

**PETITION EXHIBITS**

Public Exhibit Set

**PETITION EXHIBIT 1**

Declaration of Todd M. Kossow  
April 12, 2013

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

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FEDERAL TRADE COMMISSION,	)
	)
	)
Petitioner,	)
	)
v.	)
	)
THE WESTERN UNION COMPANY,	)
	)
and	)
	)
LONNIE KEENE, MONITOR, STATE OF	)
ARIZONA   v.   WESTERN UNION	)
FINANCIAL SERVICES, INC., KEENE	)
CONSULTING ARIZONA, LLC,	)
	)
Respondents.	)

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**DECLARATION OF TODD M. KOSSOW**

Pursuant to 28 U.S.C. § 1746, I declare as follows:

1. I am an attorney employed by the U.S. Federal Trade Commission (FTC or Commission), in Chicago, Illinois. I serve as Assistant Regional Director of the FTC's Midwest Region Office, located in Chicago. I am also assigned to the FTC's investigation of telemarketing fraud and fraud-induced money transfers, including the involvement of money transfer companies such as The Western Union Company (Western Union) (FTC File No. 122 3208).
2. I am authorized to execute a declaration verifying the facts that are set forth in the Petition of the Federal Trade Commission for an Order Enforcing Civil Investigative

Demands Issued in Furtherance of a Law Enforcement Investigation. I have read the petition and exhibits thereto (hereinafter referred to as "Pet. Exh."), and verify that Pet. Exh. 1 through Pet. Exh. 7 are true and correct copies of the original documents. The facts set forth herein are based on my personal knowledge or information made known to me in the course of my official duties.

3. Western Union is a public company, incorporated in Delaware, with its principal place of business in Englewood, Colorado. Western Union offers a number of financial services, including money transfers. The company operates through a global network of 510,000 agents in 200 countries. It has numerous agents in New York City. Western Union is engaged in, and its business affects "commerce," as that term is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
4. Lonnie Keene resides in New York City and is an attorney admitted to practice before New York State courts. On November 24, 2010, his limited liability company, Keene Consulting Arizona, LLC, was appointed to serve as a Monitor pursuant to a settlement agreement between the Attorney General for Arizona and Western Union. *See State of Arizona v. Western Union Fin. Servs., Inc.*, No. CV-2010-005807 (Ariz. Super. Ct. Maricopa Cnty. Feb. 24, 2010). In doing so, Mr. Keene replaced the first Monitor appointed, Marcy Forman. Keene Consulting Arizona, LLC's business address is also in New York City. Keene Consulting Arizona, LLC resigned as Monitor effective March 24, 2013.
5. On April 11, 2011, the Commission issued a Resolution Directing Use of Compulsory Process in a Nonpublic Investigation of Telemarketers, Sellers, Suppliers, or Others (FTC

File No. 0123145). Pet. Exh. 2. This Resolution authorized the use of compulsory process

[t]o determine whether unnamed telemarketers, sellers, or others assisting them have engaged or are engaging in: (1) unfair or deceptive acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45 (as amended); and/or (2) deceptive or abusive telemarketing acts or practices in violation of the Commission's Telemarketing Sales Rule, 16 C.F.R. pt 310 (as amended), including but not limited to the provision of substantial assistance or support – such as mailing lists, scripts, merchant accounts, and other information, products, or services – to telemarketers engaged in unlawful practices. The investigation is also to determine whether Commission action to obtain redress for injury to consumers or others would be in the public interest.

Pet. Exh. 2. This Resolution replaced an earlier resolution that was identical and similarly authorized the use of compulsory process to investigate both telemarketers and others providing substantial assistance or support to telemarketers.

6. Over the past several years, the FTC and the Midwest Region Office have become involved in attempting to stop and remedy telemarketing frauds that employ fraud-induced money transfers. These frauds take various forms, including “the grandparent scam,” “the lottery scam,” and “the overpayment scam,” to name a few. (More complete descriptions of each of these scams, and money transfer fraud generally, can be found at the FTC's website: <http://www.ftc.gov/bcp/edu/microsites/moneymatters/scam-watch-wiring-money.shtml>.) These scams typically rely on the use of money transfer services, such as those provided by Western Union, as their payment mechanism. Scam artists seeking to defraud consumers in the U.S. and around the world often prefer to use money transfers as the method of payment for several reasons, including the following. First, using a money transfer to send money is essentially the same as sending cash.

Consumers have no chargeback rights with a money transfer, as they would have if they had paid by credit card. Second, a money transfer enables the perpetrators of a scheme to get consumers' funds quickly. Indeed, a money transfer can be picked up by the recipient within a matter of minutes at multiple locations virtually anywhere in the world, rather than at a single designated location. Third, in many instances, the recipient is not required to provide identification in picking up the money transfer. All of these factors make it extremely difficult for the FTC and other enforcement agencies to identify and take action against perpetrators of frauds that employ money transfers.

7. The FTC continues to receive a high volume of complaints about fraudulent and deceptive practices that rely on money transfers as the method of payment. In 2012 alone, the FTC's database of consumer complaints ("Consumer Sentinel") received more than 102,000 complaints from consumers who lost money through a fraud-induced money transfer, with reported losses exceeding \$450 million. In the same year, money transfers were by far the most common payment method for consumers complaining of fraudulent or deceptive practices, accounting for 47% of all Consumer Sentinel complaints that reported a method of payment. *See* Consumer Sentinel Network Data Book for January - December 2012, at 8 (Feb. 2013), *available at* <http://ftc.gov/sentinel/reports/sentinel-annualreports/sentinel-cy2012.pdf>. In many of these schemes perpetrators outside the U.S. target U.S. consumers.
8. Money transfer companies can play an important role in addressing the use of money transmission services to facilitate fraud. They can often identify suspicious outlets, locations, or agents, and can detect patterns of transactions consistent with ongoing

fraudulent and deceptive practices. Through diligent and effective anti-fraud policies and procedures, these companies can address and deter those activities. For example, as required by the consent order in *FTC v. MoneyGram Int'l, Inc.*, No. 09-cv-6576 (N.D. Ill. Oct. 19, 2009), MoneyGram must establish, implement, and maintain a comprehensive anti-fraud program that “is reasonably designed to protect Consumers by detecting and preventing Fraud-Induced Money Transfers worldwide and to avoid installing and doing business with MoneyGram Agents worldwide who appear to be involved or complicit in processing Fraud-Induced Money Transfers.” Prior to the FTC’s 2009 consent order with MoneyGram, both MoneyGram and Western Union entered into agreements with the Attorneys General of numerous states and the District of Columbia that imposed obligations on the companies to implement programs to protect consumers from fraud-induced money transfers. More recently, in November 2012, MoneyGram entered into a Deferred Prosecution Agreement with the U.S. Department of Justice and the U.S. Attorney for the Middle District of Pennsylvania relating to its conduct in failing to prevent fraud-induced money transfers. *See U.S. v. MoneyGram International, Inc.*, Case No. 12-291 (M.D. Pa. Nov. 9, 2012).

9. Following the FTC’s consent order with MoneyGram, FTC staff asked Western Union to provide, on a voluntary basis, information about steps the company was taking to reduce fraud-induced money transfers. As part of those discussions, Western Union agreed to provide to the FTC’s Consumer Sentinel complaint database the complaints about fraud-induced money transfers that it receives from consumers in the U.S. Western Union also provided the FTC with information about its anti-fraud program.

10. In June 2012, FTC staff requested that Western Union voluntarily provide the FTC with reports produced by the Monitor appointed pursuant to a settlement with the State of Arizona. *State of Arizona v. Western Union Fin. Servs., Inc.*, No. CV 2010-5807 (Ariz. Super. Ct. Maricopa Cnty. Feb. 24, 2010). This settlement resolved charges that Western Union's money transfer business was being used for money laundering in connection with human smuggling and drug trafficking. As part of this settlement, Western Union agreed to share information with an independent Monitor, who would prepare periodic reports assessing Western Union's effectiveness in implementing an anti-money laundering (AML) program. Despite months of negotiations, Western Union did not provide the reports.
11. The independent views and recommendations of a third-party monitor on the effectiveness of Western Union's AML program would assist staff in assessing the effectiveness of Western Union's anti-fraud program. Both programs aim to detect the use of Western Union's services to facilitate illegal activities; in fact, Western Union reported to FTC staff that, until recently, Western Union's AML employees and anti-fraud employees were housed in the same business unit. Moreover, from the information Western Union provided, it appears that the company uses many of the same policies, procedures, and technologies to detect money laundering and fraud in its system.
12. When it became clear that Western Union would not provide the Monitor's reports to the FTC, the Arizona Attorney General sought permission from the Arizona Superior Court to disclose the Monitor's reports to the FTC consistent with the terms of the settlement agreement. On September 25, 2012, the Arizona Superior Court denied the request

without prejudice, but made no comment on the FTC's right to secure information from the Monitor or Western Union.

13. On November 5, 2012, the Commission issued a CID to Lonnie Keene and Keene Consulting Arizona, LLC, then serving as Monitor under Arizona's settlement with Western Union. This CID contained only one specification and requested all documents referring or relating to the Monitor's reports, including drafts, reviews, and correspondence with Western Union. This CID was authorized by Resolution No. 0123145.
14. On December 12, 2012, the Commission then issued a CID to Western Union, also authorized by Resolution No. 0123145. This CID contained two specifications. The first called for all documents referring or relating to complaints by consumers worldwide relating to fraud-induced money transfers. The second CID specification requested all documents referring or relating to communications with the Monitor, including, but not limited to, all information Western Union provided to the Monitor and, any reports, reviews or other documents prepared by the Monitor. Both the CID to the Monitor and the CID to Western Union were narrowly tailored to obtain information relevant to the Commission's inquiry.
15. Western Union has represented that they maintain in the United States all of the worldwide consumer complaints sought by the Commission. Complaints from consumers worldwide relating to fraud-based money transfers will assist staff in assessing the effectiveness of Western Union's anti-fraud program. For example, numbers and patterns of consumer complaints, which would reveal the agent location

where the transaction was picked up and the individual who picked up the transaction, can often identify corrupt or criminal agents employed by Western Union, or agents who may not be following proper procedures. As Western Union itself has acknowledged, identifying and removing corrupt agents is a key part of its anti-fraud program. Thus, numbers and patterns of complaints can provide information on Western Union's effectiveness in policing its own agents and protecting its customers from sending a fraud-induced money transfer. Furthermore, consumer complaints will enable the staff to identify perpetrators and victims of the underlying telemarketing fraud.

16. After receiving the CID, the Monitor filed a motion in the settled Arizona case asking leave to share his reports with the FTC. On January 28, 2013, the Arizona court denied the motion, explicitly stating that it did not determine the enforceability of the FTC's CID.
17. Meanwhile, Western Union and staff of the Midwest Region Office attempted to negotiate terms by which Western Union would provide the Monitor's reports and other information specified in the CID directed to Western Union. When those negotiations proved unsuccessful, Western Union filed on January 31, 2013, a petition to quash both the CID issued to Western Union and the CID issued to the Monitor.
18. The Commission ruled on the petition on March 4, 2013, denying it in its entirety and ordering Western Union to comply by March 18, 2013.
19. Western Union did not comply as directed. Instead, in correspondence following the March 18, 2013 deadline, the company expressed a desire to comply but reiterated many of the arguments and positions advanced and rejected by the Commission's March 4,

2013, ruling. In addition, Western Union also raised new arguments that had not been raised in its petition to quash the CIDs. The company also requested that Commission staff engage in further discussions or negotiations regarding compliance. Despite several discussions, Western Union declined to produce any of the information specified in the CID.

20. Western Union's petition purported to seek to quash the CID issued to the Monitor, but the Monitor did not file a petition to limit or quash the CID. As such, the Commission's March 4, 2013, ruling did not address the Monitor's obligation to comply. Consistent with the Arizona Superior Court's ruling of January 28, 2013, the Monitor has not produced any of the information called for by the Commission's CID. Instead, on January 31, 2013, the Monitor responded by objecting to the CID pursuant to Section 2.11 of the FTC's Rules of Practice, claiming that the Monitor Engagement Letter incorporated in the settlement prevented compliance absent a federal court enforcement order.
21. Western Union's and the Monitor's non-compliance with the CIDs have burdened, delayed, and impeded the Commission's investigation.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 12, 2013

  
Todd M. Kossow, Assistant Regional Director  
Midwest Region Office  
Federal Trade Commission

**PETITION EXHIBIT 2**

Resolution Directing Use of Compulsory Process in a Nonpublic  
Investigation of Telemarketers, Sellers, Suppliers or Others  
April 11, 2011 (FTC File No. 0123145)

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Jon Leibowitz, Chairman  
William E. Kovacic  
J. Thomas Rosch  
Edith Ramirez  
Julie Brill

RESOLUTION DIRECTING USE OF COMPULSORY PROCESS IN A NONPUBLIC  
INVESTIGATION OF TELEMARKETERS, SELLERS, SUPPLIERS, OR OTHERS

File No. 0123145

Nature and Scope of Investigation:

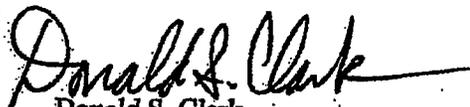
To determine whether unnamed telemarketers, sellers, or others assisting them have engaged or are engaging in: (1) unfair or deceptive acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45 (as amended); and/or (2) deceptive or abusive telemarketing acts or practices in violation of the Commission's Telemarketing Sales Rule, 16 C.F.R. pt 310 (as amended), including but not limited to the provision of substantial assistance or support — such as mailing lists, scripts, merchant accounts, and other information, products, or services — to telemarketers engaged in unlawful practices. The investigation is also to determine whether Commission action to obtain redress for injury to consumers or others would be in the public interest.

