

1 Neil A. Goteiner (State Bar No. 083524)  
ngoteiner@fbm.com  
2 Scott Andrews (State Bar No. 243690)  
sandrews@fbm.com  
3 FARELLA BRAUN & MARTEL LLP  
235 Montgomery Street  
4 San Francisco, CA 94104  
Telephone: (415) 954-4400  
5 Facsimile: (415) 954-4480

6 Attorneys for Plaintiffs  
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., Case No. SACV 09-00287-JVS(RNBx)  
13 Plaintiffs,  
14 v. **AMENDED AND SUPPLEMENTAL**  
15 JASON GILLIAM, et al., **FINDINGS OF FACT,**  
**CONCLUSIONS OF LAW, AND**  
16 Defendants. **PRELIMINARY INJUNCTION**

The Hon. James V. Selna

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20 The Court has read all documents submitted in support of, in return to, and/or  
21 in opposition to entry of the temporary restraining order, the order to show cause,  
22 and/or the preliminary injunction, and has read supplemental briefing by plaintiffs  
23 and defendants Jason and Richard Gilliam. The Court also has considered all other  
24 evidence, documents, and argument of counsel and of pro se parties. Based on the  
25 foregoing material, and the entire file in this civil action, the Court finds that good  
26 cause exists to grant the preliminary injunction described in the Order to Show  
27 Cause and to amend and supplement the Court’s Findings of Fact, Conclusions of  
28

Law, and Preliminary Injunction dated April 9, 2009.

1 The Court finds the following facts:

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

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

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

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

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

3 6. Also since this Court's March 24, 2009 Order defendant Jason Gilliam  
4 has testified that his mission short of compelling Monex to pay his extortionate  
5 demand of \$15 million (his father defendant Richard Gilliam demanded \$20  
6 million) was to completely destroy Monex through a relentless marketing and  
7 awareness campaign to persuade Monex customers and potential customers to  
8 avoid transacting business with Monex, and to consider instead investing with  
9 Monex's competitors.

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

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

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

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

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

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

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

4 14. All defendants received actual notice of the Order to Show Cause.

5 15. Defendant Steven Bowman has not responded to the Order to Show  
6 Cause or to any other emailed communications from plaintiffs or defendants [after](#)  
7 [the filing of the Complaint in this matter.](#)

8 The Court makes the following conclusions of law:

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

12 2. To the extent that defendants' statements about Monex are fraudulent,  
13 they are not protected by the First Amendment. *San Antonio Community Hospital*  
14 *v. Southern California District Council of Carpenters*, 125 F.3d 1230, 1239 (9th  
15 Cir. 1997); *see Peel v. Attorney Registration and Disciplinary Comm~~u~~n of Ill.*, 496  
16 U.S. 91, 107 n. 14, (1990); *Gehl Group v. Koby*, 63 F.3d 1528, 1534 (10th Cir.  
17 1995). As the California Supreme Court has noted: "The policy of this state which  
18 characterizes the use of false or fraudulent statements in picketing as unlawful is  
19 within the permissible limits which a state may impose upon industrial combatants  
20 without impairing the right of free speech." *Magill Bros., Inc. v. Building Serv.*  
21 *Employees' Int~~er~~l Union*, 20 Cal.2d 506, 127 P.2d 542, 545 (1942) (*citing Thornhill*  
22 *v. Alabama*, 310 U.S. 88, 1043 (1940)).

23 3. [To the extent that defendants' negative statements are part of an illegal](#)  
24 [extortion scheme, they are not protected by the First Amendment irrespective of](#)  
25 [whether they are true or false. See R.A.V. v. City of St. Paul, 505 U.S. 377, 420](#)  
26 [\(1992\) \(conc. opn. of Stevens, J.\) \("Although the First Amendment broadly protects](#)  
27 ['speech,' it does not protect the right to ... 'extort.'"\); Flatley v. Mauro, 39 Cal. 4th](#)  
28 [299, 328, 139 P.3d 2, 21 \(2006\); Philippine Export & Foreign Loan Guarantee](#)

1 *Corp. v. Chuidian*, 218 Cal. App. 3d 1058, 267 Cal. Rptr. 457(Cal. Ct. App. 1990).

