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JS-6

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MONEX DEPOSIT COMPANY and MONEX
7 CREDIT COMPANY

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

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

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

**JUDGMENT AND PERMANENT
INJUNCTION UNDER FEDERAL
RULE OF CIVIL PROCEDURE
54(b) IN FAVOR OF PLAINTIFFS
MONEX DEPOSIT CO. AND
MONEX CREDIT CO., AND
AGAINST DEFENDANTS
RICHARD AND JASON GILLIAM**

17
18
19
20 AND RELATED COUNTERCLAIMS.
21

The Hon. James V. Selna

22 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that judgment
23 be entered against defendants Jason and Richard Gilliam (collectively, the
24 “Gilliams”) and in favor of plaintiffs Monex Deposit Co. and Monex Credit Co.
25 (collectively, “Monex”) on plaintiffs’ claims of intentional interference with
26 prospective economic advantage, negligent interference with prospective economic
27 advantage, intentional interference with contractual relations, unfair business
28

1 practices (Cal. Bus. & Prof. Code § 17200 *et seq.*), civil racketeering (18 U.S.C. §§
2 1961–1968), and cyberpiracy (15 U.S.C. § 1125(d)).

3 IN ADDITION, IT IS HEREBY ORDERED, ADJUDGED, AND
4 DECREED that judgment be entered against defendant Richard Gilliam and in
5 favor of Monex on plaintiffs’ extortion claim.

6 **FINDINGS OF FACT**

7 The Court finds the following facts:

- 8 1. Monex trades in precious metals, transacting sales and purchases with
9 members of the public, often pursuant to contracts.
- 10 2. Monex has used the word “Monex” to mark its products, services, and
11 business in the precious metals industry for many years.
- 12 3. The Gilliams were the owners, users, registrants, and operators of, and
13 contributors to, the web site www.MonexFraud.com.
- 14 4. The Gilliams published on the web site statements that Monex did not
15 have title to, or the ability to deliver, precious metals sold under contract to Monex
16 customers; that Monex was expelled from the National Futures Association for
17 fraud; that Monex operated as a boiler room; that Monex violated federal or state
18 statutes regulating the business operations of Monex; that Monex was charged by
19 the Internal Revenue Service with tax evasion; and that Monex failed to disclose
20 accurately to customers account and trading terms.
- 21 5. The web site included paid advertising for Monex’s competitors and
22 solicitation for donations to the Gilliams.
- 23 6. Monex’s relationships with its potential customers and active
24 customers, including John Barton, had a probable future economic benefit to
25 Monex.
- 26 7. The Gilliams knew of the economic relationships and contracts Monex
27 had with its customers and potential customers in part because the Gilliams had
28

1 been Monex customers themselves and entered into contracts with Monex,
2 governing their trading activities.

3 8. The Gilliams intentionally tried to disrupt, through their publication of
4 the MonexFraud.com web site, the relationships between Monex and its potential
5 and active customers.

6 9. The Gilliams' intentional attempts to disrupt these relationships were
7 independently wrongful because those attempts were part of their attempt to extort
8 \$15 million to \$20 million from Monex, for which they are independently liable,
9 for the reasons set forth below and in the document titled Amended Judgment On
10 Extortion In Favor Of Monex Deposit Co. And Monex Credit Co., And Against
11 Jason Gilliam; Permanent Injunction; Order Allowing Judgment Under Federal
12 Rule Of Civil Procedure 54(b) (Dkt. 356).

13 10. Mr. Barton decided not to do further business with Monex because he
14 read allegations about Monex on www.MonexFraud.com. The Gilliams therefore
15 interrupted Monex's economic relationship with Mr. Barton. Mr. Barton went on
16 to do business with one of Monex's competitors. He said he would have conducted
17 this business with Monex had www.MonexFraud.com (and therefore the Gilliams)
18 not influenced him. The Gilliams and MonexFraud.com also disrupted Monex's
19 relationships with other potential and active customers.