The Federal Trade Commission hereby resolves and directs that any and all compulsory processes available to it be used in connection with this investigation for a period not to exceed five years from the date of issuance of this resolution. The expiration of this five-year period shall not limit or terminate the investigation or the legal effect of any compulsory process issued during the five-year period. The Federal Trade Commission specifically authorizes the filing or continuation of actions to enforce any such compulsory process after the expiration of the five-year period.

Authority to Conduct Investigation:

Sections 6, 9, 10, and 20 of the Federal Trade Commission Act, 15 U.S.C. §§ 46, 49, 50, 57b-1 (as amended); and FTC Procedures and Rules of Practice, 16 C.F.R. §§ 1.1 *et seq.* and supplements thereto.

By direction of the Commission.

  
Donald S. Clark  
Secretary

Issued: April 11, 2011

**PETITION EXHIBIT 3**

Civil Investigative Demand to Lonnie Keene, Monitor, State of  
Arizona v. Western Union Financial Services, Inc., Keene  
Consulting Arizona, LLC  
November 5, 2012



United States of America  
Federal Trade Commission

## CIVIL INVESTIGATIVE DEMAND

### 1. TO

Lonnie Keene, Monitor  
State of Arizona vs. Western Union Financial Services, Inc.  
Keene Consulting Arizona, LLC  
P.O. Box 270, New York, NY 10021

This demand is issued pursuant to Section 20 of the Federal Trade Commission Act, 15 U.S.C. § 57b-1, in the course of an investigation to determine whether there is, has been, or may be a violation of any laws administered by the Federal Trade Commission by conduct, activities or proposed action as described in Item 3.

### 2. ACTION REQUIRED

You are required to appear and testify.

LOCATION OF HEARING

YOUR APPEARANCE WILL BE BEFORE

DATE AND TIME OF HEARING OR DEPOSITION

You are required to produce all documents described in the attached schedule that are in your possession, custody, or control, and to make them available at your address indicated above for inspection and copying or reproduction at the date and time specified below.

You are required to answer the interrogatories or provide the written report described on the attached schedule. Answer each interrogatory or report separately and fully in writing. Submit your answers or report to the Records Custodian named in Item 4 on or before the date specified below.

DATE AND TIME THE DOCUMENTS MUST BE AVAILABLE

**NOV 20 2012**

### 3. SUBJECT OF INVESTIGATION

See attached resolution

### 4. RECORDS CUSTODIAN/DEPUTY RECORDS CUSTODIAN

C. Steven Baker, Regional Director (Custodian)  
Douglas M. McKenney, Investigator (Deputy)  
Federal Trade Commission, Midwest Region  
55 W. Monroe Street, Suite 1825, Chicago, IL 60603

### 5. COMMISSION COUNSEL

David A. O'Toole - 312.960.5601  
Federal Trade Commission, Midwest Region  
55 W. Monroe Street, Suite 1825, Chicago, IL 60603

DATE ISSUED

11/5/12

COMMISSIONER'S SIGNATURE

*David A. O'Toole*

### INSTRUCTIONS AND NOTICES

The delivery of this demand to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply. The production of documents or the submission of answers and report in response to this demand must be made under a sworn certificate, in the form printed on the second page of this demand, by the person to whom this demand is directed or, if not a natural person, by a person or persons having knowledge of the facts and circumstances of such production or responsible for answering each interrogatory or report question. This demand does not require approval by OMB under the Paperwork Reduction Act of 1980.

### PETITION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any petition to limit or quash this demand be filed within 20 days after service, or, if the return date is less than 20 days after service, prior to the return date. The original and twelve copies of the petition must be filed with the Secretary of the Federal Trade Commission, and one copy should be sent to the Commission Counsel named in Item 5.

### YOUR RIGHTS TO REGULATORY ENFORCEMENT FAIRNESS

The FTC has a longstanding commitment to a fair regulatory enforcement environment. If you are a small business (under Small Business Administration standards), you have a right to contact the Small Business Administration's National Ombudsman at 1-888-REGFAIR (1-888-734-3247) or [www.sba.gov/ombudsman](http://www.sba.gov/ombudsman) regarding the fairness of the compliance and enforcement activities of the agency. You should understand, however, that the National Ombudsman cannot change, stop, or delay a federal agency enforcement action.

The FTC strictly forbids retaliatory acts by its employees, and you will not be penalized for expressing a concern about these activities.

### TRAVEL EXPENSES

Use the enclosed travel voucher to claim compensation to which you are entitled as a witness for the Commission. The completed travel voucher and this demand should be presented to Commission Counsel for payment. If you are permanently or temporarily living somewhere other than the address on this demand and it would require excessive travel for you to appear, you must get prior approval from Commission Counsel.

A copy of the Commission's Rules of Practice is available online at <http://ftl.ftl.gov/FTCRulesofPractice>. Paper copies are available upon request.

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### Form of Certificate of Compliance\*

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I/We do certify that all of the documents and information required by the attached Civil Investigative Demand which are in the possession, custody, control, or knowledge of the person to whom the demand is directed have been submitted to a custodian named herein.

If a document responsive to this Civil Investigative Demand has not been submitted, the objections to its submission and the reasons for the objection have been stated.

If an interrogatory or a portion of the request has not been fully answered or a portion of the report has not been completed, the objections to such interrogatory or uncompleted portion and the reasons for the objections have been stated.

Signature \_\_\_\_\_

Title \_\_\_\_\_

Sworn to before me this day

\_\_\_\_\_  
\_\_\_\_\_  
Notary Public  
\_\_\_\_\_

\*In the event that more than one person is responsible for complying with this demand, the certificate shall identify the documents for which each certifying individual was responsible. In place of a sworn statement, the above certificate of compliance may be supported by an unsworn declaration as provided for by 28 U.S.C. § 1746.

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Jon Leibowitz, Chairman  
William E. Kovacic  
J. Thomas Rosch  
Edith Ramirez  
Julie Brill

RESOLUTION DIRECTING USE OF COMPULSORY PROCESS IN A NONPUBLIC  
INVESTIGATION OF TELEMARKETERS, SELLERS, SUPPLIERS, OR OTHERS

File No. 0123145

Nature and Scope of Investigation:

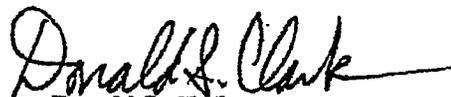
To determine whether unnamed telemarketers, sellers, or others assisting them have engaged or are engaging in: (1) unfair or deceptive acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45 (as amended); and/or (2) deceptive or abusive telemarketing acts or practices in violation of the Commission's Telemarketing Sales Rule, 16 C.F.R. pt 310 (as amended), including but not limited to the provision of substantial assistance or support — such as mailing lists, scripts, merchant accounts, and other information, products, or services — to telemarketers engaged in unlawful practices. The investigation is also to determine whether Commission action to obtain redress for injury to consumers or others would be in the public interest.

The Federal Trade Commission hereby resolves and directs that any and all compulsory processes available to it be used in connection with this investigation for a period not to exceed five years from the date of issuance of this resolution. The expiration of this five-year period shall not limit or terminate the investigation or the legal effect of any compulsory process issued during the five-year period. The Federal Trade Commission specifically authorizes the filing or continuation of actions to enforce any such compulsory process after the expiration of the five-year period.

Authority to Conduct Investigation:

Sections 6, 9, 10, and 20 of the Federal Trade Commission Act, 15 U.S.C. §§ 46, 49, 50, 57b-1 (as amended); and FTC Procedures and Rules of Practice, 16 C.F.R. §§ 1.1 *et seq.* and supplements thereto.

By direction of the Commission.

  
Donald S. Clark  
Secretary

Issued: April 11, 2011

**CIVIL INVESTIGATIVE DEMAND  
Schedule for Documentary Materials**

**I. DEFINITIONS**

As used in this Civil Investigative Demand, the following definitions shall apply:

- A. "And," as well as "or," shall be construed both conjunctively and disjunctively, as necessary, in order to bring within the scope of any specification in this Schedule all information that otherwise might be construed to be outside the scope of the specification.
- B. "Any" shall be construed to include "all," and "all" shall be construed to include the word "any."
- C. "CID" shall mean the Civil Investigative Demand, including the attached Resolution and this Schedule, and including the Definitions, Instructions, and Specifications.
- D. "Western Union" shall mean the Western Union Company or Western Union Financial Services, Inc., their wholly or partially owned subsidiaries, unincorporated divisions, joint ventures, operations under assumed names, and affiliates, and all directors, officers, employees, agents, consultants, and other persons working for or on behalf of the foregoing.
- E. "Document" shall mean the complete original and any non-identical copy (whether different from the original because of notations on the copy or otherwise), regardless of origin or location, of any written, typed, printed, transcribed, filmed, punched, or graphic matter of every type and description, however and by whomever prepared, produced, disseminated or made, including but not limited to any advertisement, book, pamphlet, periodical, contract, correspondence, file, invoice, memorandum, note, telegram, report, record, handwritten note, working paper, routing slip, chart, graph, paper, index, map, tabulation, manual, guide, outline, script, abstract, history, calendar, diary, agenda, minute, code book or label.
- F. "FTC" or "Commission" shall mean the Federal Trade Commission.
- G. "Referring to" or "relating to" shall mean discussing, describing, reflecting, containing, analyzing, studying, reporting, commenting, evidencing, constituting, setting forth, considering, recommending, concerning, or pertaining to, in whole or in part.
- H. "You" and "Your" shall mean Lonnie Keene, in his capacity as the court-appointed Monitor in the matter *State of Arizona ex rel. Attorney General Thomas C. Horne v. Western Union Financial Services, Inc.*, No. CV 2010-005807 (Ariz. Sup. Ct. Maricopa County).

**II. INSTRUCTIONS**

- A. **Sharing of Information:** The Commission often makes its files available to other civil and criminal federal, state, local, or foreign law enforcement agencies. The Commission may

make information supplied by you available to such agencies where appropriate pursuant to the Federal Trade Commission Act and 16 C.F.R. § 4.11 (c) and (j). Information you provide may be used in any federal, state, or foreign civil or criminal proceeding by the Commission or other agencies.

**B. Meet and Confer:** You must contact David A. O'Toole at 312.960.5601 as soon as possible to schedule a meeting (telephonic or in person) to be held within ten (10) days after receipt of this CID in order to confer regarding your response.

**C. Applicable time period:** The applicable time period for the request shall be from January 1, 2010 until the date of full and complete compliance with this CID.

**D. Claims of Privilege:** If any material called for by this CID is withheld based on a claim of privilege or any similar claim, the claim must be asserted no later than the return date of this CID. In addition, pursuant to 16 C.F.R. § 2.8A(a), submit, together with the claim, a schedule of the items withheld, stating individually as to each item:

1. the type, specific subject matter, date, and number of pages of the item;
2. the names, addresses, positions, and organizations of all authors and recipients of the item; and
3. the specific grounds for claiming that the item is privileged.

If only some portion of any responsive material is privileged, all non-privileged portions of the material must be submitted. A petition to limit or quash this CID shall not be filed solely for the purpose of asserting a claim of privilege. 16 C.F.R. § 2.8A(b).

**E. Document Retention:** You shall retain all documentary materials used in the preparation of responses to the specification of this CID. The Commission may require the submission of additional documents at a later time during this investigation. Accordingly, you should suspend any routine procedures for document destruction and take other measures to prevent the destruction of documents that are in any way relevant to this investigation during its pendency, irrespective of whether you believe such documents are protected from discovery by privilege or otherwise. See 15 U.S.C. § 50; see also 18 U.S.C. §§ 1505, 1519.

**F. Petitions to Limit or Quash:** Any petition to limit or quash this CID must be filed with the Secretary of the Commission no later than twenty (20) days after service of the CID, or, if the return date is less than twenty (20) days after service, prior to the return date. Such petition shall set forth all assertions of privilege or other factual and legal objections to the CID, including all appropriate arguments, affidavits, and other supporting documentation. 16 C.F.R. § 2.7(d).

**G. Modification of Specifications:** If you believe that the scope of the required search or response for any specification can be narrowed consistent with the Commission's need for

documents or information, you are encouraged to discuss such possible modifications, including any modifications of definitions and instructions, with David A. O'Toole at 312.960.5601. All such modifications must be agreed to in writing by an Associate Director, Regional Director, or Assistant Regional Director. 16 C.F.R. § 2.7(c).

**H. Certification:** A responsible corporate officer shall certify that the response to this CID is complete. This certification shall be made in the form set out on the back of the CID form, or by a declaration under penalty of perjury as provided by 28 U.S.C. § 1746.

