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

MONEX DEPOSIT CO., et al.,
Plaintiffs,
v.
JASON GILLIAM, et al.,
Defendants,

Case No. SACV 09-287-JVS(RNBx)

**AMENDED JUDGMENT ON
EXTORTION IN FAVOR OF
MONEX DEPOSIT CO. AND
MONEX CREDIT CO., AND
AGAINST JASON GILLIAM;
PERMANENT INJUNCTION;
ORDER ALLOWING JUDGMENT
UNDER FEDERAL RULE OF
CIVIL PROCEDURE 54(b)**

AND RELATED COUNTERCLAIMS.

The Hon. James V. Selna

The Court having considered and ruled on the Motion of Monex Deposit Co. and Monex Credit Co. to amend the Judgment against Jason Gilliam (Docket No. 327) pursuant to Rule 60(a) of the Federal Rules of Civil Procedure, the Court now enters its Amended Judgment:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that judgment

1 be entered against defendant Jason Gilliam and in favor of plaintiffs Monex Deposit
2 Co. and Monex Credit Co. on plaintiffs' claim of extortion.

3 The Court finds the following facts and makes the following conclusions of
4 law:

5 1. The Court has jurisdiction over plaintiffs and defendants Jason Gilliam
6 and Richard Gilliam, and over the subject matter of this civil action.

7 2. Monex Deposit Company and Monex Credit Company (collectively,
8 "Monex") is a retail dealer in precious metals, transacting sales and purchases with
9 members of the public. Monex thus has economic relationships with its customers
10 and potential customers.

11 3. Jason Gilliam was the owner and operator of, and contributor to, the
12 website www.MonexFraud.com.

13 4. Monex's relationship with at least one of its active customers, John
14 Barton, had a probable future economic benefit to Monex.

15 5. Defendants Jason and Richard Gilliam knew of the economic
16 relationships Monex had with its customers and potential customers in part because
17 the Gilliams had been Monex customers themselves.

18 6. Jason Gilliam intentionally tried to disrupt, through his publications on
19 the www.MonexFraud.com website, the relationships between Monex and its customers.

20 7. Jason Gilliam's intentional attempts to disrupt these relationships was
21 independently wrongful because those attempts were part of his attempt to extort
22 \$15 million from Monex, for which he is independently liable, for the reasons set
23 forth below.

24 8. Mr. Barton decided not to do further business with Monex because he
25 read allegations about Monex on www.MonexFraud.com. Jason Gilliam therefore
26 interrupted Monex's economic relationship with Mr. Barton. Mr. Barton went on
27 to do business with one of Monex's competitors. He said he would have conducted
28 this business with Monex had www.MonexFraud.com (and therefore Jason

1 Gilliam) not influenced him.

2 9. Jason Gilliam and MonexFraud.com economically harmed Monex by
3 causing it to lose business, including that of Mr. Barton.

4 10. On February 13, 2009, Jason Gilliam delivered a written
5 correspondence to Monex in the form of a demand letter and a “Plan of Action.”

6 11. The letter and “Plan of Action” expressed and implied threats listed in
7 California Penal Code Section 519, including publicly to accuse Monex of crimes,
8 to expose Monex’s alleged crimes, to expose Monex secrets, such as a Monex
9 “Position Report” document containing trade secrets, and to do an unlawful injury
10 to Monex (*i.e.*, intentional interference with prospective economic advantage).

11 12. California Penal Code Section 523 implies a civil cause of action for
12 attempted extortion, and the provisions of California Penal Code Section 519 are
13 incorporated within that cause of action.

14 13. Jason Gilliam intended to improperly use fear created by the Section
15 519 threats in order to extort a payment of \$15 million from Monex to him and/or
16 one or more confederates with whom he was working.

17 14. Neither Jason nor Richard Gilliam intended to bring a lawsuit against
18 Monex at the time Jason Gilliam delivered the letter and “Plan of Action” to
19 Monex.