20 11. The Gilliams and MonexFraud.com economically harmed Monex by
21 causing it to lose business, including that of Mr. Barton.

22 12. If the domain name www.MonexFraud.com remains open to abuse,
23 Monex will be vulnerable to future attack.

24 13. On February 13, 2009, the Gilliams delivered a written correspondence
25 to Monex in the form of a demand letter and a "Plan of Action."

26 14. The letter and "Plan of Action" expressed and implied threats listed in
27 California Penal Code Section 519, including publicly to accuse Monex of crimes,
28 to expose Monex's alleged crimes, to expose Monex secrets, such as a Monex

1 “Position Report” document containing trade secrets, and to do unlawful injuries to
2 Monex (*e.g.*, intentional interference with prospective economic advantage,
3 intentional interference with contractual relations, racketeering, and unfair business
4 practices). The Gilliams stated and implied in the letter and “Plan of Action” that
5 they would carry out their threats unless Monex paid \$15 million to them or to one
6 of their confederates with whom they were working.

7 15. Richard Gilliam made oral, extortionate threats against Monex similar
8 to those in the letter and “Plan of Action” (and listed in California Penal Code
9 Section 519) during a meeting with Harvey Kochen, a Monex employee, on March
10 19, 2009. Richard Gilliam said the Gilliams would carry out those threats unless
11 Monex paid them or one of their confederates \$20 million.

12 16. The Gilliams intended to use fear created by the Section 519 threats in
13 order to extort a payment of \$15 million to \$20 million from Monex to them or one
14 or more confederates.

15 17. MonexFraud.com was an integral part of the Gilliams’ attempted
16 extortion because their written communications that they delivered to Monex, and
17 Richard Gilliam’s oral threats, stated that more negative information about the
18 company would be posted to the web site if their demands were not satisfied, and
19 because such threats were, in fact, carried out.

20 18. The Gilliams did not intend to bring a lawsuit against Monex at the
21 time they delivered the letter and “Plan of Action” to Monex, or made the oral
22 threats.

23 19. Statements in the letter and “Plan of Action” suggesting the Gilliams’
24 intent to litigate were fabrications, removing any doubt that the Gilliams intended
25 to use fear created by the Section 519 threats to extort money from Monex.

26 20. Addressing such fabrications, first, Jason Gilliam admitted that there
27 were never 234 people seeking recovery from Monex and, in fact, that 184 of these
28 people came from an apparently misappropriated Monex “Position Report”

1 document listing these investors. None of these 184 people asked Jason Gilliam to
2 represent them. Jason Gilliam did not know whether these people wanted any
3 money from Monex. As for the remaining, approximately 50 people, Jason Gilliam
4 had not spoken to all of them. He did not have any documented proof of their
5 losses. He refused to identify those people at his deposition. He provided no
6 evidence to support his statements in the letter that he represented 234 people or
7 that the Gilliams had a valid basis to demand \$15 million to \$20 million from
8 Monex. That amount was far in excess of the losses allegedly incurred by the
9 Gilliams, now-dismissed defendant Steven Bowman, and seven people who
10 submitted declarations indicating they may have contemplated suing Monex.

11 21. Second, there is no evidence to support the Gilliams' reference in the
12 written correspondence to two former Monex account representatives willing to
13 testify regarding Monex's allegedly illegal activities.

14 22. The only former Monex account representative the Gilliams produced
15 for deposition did not testify to facts that supported the allegations made in the
16 letter and "Plan of Action" regarding Monex's allegedly illegal conduct.

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

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

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

26 26. Neither Jason or Richard Gilliam nor any one else working with them
27 made a settlement demand of Monex that was related to litigation that any of them
28 contemplated in good faith and had under serious consideration.

1 27. The Gilliams began publishing www.MonexFraud.com on, at the
2 latest, August 31, 2008. Publication ceased on or about March 26, 2009.