**I. Scope of Search:** This CID covers documents and information in your possession or under your actual or constructive custody or control including, but not limited to, documents and information in the possession, custody, or control of your attorneys, accountants, directors, officers, employees, and other agents and consultants, whether or not such documents and information were received from or disseminated to any person or entity.

**J. Document Production:** You shall produce the documentary material by making all responsive documents available for inspection and copying at your principal place of business. Alternatively, you may elect to send all responsive documents to Douglas M. McKenney, Federal Trade Commission, Midwest Region, 55 W. Monroe St., Suite 1825, Chicago, IL 60603. Because postal delivery to the Commission is subject to delay due to heightened security precautions, please use a courier service such as Federal Express or UPS. Notice of your intended method of production shall be given by email or telephone to Douglas M. McKenney, at 312.960.5634 at least five days prior to the return date.

**K. Production of Copies:** Unless otherwise stated, legible photocopies (or electronically rendered images or digital copies of native electronic files) may be submitted in lieu of original documents, provided that the originals are retained in their state at the time of receipt of this CID. Further, copies of originals may be submitted in lieu of originals only if they are true, correct, and complete copies of the original documents; provided, however, that submission of a copy shall constitute a waiver of any claim as to the authenticity of the copy should it be necessary to introduce such copy into evidence in any Commission proceeding or court of law; and provided further that you shall retain the original documents and produce them to Commission staff upon request. Copies of marketing materials and advertisements shall be produced in color, and copies of other materials shall be produced in color if necessary to interpret them or render them intelligible.

**L. Sensitive Personally Identifiable Information:** If any material called for by these requests contains sensitive personally identifiable information or sensitive health information of any individual, please contact us before sending those materials to discuss whether it would be appropriate to redact the sensitive information. If that information will not be redacted, contact us to discuss encrypting any electronic copies of such material with encryption software such as SecureZip and provide the encryption key in a separate communication.

For purposes of these requests, sensitive personally identifiable information includes: an individual's Social Security number alone; or an individual's name or address or phone number

in combination with one or more of the following: date of birth, Social Security number, driver's license number or other state identification number, or a foreign country equivalent, passport number, financial account number, credit card number, or debit card number. Sensitive health information includes medical records and other individually identifiable health information relating to the past, present, or future physical or mental health or conditions of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual.

M. **Certification of Records of Regularly Conducted Activity:** Attached is a Certification of Records of Regularly Conducted Activity, which may reduce the need to subpoena you to testify at future proceedings in order to establish the admissibility of documents produced in response to this CID. You are asked to execute this Certification and provide it with your response.

### III. SPECIFICATION FOR DOCUMENTARY MATERIALS

Produce the following documents:

1. Reports: All documents referring or relating to the Periodic Reviews of the Monitor appointed by the court in *State of Arizona ex rel. Horne v. Western Union Financial Services, Inc.*, No. CV 2010-005807, including, but not limited to, all drafts of any reports, reviews, or correspondence with Western Union.

**CERTIFICATION OF RECORDS OF REGULARLY CONDUCTED ACTIVITY**

Pursuant to 28 U.S.C. § 1746

1. I, \_\_\_\_\_, have personal knowledge of the facts set forth below and am competent to testify as follows:
2. I have authority to certify the authenticity of the records produced by Lonnie Keene, in his capacity as the court-appointed Monitor in the matter *State of Arizona ex rel. Attorney General Thomas C. Horne v. Western Union Financial Services, Inc.*, No. CV 2010-005807 (Ariz. Sup. Ct. Maricopa County), and attached hereto.
3. The documents produced and attached hereto by Lonnie Keene, in his capacity as the court-appointed Monitor in the matter *State of Arizona ex rel. Attorney General Thomas C. Horne v. Western Union Financial Services, Inc.*, No. CV 2010-005807 (Ariz. Sup. Ct. Maricopa County), are originals or true copies of records of regularly conducted activity that:
  - a) Were made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of those matters;
  - b) Were kept in the course of the regularly conducted activity of Lonnie Keene, in his capacity as the court-appointed Monitor in the matter *State of Arizona ex rel. Attorney General Thomas C. Horne v. Western Union Financial Services, Inc.*, No. CV 2010-005807 (Ariz. Sup. Ct. Maricopa County); and
  - c) Were made by the regularly conducted activity as a regular practice of Lonnie Keene, in his capacity as the court-appointed Monitor in the matter *State of Arizona ex rel. Attorney General Thomas C. Horne v. Western Union Financial Services, Inc.*, No. CV 2010-005807 (Ariz. Sup. Ct. Maricopa County).

I certify under penalty of perjury that the foregoing is true and correct.

Executed on \_\_\_\_\_, 2012.

\_\_\_\_\_  
Signature

**PETITION EXHIBIT 4**

Civil Investigative Demand to Western Union Company  
December 12, 2012



### CIVIL INVESTIGATIVE DEMAND

1. TO

Western Union Company  
12500 E. Belford Ave., M21A2  
Englewood, CO 80112

This demand is issued pursuant to Section 20 of the Federal Trade Commission Act, 15 U.S.C. § 57b-1, in the course of an investigation to determine whether there is, has been, or may be a violation of any laws administered by the Federal Trade Commission by conduct, activities or proposed action as described in Item 3.

2. ACTION REQUIRED

You are required to appear and testify.

LOCATION OF HEARING

YOUR APPEARANCE WILL BE BEFORE

DATE AND TIME OF HEARING OR DEPOSITION

You are required to produce all documents described in the attached schedule that are in your possession, custody, or control, and to make them available at your address indicated above for inspection and copying or reproduction at the date and time specified below.

You are required to answer the interrogatories or provide the written report described on the attached schedule. Answer each interrogatory or report separately and fully in writing. Submit your answers or report to the Records Custodian named in Item 4 on or before the date specified below.

DATE AND TIME THE DOCUMENTS MUST BE AVAILABLE

DEC 27 2012

3. SUBJECT OF INVESTIGATION

See attached resolution

4. RECORDS CUSTODIAN/DEPUTY RECORDS CUSTODIAN

C. Steven Baker, Regional Director (Custodian)  
Douglas M. McKenney, Investigator (Deputy)  
Federal Trade Commission, Midwest Region  
55 W. Monroe Street, Suite 1825, Chicago, IL 60603

5. COMMISSION COUNSEL

David A. O'Toole - 312.960.5601  
Federal Trade Commission, Midwest Region  
55 W. Monroe Street, Suite 1825, Chicago, IL 60603

DATE ISSUED

12/12/12

COMMISSIONER'S SIGNATURE

INSTRUCTIONS AND NOTICES

The delivery of this demand to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply. The production of documents or the submission of answers and report in response to this demand must be made under a sworn certificate, in the form printed on the second page of this demand, by the person to whom this demand is directed or, if not a natural person, by a person or persons having knowledge of the facts and circumstances of such production or responsible for answering each interrogatory or report question. This demand does not require approval by OMB under the Paperwork Reduction Act of 1980.

PETITION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any petition to limit or quash this demand be filed within 20 days after service, or, if the return date is less than 20 days after service, prior to the return date. The original and twelve copies of the petition must be filed with the Secretary of the Federal Trade Commission, and one copy should be sent to the Commission Counsel named in Item 5.

YOUR RIGHTS TO REGULATORY ENFORCEMENT FAIRNESS

The FTC has a longstanding commitment to a fair regulatory enforcement environment. If you are a small business (under Small Business Administration standards), you have a right to contact the Small Business Administration's National Ombudsman at 1-888-REGFAIR (1-888-734-3247) or [www.sba.gov/ombudsman](http://www.sba.gov/ombudsman) regarding the fairness of the compliance and enforcement activities of the agency. You should understand, however, that the National Ombudsman cannot change, stop, or delay a federal agency enforcement action.

The FTC strictly forbids retaliatory acts by its employees, and you will not be penalized for expressing a concern about these activities.

TRAVEL EXPENSES

Use the enclosed travel voucher to claim compensation to which you are entitled as a witness for the Commission. The completed travel voucher and this demand should be presented to Commission Counsel for payment. If you are permanently or temporarily living somewhere other than the address on this demand and it would require excessive travel for you to appear, you must get prior approval from Commission Counsel.

A copy of the Commission's Rules of Practice is available online at <http://bit.ly/FTCRulesofPractice>. Paper copies are available upon request.

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## Form of Certificate of Compliance\*

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I/We do certify that all of the documents and information required by the attached Civil Investigative Demand which are in the possession, custody, control, or knowledge of the person to whom the demand is directed have been submitted to a custodian named herein.

If a document responsive to this Civil Investigative Demand has not been submitted, the objections to its submission and the reasons for the objection have been stated.

If an interrogatory or a portion of the request has not been fully answered or a portion of the report has not been completed, the objections to such interrogatory or uncompleted portion and the reasons for the objections have been stated.

Signature \_\_\_\_\_

Title \_\_\_\_\_

Sworn to before me this day

\_\_\_\_\_

\_\_\_\_\_  
Notary Public

\_\_\_\_\_

\*In the event that more than one person is responsible for complying with this demand, the certificate shall identify the documents for which each certifying individual was responsible. In place of a sworn statement, the above certificate of compliance may be supported by an unsworn declaration as provided for by 28 U.S.C. § 1746.

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Jon Leibowitz, Chairman  
William E. Kovacic  
J. Thomas Rosch  
Edith Ramirez  
Julie Brill

RESOLUTION DIRECTING USE OF COMPULSORY PROCESS IN A NONPUBLIC  
INVESTIGATION OF TELEMARKETERS, SELLERS, SUPPLIERS, OR OTHERS

File No. 0123145

Nature and Scope of Investigation:

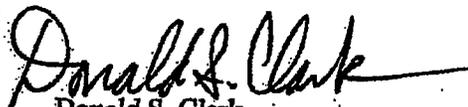
To determine whether unnamed telemarketers, sellers, or others assisting them have engaged or are engaging in: (1) unfair or deceptive acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45 (as amended); and/or (2) deceptive or abusive telemarketing acts or practices in violation of the Commission's Telemarketing Sales Rule, 16 C.F.R. pt 310 (as amended), including but not limited to the provision of substantial assistance or support — such as mailing lists, scripts, merchant accounts, and other information, products, or services — to telemarketers engaged in unlawful practices. The investigation is also to determine whether Commission action to obtain redress for injury to consumers or others would be in the public interest.

The Federal Trade Commission hereby resolves and directs that any and all compulsory processes available to it be used in connection with this investigation for a period not to exceed five years from the date of issuance of this resolution. The expiration of this five-year period shall not limit or terminate the investigation or the legal effect of any compulsory process issued during the five-year period. The Federal Trade Commission specifically authorizes the filing or continuation of actions to enforce any such compulsory process after the expiration of the five-year period.

Authority to Conduct Investigation:

Sections 6, 9, 10, and 20 of the Federal Trade Commission Act, 15 U.S.C. §§ 46, 49, 50, 57b-1 (as amended); and FTC Procedures and Rules of Practice, 16 C.F.R. §§ 1.1 *et seq.* and supplements thereto.

By direction of the Commission.

  
Donald S. Clark  
Secretary

Issued: April 11, 2011

**CIVIL INVESTIGATIVE DEMAND  
Schedule for Documentary Materials**

**I. DEFINITIONS**

As used in this Civil Investigative Demand, the following definitions shall apply:

A. **“And,”** as well as **“or,”** shall be construed both conjunctively and disjunctively, as necessary, in order to bring within the scope of any specification in this Schedule all information that otherwise might be construed to be outside the scope of the specification.

B. **“Any”** shall be construed to include **“all,”** and **“all”** shall be construed to include the word **“any.”**

C. **“CID”** shall mean the Civil Investigative Demand, including the attached Resolution and this Schedule, and including the Definitions, Instructions, and Specifications.

D. **“Document”** shall mean the complete original and any non-identical copy (whether different from the original because of notations on the copy or otherwise), regardless of origin or location, of any written, typed, printed, transcribed, filmed, punched, or graphic matter of every type and description, however and by whomever prepared, produced, disseminated or made, including but not limited to any advertisement, book, pamphlet, periodical, contract, correspondence, file, invoice, memorandum, note, telegram, report, record, handwritten note, working paper, routing slip, chart, graph, paper, index, map, tabulation, manual, guide, outline, script, abstract, history, calendar, diary, agenda, minute, code book or label. **“Document” shall also include Electronically Stored Information.**

E. **“Each”** shall be construed to include **“every,”** and **“every”** shall be construed to include **“each.”**

F. **“Electronically Stored Information”** or **“ESI”** shall mean the complete original and any non-identical copy (whether different from the original because of notations, different metadata, or otherwise), regardless of origin or location, of any information created, manipulated, communicated, stored, or utilized in digital form, requiring the use of computer hardware or software. This includes, but is not limited to, electronic mail, instant messaging, videoconferencing, and other electronic correspondence (whether active, archived, or in a deleted items folder), word processing files, spreadsheets, databases, and video and sound recordings, whether stored on: cards; magnetic or electronic tapes; disks; computer hard drives, network shares or servers, or other drives; cloud-based platforms; cell phones, PDAs, computer tablets, or other mobile devices; or other storage media. **“ESI”** also includes such technical assistance or instructions as will enable conversion of such ESI into a reasonably usable form.

