 charged by the Internal Revenue Service with tax evasion; and that Monex
17 fails to accurately disclose to customers account and trading terms
18 (collectively “Prohibited Statements”). This part of the order requires
19 defendants to remove, from any website over which they have sufficient
20 control, all Prohibited Statements that they have published or republished
21 there, and to stop using the word MonexFRAUD, all within 24 hours of the
22 entry of this preliminary injunction. Notwithstanding any other provision of
23 this Order, nothing herein shall prohibit defendants from (a) making
24 statements regarding their own business dealings with Monex, including any
25 losses they may have sustained, or (b) communicating with any
26 governmental entity concerning matters within the scope of that entity’s
27 legislative, administrative or regulatory responsibilities.

28 iv. Disclosing or using directly or indirectly in any way any trade

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secret documentation or other proprietary information belonging to Monex, including all internal Monex documents which are not public, such as Monex customer lists.

v. Retaining any trade secret or proprietary information referred to in the last paragraph. To implement this part of the Order, defendants must disclose to and return to Monex within 48 hours of entry of this Order all such information and documentation within defendants' possession, or within possession of anyone within defendants' control. To the extent that defendants once had possession of such documentation, but no longer have possession, defendants must within 48 hours also inform Monex's counsel in writing and in specific and sufficient detail: (1) all efforts defendants have made to re-acquire such documentation; (2) what became of such documentation, including the time and date the defendant lost control of the documentation; and (3) who presently has possession of this documentation so that Monex can take steps to recover the documentation.

B. This order shall be effective as soon as plaintiffs or either of them properly have posted a bond in the amount of \$20,000.

Dated: April 09, 2009

Time: 9:45 a.m.


By: _____
U.S. DISTRICT COURT JUDGE