3 28. The Gilliams caused Monex to lose \$1 million in sales per week for
4 each week they operated www.MonexFraud.com. This amount is based upon
5 a) the Gilliams' testimony that Jason Gilliam had detailed and frequent
6 communications with investors who had read MonexFraud.com and therefore
7 decided not to do business with Monex , b) Jason Gilliam's published estimates that
8 defendants were causing \$1 million in lost business per week, c) Jason Gilliam's
9 testimony that the \$1 million per week estimate was reasonable and was based on
10 deep factual research, and d) corroborating evidence that \$1 million per week was a
11 reasonable estimate because of the ease by which customers and potential
12 customers could choose one of Monex's competitors instead of Monex after reading
13 the negative information about Monex at www.MonexFraud.com, and due to their
14 likely motivation to avoid the Monex described there, given the already high risk of
15 investing in precious metals. In addition, the \$1 million in lost business a week is
16 supported by the website's large readership and high visibility due to the Gilliams'
17 deliberate success in placing Monexfraud.com just after Monex's entry on the
18 Google search engine. Finally, the \$ 1 million weekly losses is also supported by
19 the fact that Monex's average transaction size across its customer base from 2004
20 through 2009 was \$44,998. Only 23 lost transactions per week would cause Monex
21 to suffer the weekly \$1 million in lost business claimed by the Gilliams.

22 29. The website's operation therefore caused Monex to lose \$29 million in
23 sales over the website's 29 weeks of operations.

24 30. More precise proof of the amount of lost sales is not possible due to
25 the Gilliams' own efforts to turn customers and potential customers against Monex,
26 thus depriving Monex of the opportunity to identify and debrief those lost
27 customers and potential customers.

28 31. For every \$1 million that the Gilliams cost Monex in lost transactions,

1 Monex lost gross profits of approximately \$21,150. Monex has demonstrated these
2 lost gross profits based on Monex's historic gross profit margin of 1.41 percent and
3 its historic percentage of 50 percent of all its customers doing repeat transactions.
4 The amount of Monex's total lost gross profits which the Gilliams unlawfully
5 caused Monex was \$613,350 — 29 weeks of costing Monex \$1 million in lost
6 transactions per week and \$21,150 in gross profits each week.

7 32. Monex was unable to reduce or redeploy any significant amount of its
8 fixed costs for the proportion of its business that the Gilliams' unlawful activities
9 cost Monex.

10 33. Jason Gilliam removed this action from California state court. Richard
11 Gilliam joined in that removal.

12 34. The First Amended Complaint contains the following claims based on
13 federal statutes, each of which remains pending: civil racketeering and cyberpiracy.
14 That complaint also contains the following claims under California law, each of
15 which remains pending: extortion, intentional interference with prospective
16 economic advantage, negligent interference with prospective economic advantage,
17 unfair business practices, and intentional interference with contractual relations.

18 35. The Court stayed the Gilliams' counterclaims against Monex and
19 ordered that the Gilliams can only pursue them in arbitration.

20 36. Neither Jason nor Richard Gilliam retracted their extortionate demands
21 or threats: (a) to publish additional negative material about Monex on
22 MonexFraud.com and otherwise, (b) to report Monex's activities to government
23 and the news media, and (c) to continue to do so, unless Monex paid them \$15
24 million to \$20 million.

25 37. In litigating this matter, Monex paid Farella Braun + Martel LLP
26 \$1,114,590.99 in costs and attorney's fees.

27 38. The cost of the expenses for which Monex paid was consistent with
28 prevailing market rates in California for the type of services rendered, in light of

1 complex legal issues in this matter and additional work made necessary by dealing
2 with the Gilliams' procedural tactics, for which the Court and Magistrate Judge
3 Block collectively twice sanctioned them.

4 39. Monex's counsel's work included extensive factual and legal research,
5 applications for a temporary restraining order and a preliminary injunction, two
6 motions to dismiss, three motions for summary judgment, two motions to compel
7 arbitration, multiple sanctions issues, searching for Mr. Bowman (the missing
8 Canadian defendant), speaking with so-called witnesses identified by defendants,
9 two motions to compel discovery, dealing with web-services providers, extensive
10 efforts to purge the Internet of the extortionate publications that violated the
11 preliminary injunctions, communications with clients and client employees,
12 strategizing to attempt to mitigate harm to Monex, communications with
13 defendants, discovery work, including depositions and document review, and
14 responses to the press.