G. **“FTC”** or **“Commission”** shall mean the Federal Trade Commission.

H. **“Referring to”** or **“relating to”** shall mean discussing, describing, reflecting, containing,

analyzing, studying, reporting, commenting, evidencing, constituting, setting forth, considering, recommending, concerning, or pertaining to, in whole or in part.

I. **“Western Union”** shall mean the **Western Union Company**, its wholly or partially owned subsidiaries, unincorporated divisions, joint ventures, operations under assumed names, and affiliates, and all directors, officers, employees, agents, consultants, and other persons working for or on behalf of the foregoing.

J. **“You”** and **“Your”** shall mean the person or entity to whom this CID is issued, and includes Western Union.

## II. INSTRUCTIONS

A. **Sharing of Information:** The Commission often makes its files available to other civil and criminal federal, state, local, or foreign law enforcement agencies. The Commission may make information supplied by you available to such agencies where appropriate pursuant to the Federal Trade Commission Act and 16 C.F.R. § 4.11 (e) and (j). Information you provide may be used in any federal, state, or foreign civil or criminal proceeding by the Commission or other agencies.

B. **Meet and Confer:** You must contact David A. O’Toole at 312.960.5601 as soon as possible to schedule a meeting (telephonic or in person) to be held within ten (10) days after receipt of this CID in order to confer regarding your response, including but not limited to a discussion of the submission of Electronically Stored Information and other electronic productions as described in these Instructions.

C. **Applicable time period:** Unless otherwise directed in the specifications, the applicable time period for the request shall be from January 1, 2011 until the date of full and complete compliance with this CID.

D. **Claims of Privilege:** If any material called for by this CID is withheld based on a claim of privilege or any similar claim, the claim must be asserted no later than the return date of this CID. In addition, pursuant to 16 C.F.R. § 2.8A(a), submit, together with the claim, a schedule of the items withheld, stating individually as to each item:

1. the type, specific subject matter, date, and number of pages of the item;
2. the names, addresses, positions, and organizations of all authors and recipients of the item; and
3. the specific grounds for claiming that the item is privileged.

If only some portion of any responsive material is privileged, all non-privileged portions of the material must be submitted. A petition to limit or quash this CID shall not be filed solely for the purpose of asserting a claim of privilege. 16 C.F.R. § 2.8A(b).

E. **Document Retention:** You shall retain all documentary materials used in the preparation of responses to the specifications of this CID. The Commission may require the submission of additional documents at a later time during this investigation. Accordingly, you should suspend any routine procedures for document destruction and take other measures to prevent the destruction of documents that are in any way relevant to this investigation during its pendency, irrespective of whether you believe such documents are protected from discovery by privilege or otherwise. See 15 U.S.C. § 50; see also 18 U.S.C. §§ 1505, 1519.

F. **Petitions to Limit or Quash:** Any petition to limit or quash this CID must be filed with the Secretary of the Commission no later than twenty (20) days after service of the CID, or, if the return date is less than twenty (20) days after service, prior to the return date. Such petition shall set forth all assertions of privilege or other factual and legal objections to the CID, including all appropriate arguments, affidavits, and other supporting documentation. 16 C.F.R. § 2.7(d).

G. **Modification of Specifications:** If you believe that the scope of the required search or response for any specification can be narrowed consistent with the Commission's need for documents or information, you are encouraged to discuss such possible modifications, including any modifications of definitions and instructions, with David A. O'Toole at 312.960.5601. All such modifications must be agreed to in writing by an Associate Director, Regional Director, or Assistant Regional Director. 16 C.F.R. § 2.7(c).

H. **Certification:** A responsible corporate officer shall certify that the response to this CID is complete. This certification shall be made in the form set out on the back of the CID form, or by a declaration under penalty of perjury as provided by 28 U.S.C. § 1746.

I. **Scope of Search:** This CID covers documents and information in your possession or under your actual or constructive custody or control including, but not limited to, documents and information in the possession, custody, or control of your attorneys, accountants, directors, officers, employees, and other agents and consultants, whether or not such documents and information were received from or disseminated to any person or entity.

J. **Document Production:** You shall produce the documentary material by making all responsive documents available for inspection and copying at your principal place of business. Alternatively, you may elect to send all responsive documents to Douglas M. McKenney, Federal Trade Commission, Midwest Region, 55 W. Monroe St., Suite 1825, Chicago, IL 60603. Notice of your intended method of production shall be given by email or telephone to Douglas M. McKenney at 312.960.5634 at least five days prior to the return date.

K. **Document Identification:** Documents that may be responsive to more than one specification of this CID need not be submitted more than once; however, your response should indicate, for each document submitted, each specification to which the document is responsive. If any documents responsive to this CID have been previously supplied to the Commission, you may comply with this CID by identifying the document(s) previously provided and the date of submission. Documents should be produced in the order in which they appear in your files or as

electronically stored and without being manipulated or otherwise rearranged; if documents are removed from their original folders, binders, covers, containers, or electronic source in order to be produced, then the documents shall be identified in a manner so as to clearly specify the folder, binder, cover, container, or electronic media or file paths from which such documents came. In addition, number by page (or file, for those documents produced in native electronic format) all documents in your submission, preferably with a unique Bates identifier, and indicate the total number of documents in your submission.

L. **Production of Copies:** Unless otherwise stated, legible photocopies (or electronically rendered images or digital copies of native electronic files) may be submitted in lieu of original documents, provided that the originals are retained in their state at the time of receipt of this CID. Further, copies of originals may be submitted in lieu of originals only if they are true, correct, and complete copies of the original documents; provided, however, that submission of a copy shall constitute a waiver of any claim as to the authenticity of the copy should it be necessary to introduce such copy into evidence in any Commission proceeding or court of law; and provided further that you shall retain the original documents and produce them to Commission staff upon request. Copies of marketing materials and advertisements shall be produced in color, and copies of other materials shall be produced in color if necessary to interpret them or render them intelligible.

M. **Electronic Submission of Documents:** The following guidelines refer to the production of any Electronically Stored Information ("ESI") or digitally imaged hard copy documents. Before submitting any electronic production, You must confirm with the Commission counsel named above that the proposed formats and media types will be acceptable to the Commission. The FTC requests. Concordance load-ready electronic productions, including DAT and OPT load files.

(1) **Electronically Stored Information:** Documents created, utilized, or maintained in electronic format in the ordinary course of business should be delivered to the FTC as follows:

(a) Spreadsheet and presentation programs, including but not limited to Microsoft Access, SQL, and other databases, as well as Microsoft Excel and PowerPoint files, must be produced in native format with extracted text and metadata. Data compilations in Excel spreadsheets, or in delimited text formats, must contain all underlying data un-redacted with all underlying formulas and algorithms intact. All database productions (including structured data document systems) must include a database schema that defines the tables, fields, relationships, views, indexes, packages, procedures, functions, queues, triggers, types, sequences, materialized views, synonyms, database links, directories, Java, XML schemas, and other elements, including the use of any report writers and custom user data interfaces;

(b) All ESI other than those documents described in (1)(a) above must be provided in native electronic format with extracted text or Optical Character

Recognition (OCR) and all related metadata, and with corresponding image renderings as converted to Group IV, 300 DPI, single-page Tagged Image File Format (TIFF) or as color JPEG images (where color is necessary to interpret the contents);

(c) Each electronic file should be assigned a unique document identifier ("DocID") or Bates reference.

(2) **Hard Copy Documents:** Documents stored in hard copy in the ordinary course of business should be submitted in an electronic format when at all possible. These documents should be true, correct, and complete copies of the original documents as converted to TIFF (or color JPEG) images with corresponding document-level OCR text. Such a production is subject to the following requirements:

(a) Each page shall be endorsed with a document identification number (which can be a Bates number or a document control number); and

(b) Logical document determination should be clearly rendered in the accompanying load file and should correspond to that of the original document; and

(c) Documents shall be produced in color where necessary to interpret them or render them intelligible;

(3) For each document electronically submitted to the FTC, You should include the following metadata fields in a standard ASCII delimited Concordance DAT file:

(a) **For electronic mail:** begin Bates or unique document identification number ("DocID"), end Bates or DocID, mail folder path (location of email in personal folders, subfolders, deleted or sent items), custodian, from, to, cc, bcc, subject, date and time sent, date and time received, and complete attachment identification, including the Bates or DocID of the attachments (AttachIDs) delimited by a semicolon, MD5 or SHA Hash value, and link to native file;

(b) **For email attachments:** begin Bates or DocID, end Bates or DocID, parent email ID (Bates or DocID), page count, custodian, source location/file path, file name, file extension, file size, author, date and time created, date and time modified, date and time printed, MD5 or SHA Hash value, and link to native file;

(c) **For loose electronic documents (as retrieved directly from network file stores, hard drives, etc.):** begin Bates or DocID, end Bates or DocID, page count, custodian, source media, file path, filename, file extension, file size, author, date and time created, date and time modified, date and time printed, MD5 or SHA Hash value, and link to native file;

(d) **For imaged hard copy documents:** begin Bates or DocID, end Bates or DocID, page count, source, and custodian; and where applicable, file folder name, binder name, attachment range, or other such references, as necessary to understand the context of the document as maintained in the ordinary course of business.

(4) If You intend to utilize any de-duplication or email threading software or services when collecting or reviewing information that is stored in Your computer systems or electronic storage media, or if Your computer systems contain or utilize such software, You must contact the Commission counsel named above to determine whether and in what manner You may use such software or services when producing materials in response to this Request.

(5) Submit electronic productions as follows:

(a) With passwords or other document-level encryption removed or otherwise provided to the FTC;

(b) As uncompressed electronic volumes on size-appropriate, Windows-compatible, media;

(c) All electronic media shall be scanned for and free of viruses;

(d) Data encryption tools may be employed to protect privileged or other personal or private information. The FTC accepts TrueCrypt, PGP, and SecureZip encrypted media. The passwords should be provided in advance of delivery, under separate cover. Alternate means of encryption should be discussed and approved by the FTC.

(e) Please mark the exterior of all packages containing electronic media sent through the U.S. Postal Service or other delivery services as follows:

**MAGNETIC MEDIA – DO NOT X-RAY  
MAY BE OPENED FOR POSTAL INSPECTION.**

(6) All electronic files and images shall be accompanied by a production transmittal letter which includes:

(a) A summary of the number of records and all underlying images, emails, and associated attachments, native files, and databases in the production; and

(b) An index that identifies the corresponding consecutive document identification number(s) used to identify each person's documents and, if submitted in paper form, the box number containing such documents. If the index exists as a computer file(s), provide the index both as a printed hard copy and in

machine-readable form (provided that the Commission counsel named above determines prior to submission that the machine- readable form would be in a format that allows the agency to use the computer files). The Commission counsel named above will provide a sample index upon request.

**A Bureau of Consumer Protection Production Guide is available upon request from the Commission counsel named above. This guide provides detailed directions on how to fully comply with this instruction.**

**N. Sensitive Personally Identifiable Information:** If any material called for by these requests contains sensitive personally identifiable information or sensitive health information of any individual, please contact us before sending those materials to discuss whether it would be appropriate to redact the sensitive information. If that information will not be redacted, contact us to discuss encrypting any electronic copies of such material with encryption software such as SecureZip and provide the encryption key in a separate communication.

For purposes of these requests, sensitive personally identifiable information includes: an individual's Social Security number alone; or an individual's name or address or phone number in combination with one or more of the following: date of birth, Social Security number, driver's license number or other state identification number, or a foreign country equivalent, passport number, financial account number, credit card number, or debit card number. Sensitive health information includes medical records and other individually identifiable health information relating to the past, present, or future physical or mental health or conditions of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual.

**O. Information Identification:** Each specification of this CID shall be answered separately and fully in writing under oath. All information submitted shall be clearly and precisely identified as to the specification(s) or subspecification(s) to which it is responsive.

**P. Certification of Records of Regularly Conducted Activity:** Attached is a Certification of Records of Regularly Conducted Activity, which may reduce the need to subpoena the Company to testify at future proceedings in order to establish the admissibility of documents produced in response to this CID. You are asked to execute this Certification and provide it with your response.

### **III. SPECIFICATIONS FOR DOCUMENTARY MATERIALS**

Produce the following documents:

1. Complaints Regarding Fraud-Induced Money Transfers: All documents referring or relating to complaints made to Western Union by consumers anywhere in the world, referring or relating to fraud-induced money transfers.
2. Communications with Court-appointed Monitor: All documents referring or relating to

communications with the Monitor appointed by the court in *State of Arizona ex rel. Horne v. Western Union Financial Services, Inc.*, No. CV 2010-005807, including, but not limited to, all information Western Union provided to the Monitor, and any reports, reviews, or other documents prepared by the Monitor, including any drafts of such documents.

