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FINANCIAL REMEDIES SECTION

TERRY GODDARD  
Attorney General  
(Firm State Bar No. 14000)  
CAMERON H. HOLMES #004983  
Section Chief, Financial Remedies Section  
1275 West Washington Street  
Phoenix, Arizona 85007  
Telephone: (602) 542-8482  
CRM Racketeering@azag.gov  
Attorneys for the STATE

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

STATE OF ARIZONA, <i>ex rel.</i>	)	
TERRY GODDARD,	)	
Applicant,	)	No. SW2006-002172
WESTERN UNION FINANCIAL SERVICES	)	AMENDED
INC., dba WESTERN UNION	)	ORDER RE JOINT APPLICATION
	)	OF STATE OF ARIZONA AND
	)	WESTERN UNION FINANCIAL
Co-applicant.	)	SERVICES, INC. dba WESTERN
	)	UNION

Upon joint application of the State of Arizona *ex rel.* Terry Goddard, Attorney General ("State") and Western Union Financial Services, Inc. ("Western Union") presenting the issues: whether the State of Arizona has territorial jurisdiction over transactions occurring between a state other than Arizona and Sonora, Mexico when the transactors are allegedly involved in a crime subject to Arizona criminal jurisdiction and the transaction is allegedly an act in furtherance of that conspiracy, and, if so, whether the State's exercise of that jurisdiction violates the Due Process and/or Commerce Clauses (interstate and foreign) of the United States Constitution. See Co-Applicant Western Union Financial Services Inc.'s Joint Application with State of Arizona for Judicial Review of Attorney General Subpoena and

1 Memorandum in Support (hereafter "WU Brief") at ii, lines 1-3. Based on the proceedings  
2 conducted by this Court pursuant to the application in this matter, and good cause appearing,  
3 the Court makes the following Findings Of Fact And Conclusions of Law:

4 1. The Court has jurisdiction to enter appropriate orders in this matter pursuant to  
5 A.R.S. §§ 12-123, 13-108, 13-2315, 6-1241-42 and Rule 6(d), Arizona Rules of Civil  
6 Procedure, 16 A.R.S.

7 2. The State and Western Union have voluntarily submitted themselves to the  
8 jurisdiction of this Court.

9 3. As a result of service on Western Union of a request by the State for transaction  
10 data relating to transactions paid in Sonora, Mexico, Western Union and the State have  
11 agreed to submit the question whether the State has jurisdiction over these transactions to this  
12 Court for decision based on memoranda and affidavits submitted by the State and Western  
13 Union to inform the Court.

14 The Statutory Foundation

15 4. The Arizona Attorney General has statutory authority to make requests for this type  
16 of transaction data pursuant to A.R.S. § 13-2315 and, independently, pursuant to §§  
17 6-1241-42.

18 5. The information sought is relevant to the investigation of racketeering offenses  
19 over which Arizona has jurisdiction. Arizona territorial jurisdiction pursuant to A.R.S. §  
20 13-108 is broad and includes jurisdiction over the transactions involved here.

21 a. Under A.R.S. § 13-108 Arizona has jurisdiction over conduct occurring outside of



1 Arizona when: 1) some element of the offense occurred in Arizona; 2) conduct outside  
2 Arizona constitutes an attempt or conspiracy to commit an offense within this state and an act  
3 in furtherance of the attempt or conspiracy occurs in Arizona; and/or 3) a result of the  
4 conduct occurs in Arizona. The State asserts the involvement of several forms of Money  
5 Laundering, A.R.S. § 13-2317, Human Smuggling, A.R.S. § 13-2319, and drug trafficking.  
6 Under A.R.S. § 13-2317 Money Laundering may take numerous forms, including making  
7 money available to another person knowing that it is intended to be used to facilitate  
8 racketeering under A.R.S. § 13-2317(B)(2); transaction or transfer of property, including  
9 money, having reason to know that it is the proceeds of an offense, under A.R.S. §  
10 13-2317(B)(1); and various forms of presenting false identification, bribery and structuring  
11 transactions to avoid reporting requirements.