15 40. The issues of law included whether a private right of action exists for
16 attempted extortion, limits on First Amendment protections for extortionate speech,
17 and the alleged unconscionability of an arbitration agreement under new California
18 case law.

19 41. All attorneys and professionals on this matter billed Monex at their
20 usual and standard rates, which were consistent with prevailing California rates for
21 similar quality of services.

22 42. The number of hours that Monex's counsel and other legal
23 professional staff members spent on this litigation was necessary to achieving the
24 results Monex obtained.

25 43. The Gilliams have been sanctioned with entry of default and their
26 answers have been stricken.

27 44. Unless the Court enjoins the Gilliams' tortious conduct, they are likely
28 to publish negative material about Monex, including on MonexFraud.com or a

1 similar website, and to keep their extortionate threats in place, because Monex
2 refused to pay them.

3 45. Such negative statements, particularly on the web, are likely to harm
4 Monex by damaging its reputation, customer relationships, business, revenues, and
5 goodwill.

6 46. Such harm will not be fully compensable through money damages
7 because the full amount of damage will not be determinable with sufficient
8 precision.

9 47. A judgment on Monex's remaining claims now, instead of waiting
10 until the Gilliams' counterclaims are resolved, will allow Monex to obtain prompt
11 compensation and will not make adjudication of the counterclaims any less
12 efficient. The Gilliams have made no effort to pursue arbitration of their
13 counterclaims in the eleven months since arbitration was first compelled. Monex
14 should not have to wait until the end of the arbitration (which may never come) to
15 receive compensation.

16 CONCLUSIONS OF LAW

17 1. The Court has jurisdiction over Monex and the Gilliams, and over the
18 subject matter of this civil action.

19 2. The facts alleged in Monex's First Amended Complaint that concern
20 their still-pending claims were established by the Court's entry of default against
21 the Gilliams.

22 3. California Penal Code Section 523 implies a civil cause of action for
23 attempted extortion, and the provisions of California Penal Code Section 519 are
24 incorporated within that cause of action.

25 4. Richard Gilliam sent and delivered to Monex written correspondence,
26 and he made to Monex oral communications, that expressed and implied threats to
27 commit intentional interference with prospective economic advantages and other
28

1 torts against Monex, which are unlawful injuries; to accuse Monex of crimes in the
2 operation of its business; to expose and impute to Monex unethical business
3 practices and crime; and to expose secrets, such as confidential, trade-secret
4 customer information, that affect Monex and its customers.

5 5. Richard Gilliam intentionally made those threats to obtain property
6 from Monex with its consent.

7 6. These threats, and the scheme and actions that supported them harmed
8 Monex. Richard Gilliam caused that harm.

9 7. Contracts existed between Monex and its customers that governed
10 their precious-metals trading relationships.

11 8. The Gilliams knew that such contracts existed.

12 9. The Gilliams engaged in acts that either caused customers who were
13 parties to contracts with Monex to breach those contracts or caused Monex's
14 performance of those contracts to become more expensive and burdensome.

15 10. The Gilliams either intended to cause Monex's performance to be
16 more expensive or burdensome, knew that their acts were at least substantially
17 certain to make Monex's performance more expensive and burdensome, intended to
18 cause Monex's customers to breach their contracts with Monex, or knew that their
19 acts were at least substantially certain to cause customers who were parties to
20 contracts with Monex to breach those contracts.

21 11. The Gilliams' acts that interfered with Monex's contractual relations
22 damaged Monex.

23 12. Monex and its customers had non-contractual, economic relationships
24 that had probable future economic benefits to Monex.

25 13. The Gilliams had knowledge of those relationships.