**NOTE: The documents demanded by this CID exclude any information for which prior customer notice is required under the Right to Financial Privacy Act, 12 U.S.C. § 3401, et seq. Documents produced should not contain any additional information. If you have any questions about these requests, please contact FTC staff attorney David A. O'Toole at 312.960.5601 before providing responsive documents.**

**CERTIFICATION OF RECORDS OF REGULARLY CONDUCTED ACTIVITY**

**Pursuant to 28 U.S.C. § 1746**

1. I, \_\_\_\_\_, have personal knowledge of the facts set forth below and am competent to testify as follows:
2. I have authority to certify the authenticity of the records produced by Western Union, and attached hereto.
3. The documents produced and attached hereto by Western Union, are originals or true copies of records of regularly conducted activity that:
  - a) Were made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of those matters;
  - b) Were kept in the course of the regularly conducted activity of Western Union; and
  - c) Were made by the regularly conducted activity as a regular practice of Western Union.

I certify under penalty of perjury that the foregoing is true and correct.

Executed on \_\_\_\_\_, 2012.

\_\_\_\_\_  
Signature

**PETITION EXHIBIT 5**

The Western Union Company's Petition to Quash Civil  
Investigative Demands  
January 31, 2013

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

**ORIGINAL**



\_\_\_\_\_  
)  
**IN THE MATTER OF** )  
**DECEMBER 12, 2012 CIVIL** )  
**INVESTIGATIVE DEMAND ISSUED TO THE** )  
**WESTERN UNION COMPANY AND** )  
**NOVEMBER 20, 2012 CIVIL** )  
**INVESTIGATIVE** )  
**DEMAND ISSUED TO LONNIE KEENE,** )  
**MONITOR, STATE OF ARIZONA v.** )  
**WESTERN UNION FINANCIAL** )  
**SERVICES, INC.** )  
\_\_\_\_\_

File No. 0123145

**THE WESTERN UNION COMPANY'S PETITION TO QUASH  
CIVIL INVESTIGATIVE DEMANDS**

Edward B. Schwartz  
Chong S. Park  
Douglas D. Janicik  
STEPTOE & JOHNSON LLP  
1330 Connecticut Avenue NW  
Washington, D.C. 20036  
(202) 429-6220 (Telephone)  
(202) 429-3902 (Facsimile)

*Attorneys for Petitioner  
The Western Union Company*

Pursuant to 16 C.F.R. § 2.10, The Western Union Company petitions the Federal Trade Commission (“FTC”) to quash (1) the Civil Investigative Demand (“CID”) issued to the company on December 12, 2012, and (2) the CID, dated November 5, 2012, issued to Lonnie Keene, the Monitor appointed by the Arizona Superior Court to oversee a settlement between Western Union and the Arizona Attorney General. These CIDs were issued purportedly as part of a general investigation “to determine whether unnamed telemarketers, sellers, or others assisting them have engaged ... in unfair or deceptive acts or practices in or affecting commerce.”<sup>1</sup> Significantly, however, Western Union has never been informed that it is a target of this investigation. Nevertheless, the CID served on Western Union is very broad in its scope, and seeks, in part, highly confidential materials created in connection with the settlement of unrelated litigation. The two Specifications seek:

1. All documents referring or relating to complaints made to Western Union by consumers *anywhere in the world*, referring or relating to fraud-induced money transfers; and
2. All documents referring or relating to communications with the Monitor appointed by the court in *State of Arizona v. Western Union*, No. CV2010-5807, including, but not limited to, all information Western Union provided to the Monitor, and any reports, reviews, or other documents prepared by the Monitor.

The CID issued to the Monitor in the Arizona litigation seeks all documents referring or relating to the Monitor’s periodic reviews.

Western Union objects to the CIDs as improper and unenforceable for three reasons:

- First, the CIDs are not supported by a specific and valid Resolution, which is a statutory prerequisite for the FTC to use compulsory process;

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<sup>1</sup> Copies of the CIDs are attached at Exhibit A.

- Second, the Commission’s jurisdiction under the Federal Trade Commission Act does not extend to fraud-induced money transfers conducted entirely outside of the U.S. which have no effect on U.S. commerce; and

- Third, sensitive and confidential documents prepared as part of Western Union’s settlement with the State of Arizona regarding its anti-money laundering (“AML”) program are irrelevant to the FTC’s investigation and protected from disclosure by the terms of the confidential settlement agreement entered and enforced by the state court. The Arizona case dealt with combating drug trafficking and human smuggling along the Mexico-U.S. border; the FTC is purportedly investigating telemarketers, sellers, or others assisting them for alleged fraud. The former has nothing to do with the latter.

Indeed, the court that approved and oversees the Western Union-Arizona settlement has now *twice* denied applications to release the confidential materials to the FTC. The court made it clear that “[n]o third party can read the Settlement Agreement without appreciating the significance of confidentiality of the information and access provided by Western Union to the Monitor.” As the court correctly recognized, that information would not exist *but for* Western Union’s compliance with the Settlement Agreement. The court’s confidentiality protections extend to the reports and other documents that the Monitor prepares, as well as documents that “relate to” the reports, such as those that Western Union shares with the Monitor. The Arizona court is in the best position to weigh the need for strict confidentiality in this matter. Yet, the FTC persists in seeking to circumvent the protections the court approved—by seeking the Monitor documents through the Arizona Attorney General’s office and then by serving the CIDs at issue.

It is black letter law that an agency's administrative subpoenas must be reasonable in their scope. The FTC's demands of Western Union and the Monitor fail that test, and the CIDs are otherwise unenforceable. Accordingly, the FTC should grant Western Union's petition and quash the CIDs.

## **BACKGROUND**

Western Union's primary business involves transmitting money sent by one person to another via interstate and international wires. Western Union offers its services through a network of over 45,000 agent locations throughout the U.S. and nearly 510,000 locations in over 200 countries and territories. Authorized agents include publicly-owned networks, such as post offices, as well as private companies such as banks.

### **A. Western Union and the Arizona Attorney General Entered Into a Confidential Settlement Agreement Regarding Its Anti-Money Laundering Program**

In the early 2000's, the Arizona Attorney General ("Arizona AG") began seeking data on wire transfers conducted by Western Union customers in an effort to curtail human smuggling and narcotics trafficking over the Mexico border. Based on his authority under state law to investigate money laundering, the Arizona AG demanded, among other things, data on transfers from more than 20 states (other than Arizona) to various cities in northern Mexico.

On February 11, 2010, Western Union and the Arizona AG entered into a comprehensive Settlement Agreement. As part of that Agreement, a court-appointed Monitor was directed to compile and analyze certain information on Western Union's AML program in what is referred to as the "Southwest Border Area" (which is the area within 200 miles of the U.S./Mexico border on either side and including all of Arizona), and to prepare reports every six months during his engagement. The terms of the Monitor's engagement are governed by a Monitor Engagement Letter ("MEL"). (Ex. B.) To allow the Monitor to prepare these reports, the Settlement

Agreement and the MEL give the Monitor access to confidential information concerning Western Union's business, including information about wire transfers from worldwide locations to locations in Mexico. This information is not normally available to third parties, and much of it has no nexus to Arizona and is outside the subpoena power of the Arizona AG. *See State ex rel. Goddard v. W. Union Fin. Services, Inc.*, 166 P.3d 916, 926 (Ariz. Ct. App. 2007) ("no Arizona law requir[es] Western Union to open all of its financial records to law-enforcement officials from any of its locations worldwide for the privilege of doing business in Arizona").

In exchange for its agreement to provide such broad access to highly confidential and proprietary information, Western Union was assured that both the information it provided to the Monitor and the Arizona AG and the Monitor's reports would remain strictly confidential. For example, under the Settlement Agreement, the State is obligated to "maintain the confidentiality of any materials or information provided by Western Union ... and shall not provide such material or information to any third party, except to the extent that disclosure is required by law, otherwise authorized by th[e] Agreement, or is in the proper discharge of or otherwise furthers the State's official duties or responsibilities." (Ex. C at 6, ¶ 17.1.4.)

Moreover, the MEL provides that the Monitor "agrees not to disclose any Confidential Information to anyone other than the Court or the State [of Arizona] to carry out the terms of the Engagement." (Ex. B ¶ 9.) The MEL goes on to provide that

[t]he Monitor shall take appropriate steps to maintain the confidentiality of any information entrusted to him or her while executing his or her duties under the Engagement and shall share such information only with the State, appropriate investigative agencies, and individuals or entities hired by him or her.

(*Id.* ¶ 36.) For instance, if the Monitor discovers that an agent location is engaging in money laundering, he or she could contact the appropriate law enforcement agency.

Additionally, the Monitor's periodic reports and related documents *he* prepares must be filed with the court under seal, and the Arizona AG and Western Union agreed to maintain their confidentiality "except to the extent that disclosure may be necessary by the State in connection with the discharge of *its* official duties." (*Id.* ¶ 37 (emphasis added).) This separate treatment of the Monitor's reports reflects their unique nature and limited purpose for which they were intended—to provide the Arizona court with information about the status of Western Union's progress under the Settlement Agreement.

The court's Order approving the Settlement Agreement and appointing a Monitor confirms the need for strict confidentiality. It provides that, "[i]n order to preserve the privacy of the data and information involved ... [a]ll transaction data or investigative information that is received pursuant to this Order ... may be shared with another law enforcement or prosecutive agency only if such other ... agency agrees to keep such ... information confidential to the maximum extent permissible under law." (Ex D at 8.)

**B. The State Court Has Twice Denied Requests to Allow the Monitor to Disclose Confidential Materials to the FTC**

In July 2012, the Arizona AG sought an order from the Arizona court overseeing the Arizona-Western Union settlement permitting the sharing of the Monitor's periodic reviews and related documents with the FTC. Although the FTC has no criminal enforcement authority, the Arizona AG assumed that the FTC became aware of the Monitor's engagement "in the course of [its] respective interest[] in the use of money transmitters to accomplish money laundering, whether in furtherance of drug or human smuggling, fraud or other crimes." (Ex. E at 1-2.) The Arizona AG argued that the FTC was entitled to the materials because "[o]bviously, all federal

agencies do business in the Southwest Border Area, so each is a Southwest Border Area agency by its federal nature.” (*Id.* at 6.)<sup>2</sup>

On September 25, 2012, the state court denied the Arizona AG’s application. The court, which is very familiar with the sensitive nature of the Monitor’s materials, expressed concerns over the alleged agreement between the FTC and the Monitor regarding how to handle the information to be disclosed. (Ex. F, 9/25/12 Tr. at 21:25-22:5 (“[F]or the Court to order disclosure to [the FTC] pursuant to the agreement, I would want them in the courtroom to know what the scope of the agreement [between the FTC and the Monitor] is....”))

On November 5, 2012, the FTC served a CID on the Monitor seeking a subset of the documents that the FTC demands in the CID it served on Western Union.<sup>3</sup> In response, the Monitor filed in state court an “Application for Order Construing the MEL.”

On January 28, 2013, the court denied the Monitor’s request to comply with the CID. (Ex. G (minute entry ruling).) The court noted that the Settlement Agreement contemplates that the Monitor “would have unprecedented and unfettered access to the daily business practices and records of Western Union,” to which even *government agencies* “are not usually privy.” (*Id.* at 2.) The court also noted that “Western Union voluntarily gave the Monitor access to its otherwise private practices and proprietary data to assist in ... eliminating money laundering

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<sup>2</sup> It should be noted that the Arizona AG also requested that Western Union share Monitor materials with the Department of Homeland Security Investigations (“HSI”). Western Union did not oppose that request, and informed the Arizona AG that it would communicate directly with the HSI regarding that agency’s needs.

<sup>3</sup> Western Union has standing to petition to quash the CID served on the Monitor. “Where ... privacy rights have been retained, the Supreme Court has made it clear that those rights may be raised by intervention of the claimant by motion to quash before the FTC or at the enforcement proceeding.” *Am. Motors Corp. v. FTC*, 601 F.2d 1329, 1338-39 (6th Cir. 1979); *see also Bite Tech, Inc. v. X2 Impact, Inc.*, 2013 WL 195598, at \*3 (W.D. Wash.) (“[A] party may move to quash or modify third party subpoenas when its own privacy interests may be implicated.”).

opportunities and because of an expectation of confidentiality.” (*Id.*) That information is “accessible only to the State of Arizona and this Court if [Western Union is] found in breach of this Agreement or the State of Arizona made disclosure pursuant to their official duties.” (*Id.* at 3.) Thus, the court concluded, “Western Union did not expect that [its] proprietary information and practices would be otherwise provided to a third party who has no enforceable limitation on its use or disclosure.” (*Id.*)

### REASONS FOR GRANTING THE PETITION

The CIDs issued to Western Union and the Monitor are unenforceable. “[A] subpoena from the FTC is not self-enforcing.” *Wearly v. FTC*, 616 F.2d 662, 665 (3d Cir. 1980). The FTC must seek an order from the federal court compelling compliance. *Id.* Federal courts, however, do not act as a rubber stamp; instead, they act as an independent reviewing authority with “the power to condition enforcement upon observance of safeguards to [a petitioner’s] valid interests.” *Id.*; *see also Okla. Press Publ’g Co. v. Walling*, 327 U.S. 186, 208 (1946) (noting that the courts serve as a safeguard against agency abuse); *SEC v. Arthur Young & Co.*, 584 F.2d 1018, 1024 (D.C. Cir. 1978) (citations omitted) (“The federal courts stand guard, of course, against abuses of ... subpoena-enforcement processes.”).