12       b. The State also invokes offenses such as conspiracy, participating in a criminal  
13 syndicate and participating in the conduct of a criminal enterprise, that require proof of  
14 additional elements such as an agreement, the existence of an association in fact, and the  
15 existence of a criminal syndicate. These offenses expand jurisdiction under A.R.S. §13-108  
16 because they contain elements in addition to those of the underlying offenses that are alleged  
17 to have occurred in Arizona and because they have broad results that are alleged to have  
18 occurred in Arizona.

19       c. Therefore, if a human smuggler in Arizona calls a person in New Jersey  
20 ("sponsor") who is willing to pay the transportation fee for an undocumented person and has  
21 that sponsor send money from New Jersey to an associate in Sonora to pay for the  
transportation of the undocumented person ("client") from Phoenix to New Jersey,

1 transportation of the client is an element of human smuggling, which has occurred in part in  
2 Arizona. Similarly, the calls between the human smuggler and the sponsor and between the  
3 human smuggler and the associate in Sonora take place in part in Arizona. Separately, the  
4 smuggler is part of a criminal enterprise and/or criminal syndicate which is involved in  
5 human smuggling, and the existence in Arizona of the enterprise's/syndicate's infrastructure  
6 (stash houses, vehicles, guns, operatives, etc) is an element of that offense. Under the second  
7 option under A.R.S. § 13-108, the conduct constitutes a conspiracy and numerous acts in  
8 furtherance of the conspiracy occur in Arizona. Under the third prong, the conduct results in  
9 the movement of the customer from Phoenix to New Jersey, so a result of the money  
10 laundering and human smuggling has occurred in Arizona. Also, the existence of the  
11 enterprise's/syndicate's resources in Arizona is a result of the conduct.

12 d. Although Money Laundering requires a mens rea element for violation, the State  
13 need not show that Western Union itself has the intent to facilitate money laundering in order  
14 to assert jurisdiction over a Western Union transaction in which Western Union is the third  
15 party possessor of funds in transit for its customers. Even if we were to assume that a  
16 business has no idea what its customers are doing, jurisdiction is established when the  
17 Attorney General has reasonable grounds to believe that the business's customers are  
18 engaged in racketeering. When a transaction is conducted by the "triangulation method" as  
19 described in the Affidavits of Investigator Kelly or when money is moved into Mexico  
20 through a drug or alien smuggling enterprise, the transaction takes place "in Arizona" for  
21 jurisdictional purposes. In *State v. Chan*, 188 Ariz. 272, 935 P.2d 850 (App. 1996), the  
defendants never entered Arizona. The conduct of their co-conspirator in Arizona was



1 sufficient to make the criminal transaction one that occurred “in Arizona” (purchase of what  
2 defendants believed to be stolen property that was delivered to California-resident defendants  
3 in Nevada).

4         6. Separately, the information sought is reasonably relevant to the investigation of  
5 money transmitter compliance with A.R.S. §§ 6-1241-42, over which A.R.S. § 6-1242 gives  
6 the Attorney General specific information-gathering authority. Sections 13-2317, 6-1241  
7 and 6-1242 contain prohibitions that make transactions under the various thresholds relevant  
8 to a money laundering case, either by involving aggregation or by prohibiting the structuring  
9 of transactions to evade reporting requirements, which by definition involves breaking  
10 transactions down into small amounts so that each one, by itself, does not reach a threshold.

11 If a class of transactions is subject to Arizona jurisdiction under A.R.S. § 13-108 it is  
12 business conducted in this state for the purposes of A.R.S. § 6-1202(C). Additionally, A.R.S.  
13 § 6-1242(B) specifically authorizes investigations outside this state and encompasses  
14 investigations of whether a money transmitter “has engaged or is engaging in an act, practice  
15 or transaction that constitutes a money laundering violation as provided in § 13-2317.” This  
16 does not require that the investigation be based on an assertion that Western Union has done  
17 so knowingly or intentionally. It requires only that the act, practice or transaction constitutes  
18 a violation and that Western Union has engaged or is engaging in it. In the context of the  
19 regulation of money transmission, the statute is best understood to acknowledge that money  
20 transmitters are not typically senders or receivers of transactions moving through their  
21 systems, but rather “engage” in the transactions as a service to customers who are the senders  
and receivers. Various provisions within A.R.S. § 13-2317 may be violated without a

1 minimum amount element, so transactions of as little as \$300 (or less) may constitute money  
2 laundering violations.