26 14. The Gilliams committed intentional wrongful acts, such as extortion,
27 that were designed to disrupt those relationships.

28 15. It was reasonably foreseeable that the Gilliams' website publications

1 would interfere with or disrupt such relationships if the Gilliams failed to exercise
2 due care. The Gilliams failed to exercise due care.

3 16. The Gilliams and their website publications actually disrupted and
4 interfered with such economic relationships.

5 17. Such disruption and interference proximately harmed Monex
6 economically as set forth above.

7 18. The Gilliams torts, including extortion, were part of an effort by them
8 to obtain money from advertising revenue, donations, and extortion payments.

9 19. Monex owns the trademark, service mark, trade name, and commercial
10 name "Monex" when used in relation to precious metals.

11 20. The Gilliams registered and used the domain name
12 www.MonexFraud.com.

13 21. That domain is confusingly similar to the "Monex" mark.

14 22. The "Monex" mark was distinctive and famous at the time of
15 registration and use of the domain name.

16 23. The domain name www.MonexFraud.com was dilutive of the
17 "Monex" mark.

18 24. The Gilliams had a bad faith intent to profit from the "Monex" mark
19 by using it in the www.MonexFraud.com domain name to advance their extortion
20 scheme.

21 25. Both Richard and Jason Gilliam were responsible for use of
22 www.MonexFraud.com.

23 26. The Gilliams, through a pattern of two or more acts and threats
24 involving extortion and indictable under 18 U.S.C. §§ 1343, 1344, 1951, and/or
25 1952, and constituting racketeering activity, directly and indirectly invested in,
26 maintained interests in, and participated in the conduct of an enterprise, the
27 activities of which affected interstate and foreign commerce.

28 27. Monex was injured in its business and property by reason of such

1 conduct.

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

20 29. The litigation privilege of California Civil Code Section 47(b)(2) does
21 not protect Jason or Richard Gilliam from liability because neither they nor any one
22 else working with them made a settlement demand related to litigation that any of
23 them contemplated in good faith and had under serious consideration.

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

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

27 32. This judgment, insofar as it does not address the Gilliams'
28 counterclaims against Monex but addresses all Monex's remaining claims, settles

1 fewer than all the claims in this multi-claim lawsuit. This order is the ultimate
2 disposition of Monex's remaining claims against the Gilliams.

3 33. There is no just reason to delay entry of judgment against the Gilliams
4 on Monex's remaining claims.

5 34. An award of reasonable attorney's fees and expenses is mandatory for
6 the RICO claim and claims related to it.

7 35. The amount of attorney's fees awarded is reasonable in light of the
8 procedural intensity of this case, the novel legal issues in it, and Monex's decision
9 to seek less than 50 percent of the fees and expenses it actually paid in connection
10 with this case.

11 36. The rates and expenses charged by Monex's counsel and for which
12 Monex seeks recovery are reasonable in light of the prevailing market for litigation
13 services charged by similar commercial law firms in California.

14 37. The number of hours billed by Monex for which it is recovering a fee
15 award is reasonable in light of the tasks counsel had to perform to achieve the
16 results Monex obtained.

17 38. The amount of fees awarded is for work that furthered Monex's civil
18 racketeering claim. This work included areas that largely overlapped with other of
19 Monex's claims, such as the extortion claim. (Extortion was the predicate offense
20 for the racketeering violation.) Monex has discounted its request for attorney's fees
21 by more than 50 percent from the total Monex paid to its lawyers, resulting in
22 Monex not recovering attorney's fees for any work that may have been done solely
23 on issues unrelated to racketeering.

24 39. Monex adequately supported its request for attorney's fees with
25 detailed summaries of the number of hours worked by various attorneys and other
26 timekeepers, and their rates, for various phases of this litigation.

27 40. The \$613,350 in actual damages Monex seeks is just and reasonable in
28 light of the evidence available and the Gilliams' actions in preventing more precise

1 evidence of the amount of damages.