20 15. Statements in the letter and “Plan of Action” suggesting Jason
21 Gilliam’s intent to litigate were fabrications, thus removing any remaining possible
22 doubt that Jason Gilliam intended to improperly use fear created by the Section 519
23 threats to extort money intentionally from Monex.

24 16. Addressing such fabrications, first, Jason Gilliam admitted that there
25 were never 234 people seeking recovery from Monex and, in fact, that 184 of these
26 people came from an apparently misappropriated Monex “Position Report”
27 document listing these investors. None of these 184 people asked Jason Gilliam to
28 represent them. Jason Gilliam did not know whether these people wanted any

1 money from Monex. As for the remaining, approximately 50 people, Jason Gilliam
2 had not spoken to all of them. He did not have any documented proof of their
3 losses. He refused to identify those people at his deposition. He provided no
4 evidence to support his statements in the letter that he represented 234 people or
5 that he had a valid basis to demand \$15 million from Monex. That amount was far
6 in excess of the losses allegedly incurred by Jason and Richard Gilliam, defendant
7 Steven Bowman, and seven people who submitted declarations indicating they may
8 have contemplated suing Monex.

9 17. Second, there is no evidence to support Jason Gilliam's reference in
10 the written correspondence to two former Monex account representatives willing to
11 testify regarding Monex's allegedly illegal activities.

12 18. The only former Monex account representative Jason Gilliam
13 produced for deposition did not testify to facts that supported the allegations made
14 in the letter and "Plan of Action" regarding Monex's allegedly illegal conduct.

15 19. Third, there is no evidence to support the statement in the letter and
16 "Plan of Action" that Monex had breached the standard Atlas Agreement it entered
17 into with its customers.

18 20. Fourth, there is no evidence that www.MonexFraud.com was a central
19 hub for a class action effort against Monex.

20 21. There was no class action effort against Monex connected to any
21 defendant or to www.MonexFraud.com. Jason Gilliam never brought such a class
22 action and, in fact, said he would not have joined a class action suit against Monex.

23 22. Jason Gilliam did not intend to bring suit against Monex when he
24 made the communication to Monex demanding payment.

25 23. MonexFraud.com was an integral part of the attempted extortion
26 because Jason Gilliam's written communications which he delivered to Monex
27 stated that more negative information about the company would be posted to the
28 website if his demands were not satisfied, and because such threats were, in fact,

1 carried out.

2 24. The litigation privilege of California Civil Code Section 47(b)(2) does
3 not protect Jason Gilliam from liability because neither he nor any one else working
4 with him made a settlement demand related to litigation that any or either of them
5 contemplated in good faith and had under serious consideration. Furthermore, the
6 amount of money he demanded far exceeded the alleged losses of the Gilliams,
7 Steven Bowman, and the seven declarants who indicated they were contemplating a
8 lawsuit against Monex.

9 25. Jason Gilliam's negative statements about Monex on
10 MonexFraud.com and threats to Monex to make such statements absent payment,
11 whether true or false, were never, and never could be, protected by the federal or
12 California constitutions' free-speech guaranties because these threats and
13 statements were unlawful speech made with the intent to extort. *See R.A.V. v. City*
14 *of St. Paul*, 505 U.S. 377, 420, 112 S. Ct. 2538, 2563 (1992) (conc. opn. of Stevens,
15 J.) ("Although the First Amendment broadly protects 'speech,' it does not protect
16 the right to ... 'extort.'"); *Flatley v. Mauro*, 39 Cal. 4th 299, 328, 139 P.3d 2, 21
17 (2006); *People v. Choyanski*, 95 Cal. 640, 642-43, 30 P. 791 (1892); *People v.*
18 *Umana*, 138 Cal. App. 4th 625, 638, 41 Cal. Rptr. 3d 573, 582 (2006); *Philippine*
19 *Export & Foreign Loan Guarantee Corp. v. Chuidian*, 218 Cal. App. 3d 1058, 267
20 Cal. Rptr. 457 (1990). Even if Jason Gilliam would have been within his rights to
21 obtain money from Monex for himself or others, or to make the statements he made
22 publicly and to government officials concerning Monex, he committed attempted
23 extortion by combining the threats to make these statements with the demand for
24 money. *See Flatley*, 39 Cal. 4th at 326 (2006); *accord Gomez v. Garcia*, 81 F.3d
25 95, 97 (9th Cir. 1996); *People v. Tufunga*, 21 Cal. 4th 935, 955, 987 P.2d 168
26 (1999); *Lindenbaum v. State Bar*, 26 Cal. 2d 565, 573, 160 P.2d 9 (1945).