3 7. The Attorney General is engaged in good faith in the investigation of racketeering  
4 and in the investigation of compliance with transaction reporting statutes, and is not seeking  
5 this information for any improper purpose.

6 8. Each of the statutes under which this request is made provides adequate protection  
7 for the rights of privacy involved in the kinds of transactions involved.

8 9. The methods employed by the Attorney General to safeguard the information  
9 collected are reasonable and adequate to preserve the rights of privacy involved in such  
10 transactions. Under these methods the Attorney General is demonstrating appropriate respect  
11 for the privacy of the transactions involved.

#### 12 Due Process

13 10. Western Union argues that the “ultimate purpose” of the investigation is to  
14 regulate and punish conduct which it describes as occurring outside of Arizona and states:  
15 “That the parties have come to the Court to resolve their differences over a subpoena is  
16 irrelevant. What offends the Due Process Clause is that the Subpoena is an unwarranted  
17 attempt by the Attorney General’s Office to extend the State’s regulatory powers beyond its  
18 borders.” Reply in Support of Western Union Financial Services, Inc. Joint Application for  
19 Judicial Review of Attorney General Subpoena at 10, lines 16-19 and 11, lines 1-4.  
20 However, the conduct described in the State’s affidavits is Arizona conduct under A.R.S. §  
21 13-108. The prosecution of crimes engaged in for profit, criminal and civil, always in a sense  
“regulates” that conduct. Smuggling, whether of humans or of illegal drugs, is by nature an



1 activity undertaken by organizations with activities on both sides of the international border.

2 The investigation and prosecution of conduct over which Arizona has jurisdiction does not  
3 violate Due Process. *State v. Willoughby*, 181 Ariz. 530, 892 P.2d 1319 (1995).

4 The Interstate and Foreign Commerce Clauses.

5 11. The two relevant purposes of the Commerce Clause are to prevent interstate  
6 commercial gridlock, *Edgar v. MITE Corp.* 457 U.S. 624 (1982) (restrictions on corporate  
7 tender offers); *Healy v. Beer Institute, Inc.*, 491 U.S. 324 (1989) (interstate regulatory  
8 price-setting scheme), and to prevent interference with Congressional or Presidential  
9 authority to control international relations. *American Ins. Ass'n v. Garamendi*, 539 U.S. 396  
10 (2003) (direct interference with executive efforts to negotiate Holocaust survivor  
11 reparations), *Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363 (2000) (state boycott of  
12 businesses doing business with Burma in conflict with Congressional actions on same  
13 subject). The focus of the Commerce Clause is not on interstate or international crime, even  
14 when that crime has a financial motive. Human and drug smuggling, kidnapping, assault and  
15 money laundering are not "commerce" entitled to protection.

16 12. To the extent that the assertion of Arizona jurisdiction over these transactions  
17 affects Western Union as a business, implicating actual commerce, the effect is entirely the  
18 indirect consequence of law enforcement. The law enforcement arena is traditional State  
19 action and is of legitimate and vital public interest to the State's police powers, *Huron*  
20 *Cement Co. v. Detroit*, 362 U.S. 440, 442-43 (1960) (prosecution of smoke-belching  
21 international ships upheld). Law enforcement actions such as the seizures for forfeiture of  
transactions passing through Western Union are not the kind of commercial gridlock that

1 underlay cases such as *Healy v. Beer Institute, Inc.*, 491 U.S. 324, 336-37 (1989) (potential  
2 for such effect is factor). Therefore the statute is to be enforced unless the burden on  
3 interstate commerce is clearly excessive in relation to the putative local benefits. That is not  
4 the case here.

