

CERTIFIED COPY

JAN 09 2007 FILED 12:00 p.m.
MICHAEL K. JEANES, Clerk
By D. Whitford
D. Whitford, Deputy

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

IN THE MATTER OF:

NO. SW 2006-002213

MONIES DESCRIBED IN APPENDIX
ONE TO THE SUPPORTING
AFFIDAVIT

**ORDER
QUASHING SEPTEMBER 21, 2006
SEIZURE WARRANT AND
PRELIMINARY INJUNCTION**

The Court has considered Western Union Financial Services, Inc.'s Emergency Motion to Quash Seizure Warrant ("Motion to Quash"), the Declarations In Support of the Motion to Quash; the State's Hearing Memos; the sworn statements, testimony, exhibits, and argument provided by Western Union Financial Services, Inc. ("Western Union") and the State of Arizona (the "State") at or before this Court's November 27, 2006 hearing, and the entire record in this matter. Based on the foregoing and pursuant to A.R.S. § 13-4301 *et seq.*, the Court makes the following findings of facts and conclusions of law:

FINDINGS OF FACT

1. The Seizure Warrant, which was entered on September 21, 2006 ("Seizure Warrant"), orders that "Any peace officer in the State of Arizona seize all of the property described in Appendix One to the affidavit for forfeiture pursuant to A.R.S. §§ 13-4301 *et seq.* and 13-2314 by means provided in A.R.S. § 13-4306." Seizure Warrant at 2. Appendix One to the Seizure Warrant describes the property as "[a]ll

1 Western Union money transfers” that meet all of the following criteria: person-to-
2 person money transfers in amounts of \$500 or more, excluding all Quick Collect wires,
3 that are presented for payout and/or are in the process of being paid out at any of 26
4 Western Union identified agent locations in Sonora Mexico, that were sent from any one
5 of the following 29 states: California, Arizona, New York, Florida, Illinois, Georgia,
6 New Jersey, North Carolina, Virginia, Tennessee, Maryland, Texas, Nevada, South
7 Carolina, Ohio, Pennsylvania, Washington, Alabama, Indiana, Oregon, Colorado,
8 Minnesota, Utah, Connecticut, Michigan, Massachusetts, Wisconsin, Kentucky and
9 Delaware. *Id.* Appendix One. The Motion to Quash challenges the Seizure Warrant to
10 the extent that it requires the seizure of money transfers that meet all of the above
11 criteria, except the Motion to Quash does not challenge the seizure of money transfers
12 that were sent from Arizona. The money transfers at issue in the Motion to Quash are
13 referred to herein as the “Money Transfers.” The senders or recipients or owners or
14 interest holders, within the meaning of A.R.S. § 13-4301 *et seq.*, in the Money Transfers
15 are referred to herein as the “Customers.”

16 2. The Seizure Warrant provides that upon Western Union’s identification
17 of a money transfer that fits the criteria above, Western Union must “prevent the
18 transaction from being paid from its system and cause the transaction to be ‘force paid’
19 to a detention account . . . excepting funds released from the seizure for forfeiture by the
20 seizing agency during the period.” Seizure Warrant at 3-4.

21 3. The Seizure Warrant further provides that “In each event in which a
22 transaction is detained by Western Union pursuant to this Seizure Warrant, Western
23 Union shall provide the customer who presented the transaction for payment and any
24 other person on whose behalf the transaction was being conducted notification of the
25 detention of the funds and of the point of contact and phone numbers described below.”
26 Seizure Warrant at 4. The telephone number given to customers was not a toll-free
27 number, but was a phone number in the (602) area code answered by law enforcement
28 personnel. State’s Hearing Exhibit No. 3.

1 4. The law enforcement personnel interrogate the Customers who call about
2 the Money Transfers. The law enforcement personnel may also ask the Customers to
3 provide documentation to support Customers' claims that a particular Money Transfer is
4 not for an illegal purpose. Based on these interrogations and document review, the law
5 enforcement personnel determine whether to allow the Money Transfers to be
6 completed. If a Customer does not satisfy the law enforcement officer that the Money
7 Transfer is for a legal purpose or does not call law enforcement at the (602) number
8 concerning a Money Transfer, the Money Transfer is deemed to be forfeited.