2 41. The \$613,350 in actual damages were all attributable to the Gilliams'
3 racketeering, because this money was lost due to the effects of a website that the
4 Gilliams operated as a central tool of their extortionate, racketeering enterprise.

5 42. Gross profits is the proper measure of damages here because Monex
6 was unable to reduce or redeploy any significant amount of its fixed costs for the
7 proportion of its business lost due to the Gilliams' unlawful activities.

8 43. The \$613,350 in actual damages Monex seeks must be trebled under
9 the RICO statutes, for a total of \$1,840,050.

10 44. Monex is the prevailing party in this litigation against both Jason and
11 Richard Gilliam.

12 IT IS FURTHER ORDERED, ADJUDGED AND DECREED THAT:

13 Plaintiffs Monex Deposit Co. and Monex Credit Co. recover from defendants
14 the Gilliams the amount of \$2,352,317, including prejudgment interest at the rate
15 of 2%, plus post-judgment interest at the rate of 0.36%, along with costs to be
16 calculated by the Clerk upon application by plaintiffs. These liabilities shall be
17 owed jointly and severally by the Gilliams and payable to Monex Deposit Co.
18 and/or Monex Credit Co., with payment distributed between them as they choose.
19 The \$2,352,317 amount of the recovery consists of the following just and
20 reasonable amounts:

- 21 • Compensatory damages, after mandatory trebling pursuant to 18
22 U.S.C. § 1964(c), of a final total of \$1,840,050 (based on actual
23 damages of \$613,350);
- 24 • Mandatory, reasonable attorney's fees pursuant to 18 U.S.C. § 1964(c)
25 totaling \$500,000, for work done in furtherance of the civil
26 racketeering claim; and
- 27 • Prejudgment interest totaling \$12,267, in order to ensure full
28 compensation to Monex, for the damage done by the racketeering.

1 IT IS FURTHER ORDERED, ADJUDGED AND DECREED THAT:

2 The domain name www.MonexFraud.com be transferred to Monex Deposit
3 Co., Monex Credit Co., or both, (at their option) because they are the owners of the
4 “Monex” mark in the context of precious metals. *See* 15 U.S.C. § 1125(d)(1)(C).
5 Any registrar administering that domain name, including GoDaddy.com, Inc. (the
6 registrar as of April 9, 2010) shall promptly take reasonable steps to transfer control
7 of the domain to Monex, including from Jason Gilliam (its current registrant). The
8 Gilliams shall do everything required of them to transfer the domain, if anything,
9 within seven calendar days of entry of this judgment.

10 IT IS FURTHER ORDERED, ADJUDGED AND DECREED THAT:

11 Richard Gilliam and anyone acting in concert or in participation with him,
12 including as his agent, servant, employee, attorney, representative, partner, joint
13 venturer or otherwise on his behalf, who receives notice of this order or its contents
14 by any means, ARE HEREBY PERMANENTLY RESTRAINED, ENJOINED,
15 AND PROHIBITED FROM:

16 i. Any effort to extort consideration from Monex, payable to
17 anyone or any organization, including any effort to persuade Monex to pay
18 any money, if such effort directly or indirectly involves: (1) any threat to
19 publish a negative statement, whether true or false, about Monex or its
20 employees in any forum or to share such information about Monex with third
21 parties, or (2) any threat to criticize Monex or its employees, or (3)
22 publishing any negative statement or criticism, or secret, with respect of
23 Monex or its employees, whether true or false.

24 ii. Operating, directly or indirectly, www.MonexFraud.com or any
25 other website address or publication using the name Monex in combination
26 with any modifier which implies illegal, unlawful, unethical, immoral, or
27 otherwise improper conduct, whether such accusation against Monex be true
28 or false. The Court grants this relief because www.MonexFraud.com was

1 one of the specific instrumentalities used by the Gilliams to carry out their
2 scheme to extort, and the Court finds it proper to enjoin the operation of
3 www.MonexFraud.com and such other sites as the Gilliams might use as a
4 surrogate for www.MonexFraud.com. *Cf. Balboa Island Village, Inc. v.*
5 *Lemen*, 40 Cal. 4th 1141, 1156, 1162 (2007); *Evans v. Evans*, 162 Cal. App.
6 4th 1157, 1168 (2008).