The Supreme Court established the standard for whether an agency subpoena is enforceable in *U.S. v. Morton Salt Co.*, 338 U.S. 632 (1950). A subpoena, like the CID here, is unenforceable if (i) it is not “within the authority of the agency,” (ii) is “too indefinite,” or (iii) is not “reasonably relevant [to the inquiry].” *Id.* at 652. Courts applying this test have consistently held that an administrative subpoena must be “reasonable.”<sup>4</sup> Thus, “while the [Commission] is

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<sup>4</sup> *See, e.g., U.S. v. Constr. Prods. Research, Inc.*, 73 F.3d 464, 471 (2d Cir. 1996) (“the disclosure sought must always be reasonable”); *Arthur Young & Co.*, 584 F.2d at 1030 (“the gist of the protection is in the requirement ... that the disclosures sought shall not be unreasonable”).

entitled to great freedom in conducting its investigation, it is not at liberty to act unreasonably.”

*Arthur Young & Co.*, 584 F.2d at 1031.

**I. THE CIDS ISSUED TO WESTERN UNION AND THE MONITOR ARE UNSUPPORTED BY A SPECIFIC RESOLUTION**

The CIDs should be quashed because they are not authorized by a valid resolution and thus fall outside the FTC’s authority. To issue valid, enforceable CIDs, the FTC must meet applicable statutory requirements, one of which is that the agency may not demand information unless the CID is signed by a Commissioner acting pursuant to a FTC resolution. 15 U.S.C. § 57b-1(i). Thus, “[a]ny person ... under investigation compelled or requested to furnish information or documentary material shall be advised of the purpose and scope of the investigation, the nature of the acts or practices under investigation, and the applicable provisions of law.” 16 C.F.R. § 2.6. The FTC Operating Manual (at § .3.6.7.4.1) requires that “Investigational resolutions must ... be *specific* enough to enable a court in an enforcement action to determine whether the investigation is within the authority of the Commission and the material demanded by the compulsory process is within the scope of the resolution.” (Emphasis added.) A court may only look at the resolution to evaluate the scope of an investigation. *FTC v. Invention Submission Corp.*, 965 F.2d 1086, 1088 (D.C. Cir. 1992).

The April 11, 2011 Resolution that purportedly supports the CIDs here fails to meet these requirements. Issued almost 20 months before the FTC served the CIDs, the supporting Resolution is a non-specific, generic template that states that the investigation’s purpose is to “determine whether unnamed telemarketers, sellers, or others assisting them have engaged ... in ... unfair or deceptive acts or practices in or affecting commerce.” (Ex. A.) The language of the Resolution is so broad that it would apparently permit the FTC to investigate any person or entity engaged in sales with respect to any form of practice or conduct. Moreover, there is no way to

tell whether the documents sought by the CIDs bear any relation to a lawful investigation. This is contrary to the statutory requirements imposed on the FTC. *See, e.g., FTC v. Carter*, 636 F.2d 781, 788 (D.C. Cir. 1980) (the bare recitation of “Section 5’s prohibition of unfair and deceptive practices ... standing broadly alone would not serve very specific notice of [a resolution’s] purpose”); *FTC v. Foremost-McKesson, Inc.*, 1981 WL 2029, at \*4 (S.D.N.Y.) (noting that the FTC Improvements Act of 1980 “is intended to limit the practice of the Commission of giving a vague description of the general subject matter of the inquiry and provide a standard by which relevance may be determined”). As such, the CIDs should be quashed in their entirety.

## **II. THE FTC HAS NO JURISDICTION TO INVESTIGATE MONEY TRANSFERS BETWEEN FOREIGN COUNTRIES**

Even if the CIDs were issued pursuant to a valid and specific Resolution, the FTC has overstepped its authority in seeking documents relating to wholly extraterritorial transactions having no effect on U.S. persons or commerce. Given this, Specification No. 1 is unenforceable as a matter of law. *See Transohio Sav. Bank v. Dir., Office of Thrift Supervision*, 967 F.2d 598, 621 (D.C. Cir. 1992) (agency actions beyond delegated authority are *ultra vires* and should be invalidated).

The U.S. Supreme Court recently emphasized the presumption that federal statutes “apply only within the territorial jurisdiction of the United States.” *Morrison v. Nat’l Austl. Bank Ltd.*, 130 S. Ct. 2869, 2877 (2010). Even “when a statute provides for some extraterritorial application, the presumption against extraterritoriality operates to limit that provision to its terms.” *Id.* at 2883; *see also Lyng v. Payne*, 476 U.S. 926, 927 (1986) (“[A]n agency’s power is not greater than that delegated to it by Congress.”).

Here, the FTC Act provides that “the term ‘unfair or deceptive acts or practices’ includes such acts or practices involving foreign commerce that ... involve material conduct occurring

within the United States” or that “cause or are likely to cause reasonably foreseeable injury within the United States.” 15 U.S.C. § 45(a)(4)(A)(i)-(ii). The money transfers at issue never touch the U.S.; they are sent from an agent location in a foreign country to another agent location in a foreign country. The FTC’s position is an unprecedented assertion of authority: Western Union is aware of no case in which a court approved an agency investigation into foreign transactions that do not at least involve a U.S. consumer. *See* S. Rep. No. 109-219, at 4 (2006) (§ 45(a)(4)(A)(ii) is intended to “enhance the FTC’s ability to pursue violations that *affect domestic commerce* but are committed outside the United States (emphasis added)).

Nevertheless, the FTC claims it can lawfully investigate global money transfers because Western Union engages in conduct within the U.S. “in establishing its policies and procedures for the handling of fraud-induced money transfers and complaints and for monitoring the activities of its agents worldwide.”<sup>5</sup> (Ex. H.) But that is really an act of *omission*: Western Union’s alleged failure to adequately monitor foreign money transfers. Any such failure is, at best, tangential to the actual fraud perpetrated overseas, and is certainly not “material” enough to confer jurisdiction on the FTC.<sup>6</sup>

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<sup>5</sup> The FTC has not asserted that these wholly foreign transactions affect U.S. commerce; instead, it is relying on the “material conduct” arm of the statute.

<sup>6</sup> *See, e.g., Bersch v. Drexel Firestone, Inc.*, 519 F.2d 974, 987 (2d Cir. 1975) (no jurisdiction where Canadian company’s misleading prospectus was given to foreign purchasers; even though underwriters, one of which was from U.S., drafted part of prospectus in New York; those were “merely preparatory” acts that took “the form of culpable nonfeasance”); *Am. West Airlines, Inc. v. GPA Group, Ltd.*, 877 F.2d 793, 796-97 (9th Cir. 1989) (fact that Ireland carries on commercial activities in U.S. is, “in itself, insufficient to create jurisdiction.... The commercial activity relied upon ... to establish jurisdiction must be the activity upon which the lawsuit is based”); *Copeland v. Fortis Bank*, 685 F. Supp. 2d 498, 505 (S.D.N.Y. 2010) (no jurisdiction in suit by foreign pensions against foreign corporation; although certain financial calculations and reports were done in New York and then sent to Brussels, that was merely “ancillary to the fraud that was committed in Belgium” (quotations omitted)).

What the FTC really appears to be saying is that it can investigate any company whose services are used—unbeknownst to it—by individuals in a foreign country perpetrating a fraud on individuals in another foreign country, simply because that company is based in the U.S. That stretches the meaning of “material conduct” far beyond what Congress intended. *See Morrison*, 130 S. Ct. at 2884 (“[T]he presumption against extraterritorial application would be a craven watchdog indeed if it retreated to its kennel whenever *some* domestic activity is involved in the case.”). The Staff has also suggested that the FTC Act reaches the wholly foreign transactions here because the acts of its agents are imputed to Western Union for purposes of establishing jurisdiction. Absent more, however, the *ultra vires* (and, potentially, criminal) acts of an agent cannot be imputed to a principal for jurisdictional or other purposes.

Additionally, authorizing FTC oversight and jurisdiction over money transfers between foreign countries implicates a host of foreign laws regarding data privacy, among other complicated issues. “The probability of incompatibility with the applicable laws of other countries is so obvious that if Congress intended such foreign application it would have addressed the subject of conflicts with foreign laws and procedures.” *Morrison*, 130 S. Ct. at 2885 (securities fraud); *see also Nieman v. Dryclean U.S.A. Franchise Co.*, 178 F.3d 1126, 1129 (11th Cir. 1999) (FTC franchise rule; presumption against extraterritorial application “serves to protect against unintended clashes between our laws and those of other nations which could result in international discord” (quotations omitted)).

In such situations, federal courts will afford deference to a foreign country’s laws, and the FTC—which depends on the courts to enforce its CIDs—should do the same. Courts apply principles of international comity to limit discovery obligations in cross-border cases, by recognizing that discovery rules and obligations “ought never to be construed to violate the law of nations if any other possible construction remains, and consequently can never be construed to

violate neutral rights, or to affect neutral commerce, further than is warranted by the law of nations as understood in this country.” *Soci’et’e Nationale Industrielle A’erospatiale v U.S. Dist. Ct.*, 482 U.S. 522, 546 (1987). This is also not just a matter of comity: if the FTC so cavalierly disregards foreign data privacy laws, other countries may in turn pay little respect to U.S. privacy (or other) laws when U.S. consumers are involved.

Finally, the FTC itself has recognized the value of respecting stringent international data privacy laws. See PRELIMINARY F.T.C. STAFF REPORT, PROTECTING CONSUMER PRIVACY IN AN ERA OF RAPID CHANGE: A PROPOSED FRAMEWORK FOR BUSINESSES AND POLICYMAKERS, at 17-19 (2010). In fact, the FTC has brought numerous Section 5 enforcement actions against companies that violate the self-regulating “U.S.-EU Safe Harbor Framework,” which requires companies to comply with European data privacy standards if they wish “to transfer personal data from Europe to the United States.” *Id.* at 18 (cataloguing cases). The FTC should not now undermine its own role in enforcing such transnational agreements by forcing Western Union to violate foreign laws.

### **III. SPECIFICATION NO. 2 IS UNREASONABLE BECAUSE OF ITS SCOPE AND THE FTC’S REFUSAL TO HONOR VALID CONFIDENTIALITY CONCERNS**

#### **A. The Monitor’s Reports and Related Materials Are Irrelevant to the FTC’s Allegations of Consumer Fraud**

The FTC’s demand for the Monitor’s materials is unreasonable and cannot be enforced. The MEL focuses on Western Union’s AML program, *not* its anti-fraud efforts. Nothing in the Arizona litigation or the Monitor’s activities address consumer fraud or telemarketing practices; instead, the Western Union-Arizona settlement is designed to combat human and drug trafficking occurring in the southwest region of the U.S. Thus, the goal of the engagement is to “confirm[] that Western Union has implemented the Recommendations required under this [MEL] and that [its] Program is reasonably designed and executed to detect and prevent money laundering in the

Southwest Border Area.” (Ex. B at 1.) According to the Settlement Agreement, the parties’ “common goal” is to “combat[] money laundering activities in the Southwest Border Area.” (Ex. C at ¶¶ 5, 10 (noting that the parties “believe that the Southwest Border Area poses special money laundering risks associated with criminal activity by drug, human, and weapons smuggling organizations”).) Thus, Western Union agreed to “full compliance with applicable state law and the Bank Secrecy Act and all of its implementing regulations with respect to the Southwest Border Area.” (*Id.* at ¶ 19.) There is no mention of consumer protection laws or programs.

The FTC is simply not investigating such border crimes; indeed, the DOJ, not the FTC, enforces U.S. AML laws. Apparently recognizing the challenge this presents in justifying a demand for the Monitor materials, in a declaration supporting the Arizona AG’s application in state court, David O’Toole, the FTC’s counsel, claimed that the Monitor materials were relevant because they might “provide insight into how WU complies with applicable laws and consent agreements.” (Ex. I at ¶ 22.) That is not remotely a proper basis for a CID. *See, e.g., EEOC v. ABM Janitorial-Midwest, Inc.*, 671 F. Supp.2d 999, 1003 (N.D. Ill. 2009) (relevancy requirement is an “indication of a realistic expectation rather than an idle hope that something may be discovered” and “is designed to prevent fishing expeditions” (quotations omitted)).

For his part, the Arizona AG believes the Monitor materials “will further [the FTC]’s understandings of the money transmitter industry and to further [its] respective enforcement goals.” (Ex. E at 2.) A CID, however, should not be used as a tutorial. *See Foremost-McKesson, Inc.*, 1981 WL 2029, at \*4 (FTC Improvements Act of 1980 “is designed to prevent fishing expeditions undertaken merely to satisfy [the FTC]’s ‘official curiosity’” (quotations omitted)). Nor do generic references to “enforcement goals” satisfy the reasonableness

requirement. *See Morton Salt Co.*, 338 U.S. at 652. Specification No. 1 is overbroad and unreasonable on its face.

**B. The FTC Should Respect the State Court's Decisions Regarding Documents that the Court Ordered Be Created.**

Even if the Monitor's reports and related documents are relevant to the FTC's investigation, those materials are subject to court-imposed confidentiality restrictions. The FTC should not be able to circumvent the Arizona state court's Order simply by demanding the same information through a CID. *See EEOC v. Morgan Stanley & Co.*, 132 F. Supp.2d 146, 160 (S.D.N.Y. 2000) (“[I]t would be particularly unseemly to allow the EEOC to escape the rigors of a protective order entered in one case by seeking the same protected documents in a different case.”).