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

5 5. This preliminary injunction is in the public interest.

6 IT IS ORDERED THAT:

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

9 i. Any efforts to extort consideration from Monex, including any  
10 efforts to persuade Monex to pay defendants money which directly or  
11 indirectly involves: (1) threats against Monex or its employees to publish in  
12 any forum or to share information about Monex with third parties, or (2)  
13 threats to defame Monex or its employees, unless Monex pays defendants.

14 ii. Operating, directly or indirectly, [www.MonexFRAUD.com](http://www.MonexFRAUD.com) or  
15 any other website address using the name Monex in combination any  
16 modifier which implies illegal, unlawful or unethical conduct.

17 iii. Publishing or republishing on any website, including, but not  
18 limited to, [www.MonexFRAUD.com](http://www.MonexFRAUD.com), [www.youtube.com](http://www.youtube.com), <http://digg.com>,  
19 <http://goldismoney.info>, and <http://americannepali.blogspot.com>, or in any  
20 other manner any **negative statements about Monex of any kind, without**  
21 **regard to whether the statement is false or true. Prohibited statements**  
22 **include, but are not limited to, statements that Monex** does not have title to or  
23 the ability to deliver precious metals sold under contract to any Monex  
24 customer; that Monex was expelled from the National Futures Association  
25 for fraud; that Monex **operates** as a boiler room; that Monex violates any  
26 federal or state statutes regulating the business operations of Monex; that  
27 Monex has been charged by the Internal Revenue Service with tax evasion;  
28 and that Monex fails to accurately disclose to customers account and trading

1 terms (collectively “Prohibited Statements”). This part of the order requires  
2 defendants to remove, from any website over which they have sufficient  
3 control, all **negative statements about Monex, including** Prohibited  
4 Statements, that they have published or republished there, and to stop using  
5 the word MonexFRAUD, all within 72 hours of the entry of this  
6 **supplemental and amended** preliminary injunction. Notwithstanding any  
7 other provision of this Order, nothing herein shall prohibit defendants from  
8 (a) making statements regarding their own business dealings with Monex,  
9 including any losses they may have sustained, or (b) communicating with any  
10 governmental entity concerning matters within the scope of that entity’s  
11 legislative, administrative or regulatory responsibilities.

12 iv. Disclosing or using directly or indirectly in any way any trade  
13 secret documentation or other proprietary information belonging to Monex,  
14 including all internal Monex documents which are not public, such as Monex  
15 customer lists.

16 v. Retaining any trade secret or proprietary information referred to  
17 in the last paragraph. To implement this part of the Order, defendants must  
18 disclose to and return to Monex within 48 hours of entry of **the original**  
19 **Preliminary Injunction** all such information and documentation within  
20 defendants’ possession, or within possession of anyone within defendants’  
21 control. To the extent that defendants once had possession of such  
22 documentation, but no longer have possession, defendants must within **the**  
23 **same 48-hour period** also inform Monex’s counsel in writing and in specific  
24 and sufficient detail: (1) all efforts defendants have made to re-acquire such  
25 documentation; (2) what became of such documentation, including the time  
26 and date the defendant lost control of the documentation; and (3) who  
27 presently has possession of this documentation so that Monex can take steps  
28 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 or deposited a cashier's check for \$20,000 with the Clerk of the Court.

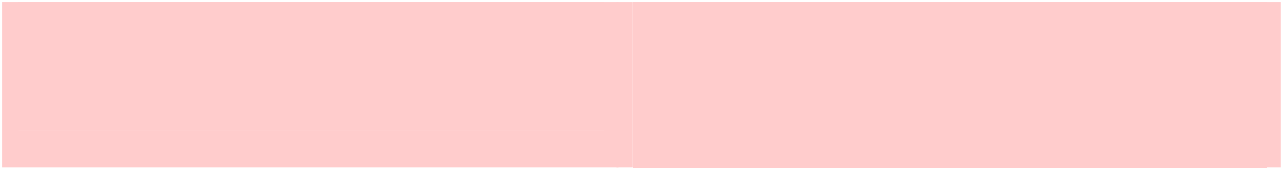
*James V. Helms*

Dated: May 27, 2009

By:

U.S. DISTRICT COURT JUDGE

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