7 iii. Publishing or republishing on any website, including, but not
8 limited to, www.MonexFraud.com, www.youtube.com, http://digg.com,
9 http://goldismoney.info, and http://americannepali.blogspot.com, or in any
10 other manner or forum: statements that Monex does not have title to, or the
11 ability to deliver, precious metals sold under contract to any Monex
12 customer; that Monex was expelled from the National Futures Association
13 for fraud; that Monex operates as a boiler room; that Monex violates any
14 federal or state statutes regulating the business operations of Monex; that
15 Monex has been charged by the Internal Revenue Service with tax evasion;
16 and that Monex fails to disclose accurately to customers account and trading
17 terms (collectively “Prohibited Statements”). The Court finds that the
18 Gilliams used these specific statements in their scheme to extort Monex, and
19 thus it is proper to enjoin Richard Gilliam from repeating these statements.
20 *Cf. Balboa Island Village*, 40 Cal. 4th at 1162 (“a properly limited injunction
21 prohibiting defendant from repeating statements about plaintiff that were
22 determined at trial to be defamatory would not violate defendant’s right to
23 free speech”); *Evans*, 162 Cal. App. 4th at 1168–69. This part of the order
24 requires removal of the following, within 72 hours of the entry of this
25 judgment, from any website or other publication over which Richard Gilliam
26 or anyone covered by this injunction has sufficient control to influence such
27 website or publication: Prohibited Statements that they have published or
28 republished there. This part of the order also requires stopping the use the

1 word MonexFraud, or any variant thereof, within 72 hours of the entry of this
2 judgment.

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

7 v. Retaining any trade secret or proprietary information referred to
8 in the last paragraph. To implement this part of the judgment, Richard
9 Gilliam and anyone covered by this injunction must disclose to and return to
10 Monex within 48 hours of entry of this judgment and permanent injunction
11 all such information and documentation within their possession, or within the
12 possession of anyone under their control. To the extent that Richard Gilliam
13 and anyone covered by this injunction once had possession of such
14 documentation, but no longer has possession, they must, within the same 48-
15 hour period, also inform Monex's counsel of the following, in writing and in
16 detail sufficient to allow Monex to use it to take effective steps to recover the
17 documentation: (1) all efforts made to re-acquire such documentation; (2)
18 what became of such documentation, including the time and date they lost
19 control of the documentation; and (3) who presently has possession of this
20 documentation.

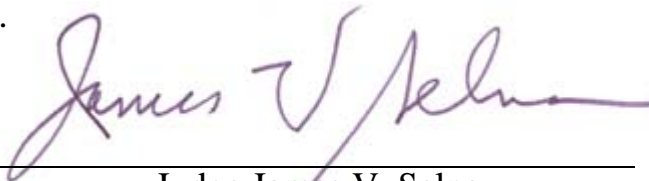
21 **Notwithstanding any other provision of this Order, nothing herein shall**
22 **prohibit Richard Gilliam from (a) making statements regarding his own**
23 **business dealings with Monex, including any losses he may have sustained, or**
24 **(b) communicating with any governmental entity concerning matters within**
25 **the scope of that entity's legislative, administrative, or regulatory**
26 **responsibilities.**

27 The Court issues the foregoing permanent injunction based on 1) the Court's
28 order granting summary judgment against Jason Gilliam on Monex's claims of

1 extortion and intentional interference with prospective economic advantage against
2 him, 2) the Court's order granting summary adjudication of elements of those
3 claims against Richard Gilliam, 3) the final pretrial conference order, 4) the motion
4 for sanctions and entry of default, and 5) the motion for entry of default judgment.

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

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9 Dated: June 01, 2010



10 Judge James V. Selna
11 United States District Judge
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