27 26. Jason Gilliam did not retract his extortionate demands or threats: (a)
28 to publish additional negative material about Monex on MonexFraud.com and

1 otherwise, (b) to report Monex's activities to government and the news media, and
2 (c) to continue to do so, unless Monex paid him \$15 million.

3 27. Unless the Court enjoins such conduct, Jason Gilliam is likely to
4 publish negative material about Monex, including on MonexFraud.com or a similar
5 web site, and to keep his extortionate threats in place because Monex has refused to
6 pay them.

7 28. Such negative statements, particularly on the web, are likely to
8 continue to harm Monex by damaging its reputation, customer relationships,
9 business, revenues, and goodwill.

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

12 30. The balance of equities in considering entry of a permanent injunction
13 tips in Monex's favor.

14 31. This permanent injunction is in the public interest.

15 32. This order, insofar as it grants summary judgment against Jason
16 Gilliam on the claim of extortion, settles fewer than all the claims in this multi-
17 claim lawsuit and settles that claim as to fewer than all defendants. This order is
18 the ultimate disposition of that cognizable claim for relief against Jason Gilliam.

19 33. There is no just reason to delay entry of judgment against Jason
20 Gilliam on the claim of extortion. A judgment on that claim now will make
21 resolution of this action more efficient and facilitate settlement of the remaining
22 claims, including by allowing appellate review of the key legal issues in this case.

23 IT IS FURTHER ORDERED, ADJUDGED AND DECREED THAT:

24 Jason Gilliam and anyone acting in concert or in participation with him,
25 including as his agent, servant, employee, attorney, representative, partner, joint
26 venturer or otherwise on his behalf, who receives notice of this order or its contents
27 by any means, ARE HEREBY PERMANENTLY RESTRAINED, ENJOINED,
28 AND PROHIBITED FROM:

[PROPOSED] EXTORTION J.; PERM. INJ.
CASE NO. SACV 09-287-JVS(RNBx)

1 i. Any effort to extort consideration from Monex, payable to
2 anyone or any organization, including any effort to persuade Monex to pay
3 any money, if such effort directly or indirectly involves: (1) any threat to
4 publish a negative statement, whether true or false, about Monex or its
5 employees in any forum or to share such information about Monex with third
6 parties, or (2) any threat to criticize Monex or its employees, or (3)
7 publishing any negative statement or criticism with respect of Monex or its
8 employees, whether true or false.

9 ii. Operating, directly or indirectly, www.MonexFraud.com or any
10 other website address or publication using the name Monex in combination
11 with any modifier which implies illegal, unlawful, unethical, immoral, or
12 otherwise improper conduct, whether such accusation against Monex be true
13 or false. The Court grants this relief because www.MonexFraud.com was
14 one of the specific instrumentalities used by Jason Gilliam to carry out his
15 scheme to extort, and the Court finds it proper to enjoin the operation of
16 www.MonexFraud.com and such other sites as Jason Gilliam might use as a
17 surrogate for www.MonexFraud.com. Cf. Balboa Island Village, Inc. v.
18 Lemen, 40 Cal. 4th 1141, 1156, 1162 (2007); Evans v. Evans, 162 Cal. App.
19 4th 1157, 1168 (2008).