As the Arizona court found, the Monitor materials that the FTC demands—the reports, as well as Western Union's communications with the Monitor—would not even exist *but for* the Settlement Agreement. (Ex. G at 3.) In similar circumstances, courts have refused to order disclosure. *See U.S. v. Bleznak*, 153 F.3d 16, 19 (2d Cir. 1998) (rejecting plaintiffs' efforts to obtain audio tapes from a phone monitoring system which defendant-traders agreed to install as part of a settlement of prior litigation and noting that without strict assurances of confidentiality made to defendants as part of the settlement, “there would be no consent decree and that, without the consent decree, there would be no tapes”); *see also McCoo v. Denny's, Inc.*, 2000 WL 156824, at \*3 (D. Kan.) (denying motion to compel because “any document that is subject to the confidentiality provisions of the Consent Decree and Stipulation and would not have come into existence but for the existence of the Consent Decree should be shielded from discovery”).

The Arizona court acknowledged that strict confidentiality protections were a material inducement for Western Union to enter into the Settlement Agreement. (*Supra* at 7-8.) If

confidential documents could later be used against the settling party in another proceeding, parties would hesitate to enter such negotiations, undermining the public policy in favor of settlements. *See Goodyear Tire & Rubber Co. v. Chiles Power Supply, Inc.*, 332 F.3d 976, 980 (6th Cir. 2003) (parties “are unlikely to propose the types of compromises that most effectively lead to settlement unless they are confident that their proposed solutions cannot be used ... by some ... third party”); *Patterson v. Newspaper & Mail Deliverers’ Union of N.Y.*, 514 F.2d 767, 771 (2d Cir. 1975) (“the clear policy in favor of encouraging settlements must also be taken into account, particularly in an area where voluntary compliance by the parties over an extended period will contribute significantly toward ultimate achievement of statutory goals” (internal citation omitted)).

Here, the FTC has provided no valid justification for overcoming the court-imposed confidentiality restrictions on the Monitor’s reports and related materials. Notably, the FTC has neither appeared before the Arizona state court at any hearing nor sought to intervene in the state court action. The latter would be the appropriate procedure, but the FTC has not sought to do so. Finally, even were the FTC able to persuade the judge to permit access to the Monitor reports and related materials, the FTC should be subject to the same confidentiality measures that bind the parties to the Settlement Agreement.<sup>7</sup> But, explained above, the FTC has failed to establish its entitlement to such confidential and sensitive materials.

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<sup>7</sup> Courts have discretion to condition enforcement of administrative subpoenas on appropriate confidentiality measures. “Since the enforcement of a subpoena is an independent judicial action, and not merely an action ancillary to an earlier agency action, a court is free to change the terms of an agency subpoena as it sees fit.” *U.S. v. Exxon Corp.*, 628 F.2d 70, 77 (D.C. Cir. 1980) (enforcing subpoena subject to “the precise terms of a protective order”). “It therefore necessarily falls within the Court’s discretion to provide additional confidentiality protections beyond those offered by the agency when it concludes that the agency ... has not provided safeguards sufficient to protect the interests of those at risk.” *Adair v. Rose Law Firm*, 867 F. Supp. 1111, 1119 (D.D.C. 1994); see also *EEOC v. C&P Tel. Co.*, 813 F. Supp. 874, 876

**CONCLUSION**

For the foregoing reasons, Western Union respectfully requests that the FTC quash the CIDs served on the company and the court Monitor.

January 31, 2013

RESPECTFULLY SUBMITTED

By 

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(D.D.C. 1993) (“A court may ... impose various conditions on the disclosure of confidential information to an administrative agency.”).

**CERTIFICATE OF SERVICE**

I certify that, on January 31, 2013, I caused the original and twelve (12) copies of The Western Union Company's Petition to Quash Civil Investigative Demands to be hand-delivered to the Secretary of the Federal Trade Commission at the following address:

Federal Trade Commission  
600 Pennsylvania Avenue, NW, H-113  
Washington, D.C. 20580

I also certify that, on January 31, 2013, I mailed a copy of The Western Union Company's Petition to Quash Civil Investigative Demands, via first class U.S. mail, to the following address:

David A. O'Toole  
Federal Trade Commission, Midwest Region  
55 W. Monroe Street, Suite 1825  
Chicago, IL 60603

Lonnie Keene, Monitor  
State of Arizona v. Western Union Financial Services, Inc.  
Keene Consulting Arizona, LLC  
P.O. Box 270  
New York, NY 10021

  
\_\_\_\_\_  
Mary Sherman  
Legal Assistant

### CERTIFICATION OF GOOD FAITH CONFERENCE

Pursuant to 16 C.F.R. § 2.7(d)(2), in a good faith effort to resolve by agreement the issues raised by this Petition, Western Union and its counsel (David Fallek, Associate General Counsel for Western Union, and Lydia Parnes, Wilson Sonsini Goodrich and Rosati) conferred by telephone with counsel for the Commission: (1) David A. O'Toole on December 21, 2012 beginning at 11:15 a.m. ET; and (2) Todd Kossow and Karen Dodge on January 22, 2013 beginning at 2:00 p.m. ET and on January 29, 2013 beginning at 1:00 p.m. ET. Despite these efforts, the parties were unable to reach agreement.

**Specification no. 1.** Well before the FTC issued the CID, and in an effort to assist the FTC with its investigation of telemarketers and others engaged in fraud, Western Union voluntarily began producing voluminous data regarding customer complaints of fraud-induced money transfers sent and/or received in the U.S., which comprise nearly 90 percent of the total number of such complaints. Western Union has continued to do so, and remains prepared to produce documents relating to fraud complaints that relate in some material way to U.S. consumers. While the parties were conferring about Specification no. 1, they discussed the impact of foreign privacy laws on the production of foreign complaint data and whether the data could be produced without personal information about senders and receivers. Western Union was looking into those issues when the FTC told Western Union that it would not extend the deadline for filing a petition to quash. In all events, the FTC, clearly lacks jurisdiction over money transfers conducted between two foreign countries and wholly outside of the U.S.

**Specification no. 2.** Western Union proposed producing Monitor reports subject to a confidentiality agreement, which would prohibit the FTC from using those materials in court or administrative proceedings. The FTC proposed giving Western Union 10 days' notice before filing the Monitor's reports in any such proceeding, which, in the FTC's view, would allow

Western Union to seek a protective order. In response, Western Union proposed that if the FTC wants to file Monitor reports in a judicial or administrative proceeding, it do so under seal. The FTC rejected that proposal.

As part of the confidentiality agreement, Western Union also proposed that the FTC not disclose that it has possession of the Monitor reports, to minimize the possibility that other agencies or authorities with no connection to the FTC's investigation might request those sensitive documents from the FTC, bypassing the Arizona court and avoiding its confidentiality orders. The FTC refused that proposal as well.

The FTC contends that documents related to communications with the Monitor (i.e., any document other than the reviews themselves) are not entitled to any confidentiality protection. Western Union disagrees. However, the FTC said that if the parties could reach an agreement on the production of the Monitor reports, it would defer production of and deadlines for Western Union to challenge the FTC's request for the "related to" documents.

To facilitate informal resolution of the parties' dispute, the FTC granted an extension until January 31, 2013, for the filing of a petition to quash. In light of the continuing discussions between Western Union and the FTC, Western Union requested a further extension. The FTC rejected that request and, as a result, Western Union had no choice but to file this Petition to Quash.

Date: January 31, 2013



David Fallek, Associate General Counsel  
The Western Union Company

**Exhibit A**



### CIVIL INVESTIGATIVE DEMAND

1. TO

Western Union Company  
12500 E. Belford Ave., M21A2  
Englewood, CO 80112

This demand is issued pursuant to Section 20 of the Federal Trade Commission Act, 15 U.S.C. § 57b-1, in the course of an investigation to determine whether there is, has been, or may be a violation of any laws administered by the Federal Trade Commission by conduct, activities or proposed action as described in Item 3.

2. ACTION REQUIRED

You are required to appear and testify.

LOCATION OF HEARING

YOUR APPEARANCE WILL BE BEFORE

DATE AND TIME OF HEARING OR DEPOSITION

You are required to produce all documents described in the attached schedule that are in your possession, custody, or control, and to make them available at your address indicated above for inspection and copying or reproduction at the date and time specified below.

You are required to answer the interrogatories or provide the written report described on the attached schedule. Answer each interrogatory or report separately and fully in writing. Submit your answers or report to the Records Custodian named in Item 4 on or before the date specified below.

DATE AND TIME THE DOCUMENTS MUST BE AVAILABLE

DEC 27 2012

3. SUBJECT OF INVESTIGATION

See attached resolution

4. RECORDS CUSTODIAN/DEPUTY RECORDS CUSTODIAN

C. Steven Baker, Regional Director (Custodian)  
Douglas M. McKenney, Investigator (Deputy)  
Federal Trade Commission, Midwest Region  
55 W. Monroe Street, Suite 1825, Chicago, IL 60603

5. COMMISSION COUNSEL

David A. O'Toole - 312.960.5601  
Federal Trade Commission, Midwest Region  
55 W. Monroe Street, Suite 1825, Chicago, IL 60603

DATE ISSUED

12/12/12

COMMISSIONER'S SIGNATURE

INSTRUCTIONS AND NOTICES

The delivery of this demand to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply. The production of documents or the submission of answers and report in response to this demand must be made under a sworn certificate, in the form printed on the second page of this demand, by the person to whom this demand is directed or, if not a natural person, by a person or persons having knowledge of the facts and circumstances of such production or responsible for answering each interrogatory or report question. This demand does not require approval by OMB under the Paperwork Reduction Act of 1980.

PETITION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any petition to limit or quash this demand be filed within 20 days after service, or, if the return date is less than 20 days after service, prior to the return date. The original and twelve copies of the petition must be filed with the Secretary of the Federal Trade Commission, and one copy should be sent to the Commission Counsel named in Item 5.

YOUR RIGHTS TO REGULATORY ENFORCEMENT FAIRNESS

The FTC has a longstanding commitment to a fair regulatory enforcement environment. If you are a small business (under Small Business Administration standards), you have a right to contact the Small Business Administration's National Ombudsman at 1-888-REGFAIR (1-888-734-3247) or [www.sba.gov/ombudsman](http://www.sba.gov/ombudsman) regarding the fairness of the compliance and enforcement activities of the agency. You should understand, however, that the National Ombudsman cannot change, stop, or delay a federal agency enforcement action.

The FTC strictly forbids retaliatory acts by its employees, and you will not be penalized for expressing a concern about these activities.

TRAVEL EXPENSES

Use the enclosed travel voucher to claim compensation to which you are entitled as a witness for the Commission. The completed travel voucher and this demand should be presented to Commission Counsel for payment. If you are permanently or temporarily living somewhere other than the address on this demand and it would require excessive travel for you to appear, you must get prior approval from Commission Counsel.

A copy of the Commission's Rules of Practice is available online at <http://bit.ly/FTCRulesofPractice>. Paper copies are available upon request.

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## Form of Certificate of Compliance\*

---

I/We do certify that all of the documents and information required by the attached Civil Investigative Demand which are in the possession, custody, control, or knowledge of the person to whom the demand is directed have been submitted to a custodian named herein.

If a document responsive to this Civil Investigative Demand has not been submitted, the objections to its submission and the reasons for the objection have been stated.

If an interrogatory or a portion of the request has not been fully answered or a portion of the report has not been completed, the objections to such interrogatory or uncompleted portion and the reasons for the objections have been stated.

Signature \_\_\_\_\_

Title \_\_\_\_\_

Sworn to before me this day

\_\_\_\_\_

\_\_\_\_\_  
Notary Public

\_\_\_\_\_

\*In the event that more than one person is responsible for complying with this demand, the certificate shall identify the documents for which each certifying individual was responsible. In place of a sworn statement, the above certificate of compliance may be supported by an unsworn declaration as provided for by 28 U.S.C. § 1746.

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS:

Jon Leibowitz, Chairman  
William E. Kovacic  
J. Thomas Rosch  
Edith Ramirez  
Julie Brill

RESOLUTION DIRECTING USE OF COMPULSORY PROCESS IN A NONPUBLIC  
INVESTIGATION OF TELEMARKETERS, SELLERS, SUPPLIERS, OR OTHERS

File No. 0123145

Nature and Scope of Investigation:

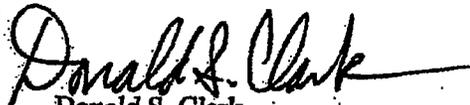
To determine whether unnamed telemarketers, sellers, or others assisting them have engaged or are engaging in: (1) unfair or deceptive acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45 (as amended); and/or (2) deceptive or abusive telemarketing acts or practices in violation of the Commission's Telemarketing Sales Rule, 16 C.F.R. pt 310 (as amended), including but not limited to the provision of substantial assistance or support — such as mailing lists, scripts, merchant accounts, and other information, products, or services — to telemarketers engaged in unlawful practices. The investigation is also to determine whether Commission action to obtain redress for injury to consumers or others would be in the public interest.