9 5. The Money Transfers are carried out in and constitute interstate and
10 foreign commerce. The Money Transfers do not flow through, touch or have any
11 connection with the State of Arizona. They take place entirely outside of the State of
12 Arizona.

13 6. The Seizure Warrant became effective September 22, 2006. On
14 September 25, 2006, this Court entered an Order For Immediate Stay Of September 21,
15 2006 Seizure Warrant, which ordered, among other things, that "The Seizure Warrant is
16 STAYED in every respect until further notice of this Court."

17 7. The Seizure Warrant does not describe or identify the Customers. In
18 addition, the State has not described or identified the Customers. Also, the Seizure
19 Warrant does not particularly describe the property to be seized and the place to be
20 searched.

21 8. The State has not established that any of the Customers were engaged in
22 Arizona crimes or transactions that violate Arizona law at any time, including A.R.S. §§
23 13-108 or 2314, within the meaning of A.R.S. § 13-4301 *et seq.*

24 9. The State lacked probable cause to believe, and failed to show (a) any
25 particularized suspicion that any of the Customers had committed or were involved in an
26 Arizona crime; or (b) any of the Customers conducted any transactions within the state
27 of Arizona to allow the State of Arizona to apply its laws to such persons or transactions
28 or assert jurisdiction over such persons or transactions.

1 10. The Seizure Warrant is an attempt by the State to apply its laws to
2 Customers engaged in Western Union Money Transfer transactions in interstate and
3 foreign commerce, which took place entirely outside of Arizona, by seizing their money
4 transfers from interstate and foreign commerce. However, the State has not established
5 that any of the Customers had the requisite minimum contacts with the State of Arizona
6 to enable Arizona to apply its laws to them.

7 11. The Seizure Warrant is an attempt by the State to apply its laws to the
8 Customers who are not citizens of Arizona by seizing their Western Union money
9 transfers from the streams of interstate and foreign commerce and transactions engaged
10 interstate and foreign commerce, by seizing the Customers' Western Union money
11 transfers. However, the State has not established that any of the Customers had the
12 requisite minimum contacts with the State of Arizona to enable Arizona to apply its laws
13 to them.

14 12. The State has not established *in personam* jurisdiction over the
15 Customers in the Money Transfers at any time.

16 13. The State has not established *in rem* jurisdiction over the Money
17 Transfers at any time.

18 14. The State has not established jurisdiction over the transactions
19 constituting the Money Transfers.

20 15. The Seizure Warrant extends unconstitutional, extraterritorial jurisdiction
21 to the State to seize the Money Transfers, in excess of the statutory jurisdiction provided
22 by A.R.S. § 13-4301 *et seq.*

23 16. The Seizure Warrant is an attempt by the State to apply its laws to the
24 Customers in the Money Transfers who were not in Arizona and whose transactions
25 took place entirely outside of Arizona.

26 17. The Seizure Warrant is a prospective, general warrant.

27 18. Although the Affidavit in support of the Seizure Warrant was sealed,
28 the executed Seizure Warrant itself was not and is not sealed.

1 **CONCLUSIONS OF LAW**

2 1. For the foregoing reasons, the State does not have *in personam* jurisdiction
3 over the Customers in the Money Transfers, *in rem* jurisdiction over the Money Transfers
4 or jurisdiction over the transactions constituting the Money Transfers.

5 2. For the foregoing reasons, the Seizure Warrant is invalid under A.R.S. §§
6 13-3911 *et. seq.*, 13-4301 *et. seq.* and A.R.S. §§ 13-108, 13-2314 and 13-3913.

7 3. For the foregoing reasons, the Seizure Warrant is unconstitutional as
8 applied under the Commerce Clause, Foreign Commerce Clause, Due Process Clause and
9 the Fourth Amendment of the United States Constitution.

10 4. Unless Defendants are enjoined from asserting regulatory authority over
11 and seizing money transfer funds from interstate or foreign commerce that were never sent
12 from, passed through, or received in Arizona, Western Union may be immediately and
13 irreparably harmed by, among other things, (a) loss of confidence and trust of Western
14 Union's clients, loss of goodwill, and loss of business reputation; (b) interference with the
15 performance of lawful contracts between Western Union and its customers and between
16 Western Union and its agents; (c) damage to and loss of Western Union's business
17 relationships with its customers and agents; (d) present economic loss, which is
18 unascertainable at this time, and future economic loss, which is presently incalculable; and
19 (e) deprivation of its rights under the Commerce Clause, Foreign Commerce Clause and Due
20 Process Clauses and Fourth Amendment guaranteed by the United States Constitution.