20 iii. Publishing or republishing on any website, including, but not
21 limited to, www.MonexFraud.com, www.youtube.com, <http://digg.com>,
22 <http://goldismoney.info>, and <http://americannepali.blogspot.com>, or in any
23 other manner or forum statements that Monex does not have title to, or the
24 ability to deliver, precious metals sold under contract to any Monex
25 customer; that Monex was expelled from the National Futures Association
26 for fraud; that Monex operates as a boiler room; that Monex violates any
27 federal or state statutes regulating the business operations of Monex; that
28 Monex has been charged by the Internal Revenue Service with tax evasion;

1 and that Monex fails to disclose accurately to customers account and trading
2 terms (collectively “Prohibited Statements”). The Court finds that Jason
3 Gilliam used these specific statements in his scheme to extort Monex, and
4 thus it is proper to enjoin him from repeating these statements. Cf. Balboa
5 Island Village, 40 Cal. 4th at 1162 (“a properly limited injunction prohibiting
6 defendant from repeating statements about plaintiff that were determined at
7 trial to be defamatory would not violate defendant's right to free speech”);
8 Evans, 162 Cal. App. 4th at 1168-69. This part of the order requires removal
9 of the following, within 72 hours of the entry of this judgment, from any
10 website or other publication over which Jason Gilliam or anyone covered by
11 this injunction has sufficient control to influence such website or publication
12 Prohibited Statements that they have published or republished there. This
13 part of the order also requires stopping the use the word MonexFraud, or any
14 variant thereof, within 72 hours of the entry of this judgment.

15 iv. Disclosing or using directly or indirectly in any way any trade
16 secrets or other proprietary information belonging to Monex, including all
17 internal Monex documents which are not public, such as Monex customer
18 lists and Monex customer position reports.

19 v. Retaining any trade secret or proprietary information referred to
20 in the last paragraph. To implement this part of the judgment, Jason Gilliam
21 and anyone covered by this injunction must disclose to and return to Monex
22 within 48 hours of entry of this judgment and permanent injunction all such
23 information and documentation within their possession, or within the
24 possession of anyone under their control. To the extent that Jason Gilliam
25 and anyone covered by this injunction once had possession of such
26 documentation, but no longer has possession, they must within the same 48-
27 hour period also inform Monex’s counsel of the following, in writing and in
28 detail sufficient to allow Monex to use it to take effective steps to recover the

1 documentation: (1) all efforts made to re-acquire such documentation; (2)
2 what became of such documentation, including the time and date they lost
3 control of the documentation; and (3) who presently has possession of this
4 documentation.


5
6 **Notwithstanding any other provision of this Order, nothing herein shall**
7 **prohibit Jason Gilliam from (a) making statements regarding his own business**
8 **dealings with Monex, including any losses he may have sustained, or (b)**
9 **communicating with any governmental entity concerning matters within the**
10 **scope of that entity's legislative, administrative or regulatory responsibilities.**

11
12 The Court issues the foregoing permanent injunction based on the Court's
13 entry of summary judgment against defendant Jason Gilliam on plaintiffs Monex
14 Deposit Co.'s and Monex Credit Co.'s claim of extortion against him. The Court's
15 bases for entering summary judgment are set forth above and in its Order re
16 Motions for Summary Judgment and Motion for Summary Adjudication, Docket
17 No. 301.

18 Monex is the prevailing party in this litigation on the claims of extortion and
19 intentional interference with prospective business advantage for the purposes of
20 recovering costs and, if allowable, fees.

21 The Court shall retain jurisdiction over this action for purposes of construing
22 and enforcing the terms of this judgment and permanent injunction, and for
23 punishing violations thereof.

24
25
26 Dated: January 26, 2010



Judge James V. Selna
United States District Judge