5 13. A state statute may also be unenforceable if “there is evidence of clear conflict  
6 between the policies adopted by the [state and federal authorities].” *American Ins. Ass’n v.*  
7 *Garamendi*, 539 U.S. 396, 421 (2003). In *Garamendi* federal authorities objected that the  
8 state statute was interfering with federal efforts and the United States filed an *amicus* brief  
9 opposing the state. Here, there is no federal opposition to this action. *Barclays Bank PLC v.*  
10 *Franchise Tax Bd. Of California*, 512 U.S. 298, 321-24 (1998) (Congress may acquiesce in  
11 state law by inaction). There is no apparent inconsistency between state law enforcement  
12 aimed at this conduct and the virtually identical federal policies criminalizing the same  
13 conduct. In *State v. Willoughby*, 181 Ariz. 530, 892 P.2d 1319 (1995), the Court found that  
14 Arizona’s Legislature intended A.R.S. §13-108 to include foreign acts and followed  
15 RESTATEMENT (THIRD) OF FOREIGN RELATION LAWS OF THE UNITED STATES  
16 § 402(1)(a) ([A] “state has jurisdiction to prescribe law with respect to conduct that, wholly  
17 or in substantial part, takes place within its territory . . .”). The fact that some element of the  
18 conduct under investigation occurs in Arizona invokes *Strassheim v. Daily*, 221 U.S. 280,  
19 285 (1911), and distinguishes *Bruce Church, Inc., v. United Farm Workers of America*, 169  
20 Ariz. 22, 816 P.2d 919 (1991). The *Willoughby* court upheld both murder and conspiracy  
21 against constitutional attack based on international reach, even imposing the death penalty  
for a death that occurred in Mexico, which has no death penalty. The State’s assertion of



1 jurisdiction over these transactions does not violate the Foreign Commerce Clause.

2 14. When a member of a conspiracy rooted in Arizona, who by his or a  
3 co-conspirator's conduct in furtherance of that conspiracy has subjected himself to the  
4 personal jurisdiction of Arizona's courts, takes action in Arizona that causes property to be  
5 turned over to a third person who is in turn subject to the jurisdiction of the courts of Arizona,  
6 that property and transaction is subject to the jurisdiction of the State under Arizona law.  
7 This would apply whether the State had jurisdiction over the third person because the third  
8 person had conceded jurisdiction, as here, because the third person is also a member of the  
9 conspiracy, or because the third person is separately subject to the jurisdiction of Arizona's  
10 courts, such as by being an Arizona resident or by doing business in Arizona. In these  
11 circumstances neither the conspirator nor the third person have a constitutional complaint  
12 when Arizona exercises its jurisdiction over the third person to exercise control over that  
13 transaction.

14 IT IS THEREFORE ORDERED that Western Union shall forthwith comply with the  
15 request for data dated April 21, 2006, attached hereto, and with such renewals of such request  
16 as the Attorney General may make in the future unless such request presents a legal issue that  
17 could not have been raised in this proceeding.

18 DATED this 8<sup>th</sup> day of March, 2007.

19 Hon. James H. Keppel

20 JS  
Judge of the Superior Court

STATE OF ARIZONA  
OFFICE OF THE ATTORNEY GENERAL  
1275 West Washington  
Phoenix, Arizona 85007  
(602) 542-8482

REQUEST TO PRODUCE RECORDS

TO: Mr. Joseph Cachey  
Senior Vice President – External Partnerships Leadership & Strategies  
Western Union Financial Services  
6200 South Quebec Street, Suite 250LC  
Greenwood Village, CO 80111

YOU ARE HEREBY COMMANDED, pursuant to A.R.S. § 13-2315, to produce for examination and copying by the Attorney General of the State of Arizona the following described records:

Data, including the data fields described on the attached Data Appendix, Relating to each send and each receive transaction of \$300 and greater, received in the state of Sonora, Mexico, on a weekly basis as each week becomes available, beginning with January 1, 2004 and ending with December 31, 2006.

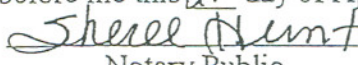
This database is to be submitted WEEKLY by e-mail to [hal.white@agaz.gov](mailto:hal.white@agaz.gov), or on a CD, and should be in CSV delimited text file or Microsoft Excel format. A definition of each field, both of its formatting characteristics and plain-English meaning, should be provided. All information about transaction details must be contained in one, consolidated table. The database is to exclude Express Payment (commercial payment) and Fast Cash (business sending to employees or customers) transactions.

This request is made in connection with the lawful performance of my official duties as an Assistant Attorney General of the State of Arizona, in order to investigate racketeering as defined by A.R.S. § 13-2301(D)(4) or a violation of A.R.S. § 13-2312. Your failure to comply in full with this request will subject you to the proceedings provided by A.R.S. § 13-2315(B).