21 5. Based on the foregoing, Western Union has standing to bring this action.

22 WHEREAS it appears to the Court's satisfaction that this is a proper case for the
23 granting of the Motion to Quash and entry of a Preliminary Injunction for the reason that
24 unless the relief prayed for is granted, Western Union may suffer immediate, irreparable
25 injury, and that a Preliminary Injunction is in the public interest,

26 NOW THEREFORE, it is hereby ORDERED that Western Union's Motion to
27 Quash the Seizure Warrant is **GRANTED** and that:

28

1 1. The Seizure Warrant is QUASHED and ENJOINED in every respect until
2 further notice of this Court;

3 2. The Arizona Attorney General, Terry Goddard, and his attorneys, officers,
4 agents, servants, employees, successors, and all other persons in active concert or
5 participation with him, shall be immediately barred and enjoined from doing any of the
6 following:

7 (a) seizing or attempting to seize money transfer funds in Western
8 Union's possession, custody, or control, for any transaction that was not sent from or
9 received in Arizona or that is otherwise outside the scope of Defendant's statutory
10 jurisdiction;

11 (b) seizing or attempting to seize money transfer funds that are not within
12 the State of Arizona when the State initiates seizure warrant proceedings, unless the State
13 establishes that courts of the State of Arizona have *in personam* jurisdiction over an owner
14 of or interest holder in those funds;

15 (c) initiating forfeiture proceedings or taking any action in furtherance
16 of a forfeiture of any money transfer funds associated with any transaction that was not
17 sent from or received in Arizona;

18 (d) prohibiting or interfering with Western Union's compliance with its
19 legal and contractual obligations to deliver transferred funds to the receiver identified by
20 the sender of money transfers that are not sent from or received in Arizona; and

21 (e) violating the Commerce Clause, Foreign Commerce Clause, the Due
22 Process Clause and the Fourth Amendment of the United States Constitution by improper
23 regulation of money transfers and associated banking transactions taking place in interstate
24 and foreign commerce.

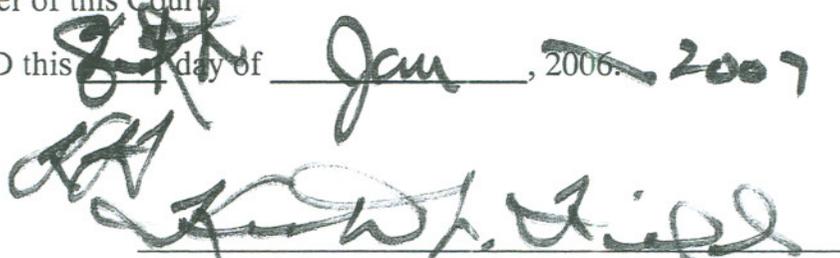
25 (f) violating the Fourth Amendment by seizing extraterritorial money
26 transfers without probable cause

27 3. It is further ORDERED that violation of the foregoing Order Quashing the
28 Seizure Warrant and enjoining further Seizure Warrants shall constitute contempt of this

1 Court and shall render the Attorney General, and his attorneys, officers, agents, servants,
2 employees, successors and all other persons in active concert or participation with him,
3 subject to punishment accordingly.

4 4. It is further ORDERED that the INJUNCTION remain in full force and
5 effect until further order of this Court.

6 DATED this 9th day of Jan, 2006. ~~2007~~

7
8 

9 THE HONORABLE KENNETH L. FIELDS
10 MARICOPA COUNTY SUPERIOR COURT JUDGE

11
12
13
14
15
16 The foregoing instrument is a full, true and correct copy
of the original document.

17 Attest JAN 09 2007

18 MICHAEL K. JAMES, Clerk of the Superior Court of the State
of Arizona, in and for the County of Maricopa.

19 By Michael K. James Deputy
20
21
22
23
24
25
26
27
28