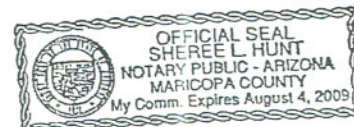
NOTICE: This is a felony investigation. Either warning another person of impending felony prosecution or suppressing physical evidence by concealment, alteration or destruction in a felony investigation are each separate felonies. A.R.S. § 13-2510(2) and (5); § 13-2512. Please contact investigator Hal White at (602) 542-7956 to coordinate production of this request.

  
Assistant Attorney General

SUBSCRIBED AND SWORN to before me this 21<sup>st</sup> day of April, 2006 by Cameron H. Holmes.

  
Notary Public

My Commission Expires 8-4-2009





## DATA APPENDIX AS LINE ITEMS

Money Transfer Control Number  
Record Date  
Record Time  
Pay Date  
Pay Time  
Principal  
Operator Name  
Sending Agent Number  
Sending Agent Name  
Sending Agent Address  
Sending Agent City  
Sending Agent State  
Sending Agent Zip Code  
Paying Agent Number  
Paying Agent Name  
Paying Agent Address  
Paying Agent City  
Paying Agent State  
Paying Agent Zip Code  
Sending Currency  
Paying Currency  
Sending Country  
Paying Country  
Sender Name  
Sender Address  
Sender City  
Sender State  
Sender Zip Code  
Sender Phone  
Sender DOB  
Sender Occupation  
Sender Identification Type  
Sender Identification Type Description  
Sender Identification Issuer  
Sender Identification Number  
Sender SSN (ID2)  
Payee Name  
Payee Address  
Payee City  
Payee State  
Payee Zip Code  
Payee Phone  
Payee DOB  
Payee Occupation  
Payee Identification Type

Sender Identification Type Description  
Payee Identification Issuer  
Payee Identification Number  
Payee SSN (ID2)



HH ☐ SCL ☐ CRJ ☐ MKD ☐ CK(scan) ☐

Richards ☐ Hinson ☐ RW ☐ SH (orig) ☐

Date Filed: \_\_\_\_\_ (or) E-filed: \_\_\_\_\_

to Judge: HD by EZ: \_\_\_\_\_ (or) by E-file: \_\_\_\_\_

to: WU by HD-EZ ☐ Mail ☐ Fax ☐ E-mail ☐

from: WU by HD ☐ Mail ☐ Fax ☐ E-mail ☐ 3-8-07

MICHAEL A. JONES, CLERK OF THE COURT

\*\*\* Filed \*\*\*

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

03/08/2007

SW 2006-002172 PICKED-UP FROM  
COURT-(CAROL)

HONORABLE JAMES H. KEPPEL

CLERK OF THE COURT

Y. Allen

Deputy

STATE OF ARIZONA, *ex rel.*  
TERRY GODDARD,

CAMERON H HOLMES  
STEPHEN C LEPLEY

Applicant,

and

WESTERN UNION FINANCIAL  
SERVICES, INC. dba WESTERN  
UNION,

Co-Applicant.

FRANCIS J BURKE JR  
STACEY F GOTTLIEB  
STEVEN D WHEELLESS  
CHARLES G COLE  
1330 CONNECTICUT AVENUE NW  
WASHINGTON DC 20036-1795

VICTIM SERVICES DIV-CA-CCC

RULING

The Court has considered the State's proposed Amended Order Re Joint Application of State of Arizona and Western Union Financial Services, Inc. dba Western Union, Western Union's Objection to said amended order and the State's Reply to those objections. The Court has further considered the arguments of counsel. Based upon the forgoing,

IT IS ORDERED overruling Western Union's objections to the proposed amended order and said order is approved and has been executed by the Court this 8<sup>th</sup> of March, 2007.



SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

SW 2006-002172

03/08/2007

The Court has further considered the State's Request to Lift Stay Consistent With Court's October 20, 2006 Ruling, Western Union's Response to State's Request to Lift Stay and Motion For Continued Stay Pending Appeals of Court's Order and the State's Reply. The Court has further considered the arguments of counsel.

IT IS HEREBY ORDERED granting the State's Request to Lift Stay and said stay is lifted effective this date.

IT IS FURTHER ORDERED denying Western Union's Motion For Continued Stay Pending Appeal of Court's order.

DATE:

3/8/07

  
\_\_\_\_\_  
JUDICIAL OFFICER OF THE SUPERIOR COURT

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MAR 08 2007

FINANCIAL REMEDIES SECTION