The Federal Trade Commission hereby resolves and directs that any and all compulsory processes available to it be used in connection with this investigation for a period not to exceed five years from the date of issuance of this resolution. The expiration of this five-year period shall not limit or terminate the investigation or the legal effect of any compulsory process issued during the five-year period. The Federal Trade Commission specifically authorizes the filing or continuation of actions to enforce any such compulsory process after the expiration of the five-year period.

Authority to Conduct Investigation:

Sections 6, 9, 10, and 20 of the Federal Trade Commission Act, 15 U.S.C. §§ 46, 49, 50, 57b-1 (as amended); and FTC Procedures and Rules of Practice, 16 C.F.R. §§ 1.1 *et seq.* and supplements thereto.

By direction of the Commission.

  
Donald S. Clark  
Secretary

Issued: April 11, 2011

**CIVIL INVESTIGATIVE DEMAND  
Schedule for Documentary Materials**

**I. DEFINITIONS**

As used in this Civil Investigative Demand, the following definitions shall apply:

A. **“And,”** as well as **“or,”** shall be construed both conjunctively and disjunctively, as necessary, in order to bring within the scope of any specification in this Schedule all information that otherwise might be construed to be outside the scope of the specification.

B. **“Any”** shall be construed to include **“all,”** and **“all”** shall be construed to include the word **“any.”**

C. **“CID”** shall mean the Civil Investigative Demand, including the attached Resolution and this Schedule, and including the Definitions, Instructions, and Specifications.

D. **“Document”** shall mean the complete original and any non-identical copy (whether different from the original because of notations on the copy or otherwise), regardless of origin or location, of any written, typed, printed, transcribed, filmed, punched, or graphic matter of every type and description, however and by whomever prepared, produced, disseminated or made, including but not limited to any advertisement, book, pamphlet, periodical, contract, correspondence, file, invoice, memorandum, note, telegram, report, record, handwritten note, working paper, routing slip, chart, graph, paper, index, map, tabulation, manual, guide, outline, script, abstract, history, calendar, diary, agenda, minute, code book or label. **“Document” shall also include Electronically Stored Information.**

E. **“Each”** shall be construed to include **“every,”** and **“every”** shall be construed to include **“each.”**

F. **“Electronically Stored Information”** or **“ESI”** shall mean the complete original and any non-identical copy (whether different from the original because of notations, different metadata, or otherwise), regardless of origin or location, of any information created, manipulated, communicated, stored, or utilized in digital form, requiring the use of computer hardware or software. This includes, but is not limited to, electronic mail, instant messaging, videoconferencing, and other electronic correspondence (whether active, archived, or in a deleted items folder), word processing files, spreadsheets, databases, and video and sound recordings, whether stored on: cards; magnetic or electronic tapes; disks; computer hard drives, network shares or servers, or other drives; cloud-based platforms; cell phones, PDAs, computer tablets, or other mobile devices; or other storage media. **“ESI”** also includes such technical assistance or instructions as will enable conversion of such ESI into a reasonably usable form.

G. **“FTC”** or **“Commission”** shall mean the Federal Trade Commission.

H. **“Referring to”** or **“relating to”** shall mean discussing, describing, reflecting, containing,

analyzing, studying, reporting, commenting, evidencing, constituting, setting forth, considering, recommending, concerning, or pertaining to, in whole or in part.

I. **“Western Union”** shall mean the **Western Union Company**, its wholly or partially owned subsidiaries, unincorporated divisions, joint ventures, operations under assumed names, and affiliates, and all directors, officers, employees, agents, consultants, and other persons working for or on behalf of the foregoing.

J. **“You”** and **“Your”** shall mean the person or entity to whom this CID is issued, and includes Western Union.

## II. INSTRUCTIONS

A. **Sharing of Information:** The Commission often makes its files available to other civil and criminal federal, state, local, or foreign law enforcement agencies. The Commission may make information supplied by you available to such agencies where appropriate pursuant to the Federal Trade Commission Act and 16 C.F.R. § 4.11 (e) and (j). Information you provide may be used in any federal, state, or foreign civil or criminal proceeding by the Commission or other agencies.

B. **Meet and Confer:** You must contact David A. O’Toole at 312.960.5601 as soon as possible to schedule a meeting (telephonic or in person) to be held within ten (10) days after receipt of this CID in order to confer regarding your response, including but not limited to a discussion of the submission of Electronically Stored Information and other electronic productions as described in these Instructions.

C. **Applicable time period:** Unless otherwise directed in the specifications, the applicable time period for the request shall be from January 1, 2011 until the date of full and complete compliance with this CID.

D. **Claims of Privilege:** If any material called for by this CID is withheld based on a claim of privilege or any similar claim, the claim must be asserted no later than the return date of this CID. In addition, pursuant to 16 C.F.R. § 2.8A(a), submit, together with the claim, a schedule of the items withheld, stating individually as to each item:

1. the type, specific subject matter, date, and number of pages of the item;
2. the names, addresses, positions, and organizations of all authors and recipients of the item; and
3. the specific grounds for claiming that the item is privileged.

If only some portion of any responsive material is privileged, all non-privileged portions of the material must be submitted. A petition to limit or quash this CID shall not be filed solely for the purpose of asserting a claim of privilege. 16 C.F.R. § 2.8A(b).

E. **Document Retention:** You shall retain all documentary materials used in the preparation of responses to the specifications of this CID. The Commission may require the submission of additional documents at a later time during this investigation. Accordingly, you should suspend any routine procedures for document destruction and take other measures to prevent the destruction of documents that are in any way relevant to this investigation during its pendency, irrespective of whether you believe such documents are protected from discovery by privilege or otherwise. See 15 U.S.C. § 50; see also 18 U.S.C. §§ 1505, 1519.

F. **Petitions to Limit or Quash:** Any petition to limit or quash this CID must be filed with the Secretary of the Commission no later than twenty (20) days after service of the CID, or, if the return date is less than twenty (20) days after service, prior to the return date. Such petition shall set forth all assertions of privilege or other factual and legal objections to the CID, including all appropriate arguments, affidavits, and other supporting documentation. 16 C.F.R. § 2.7(d).

G. **Modification of Specifications:** If you believe that the scope of the required search or response for any specification can be narrowed consistent with the Commission's need for documents or information, you are encouraged to discuss such possible modifications, including any modifications of definitions and instructions, with David A. O'Toole at 312.960.5601. All such modifications must be agreed to in writing by an Associate Director, Regional Director, or Assistant Regional Director. 16 C.F.R. § 2.7(c).

H. **Certification:** A responsible corporate officer shall certify that the response to this CID is complete. This certification shall be made in the form set out on the back of the CID form, or by a declaration under penalty of perjury as provided by 28 U.S.C. § 1746.

I. **Scope of Search:** This CID covers documents and information in your possession or under your actual or constructive custody or control including, but not limited to, documents and information in the possession, custody, or control of your attorneys, accountants, directors, officers, employees, and other agents and consultants, whether or not such documents and information were received from or disseminated to any person or entity.

J. **Document Production:** You shall produce the documentary material by making all responsive documents available for inspection and copying at your principal place of business. Alternatively, you may elect to send all responsive documents to Douglas M. McKenney, Federal Trade Commission, Midwest Region, 55 W. Monroe St., Suite 1825, Chicago, IL 60603. Notice of your intended method of production shall be given by email or telephone to Douglas M. McKenney at 312.960.5634 at least five days prior to the return date.

K. **Document Identification:** Documents that may be responsive to more than one specification of this CID need not be submitted more than once; however, your response should indicate, for each document submitted, each specification to which the document is responsive. If any documents responsive to this CID have been previously supplied to the Commission, you may comply with this CID by identifying the document(s) previously provided and the date of submission. Documents should be produced in the order in which they appear in your files or as

electronically stored and without being manipulated or otherwise rearranged; if documents are removed from their original folders, binders, covers, containers, or electronic source in order to be produced, then the documents shall be identified in a manner so as to clearly specify the folder, binder, cover, container, or electronic media or file paths from which such documents came. In addition, number by page (or file, for those documents produced in native electronic format) all documents in your submission, preferably with a unique Bates identifier, and indicate the total number of documents in your submission.

L. **Production of Copies:** Unless otherwise stated, legible photocopies (or electronically rendered images or digital copies of native electronic files) may be submitted in lieu of original documents, provided that the originals are retained in their state at the time of receipt of this CID. Further, copies of originals may be submitted in lieu of originals only if they are true, correct, and complete copies of the original documents; provided, however, that submission of a copy shall constitute a waiver of any claim as to the authenticity of the copy should it be necessary to introduce such copy into evidence in any Commission proceeding or court of law; and provided further that you shall retain the original documents and produce them to Commission staff upon request. Copies of marketing materials and advertisements shall be produced in color, and copies of other materials shall be produced in color if necessary to interpret them or render them intelligible.

M. **Electronic Submission of Documents:** The following guidelines refer to the production of any Electronically Stored Information ("ESI") or digitally imaged hard copy documents. Before submitting any electronic production, You must confirm with the Commission counsel named above that the proposed formats and media types will be acceptable to the Commission. The FTC requests. Concordance load-ready electronic productions, including DAT and OPT load files.

(1) **Electronically Stored Information:** Documents created, utilized, or maintained in electronic format in the ordinary course of business should be delivered to the FTC as follows:

(a) Spreadsheet and presentation programs, including but not limited to Microsoft Access, SQL, and other databases, as well as Microsoft Excel and PowerPoint files, must be produced in native format with extracted text and metadata. Data compilations in Excel spreadsheets, or in delimited text formats, must contain all underlying data un-redacted with all underlying formulas and algorithms intact. All database productions (including structured data document systems) must include a database schema that defines the tables, fields, relationships, views, indexes, packages, procedures, functions, queues, triggers, types, sequences, materialized views, synonyms, database links, directories, Java, XML schemas, and other elements, including the use of any report writers and custom user data interfaces;

(b) All ESI other than those documents described in (1)(a) above must be provided in native electronic format with extracted text or Optical Character

Recognition (OCR) and all related metadata, and with corresponding image renderings as converted to Group IV, 300 DPI, single-page Tagged Image File Format (TIFF) or as color JPEG images (where color is necessary to interpret the contents);

(c) Each electronic file should be assigned a unique document identifier ("DocID") or Bates reference.

(2) **Hard Copy Documents:** Documents stored in hard copy in the ordinary course of business should be submitted in an electronic format when at all possible. These documents should be true, correct, and complete copies of the original documents as converted to TIFF (or color JPEG) images with corresponding document-level OCR text. Such a production is subject to the following requirements:

(a) Each page shall be endorsed with a document identification number (which can be a Bates number or a document control number); and

(b) Logical document determination should be clearly rendered in the accompanying load file and should correspond to that of the original document; and

(c) Documents shall be produced in color where necessary to interpret them or render them intelligible;

(3) For each document electronically submitted to the FTC, You should include the following metadata fields in a standard ASCII delimited Concordance DAT file:

(a) **For electronic mail:** begin Bates or unique document identification number ("DocID"), end Bates or DocID, mail folder path (location of email in personal folders, subfolders, deleted or sent items), custodian, from, to, cc, bcc, subject, date and time sent, date and time received, and complete attachment identification, including the Bates or DocID of the attachments (AttachIDs) delimited by a semicolon, MD5 or SHA Hash value, and link to native file;

(b) **For email attachments:** begin Bates or DocID, end Bates or DocID, parent email ID (Bates or DocID), page count, custodian, source location/file path, file name, file extension, file size, author, date and time created, date and time modified, date and time printed, MD5 or SHA Hash value, and link to native file;

(c) **For loose electronic documents (as retrieved directly from network file stores, hard drives, etc.):** begin Bates or DocID, end Bates or DocID, page count, custodian, source media, file path, filename, file extension, file size, author, date and time created, date and time modified, date and time printed, MD5 or SHA Hash value, and link to native file;

(d) **For imaged hard copy documents:** begin Bates or DocID, end Bates or DocID, page count, source, and custodian; and where applicable, file folder name, binder name, attachment range, or other such references, as necessary to understand the context of the document as maintained in the ordinary course of business.

(4) If You intend to utilize any de-duplication or email threading software or services when collecting or reviewing information that is stored in Your computer systems or electronic storage media, or if Your computer systems contain or utilize such software, You must contact the Commission counsel named above to determine whether and in what manner You may use such software or services when producing materials in response to this Request.

(5) Submit electronic productions as follows:

(a) With passwords or other document-level encryption removed or otherwise provided to the FTC;

(b) As uncompressed electronic volumes on size-appropriate, Windows-compatible, media;

(c) All electronic media shall be scanned for and free of viruses;

(d) Data encryption tools may be employed to protect privileged or other personal or private information. The FTC accepts TrueCrypt, PGP, and SecureZip encrypted media. The passwords should be provided in advance of delivery, under separate cover. Alternate means of encryption should be discussed and approved by the FTC.

(e) Please mark the exterior of all packages containing electronic media sent through the U.S. Postal Service or other delivery services as follows:

**MAGNETIC MEDIA – DO NOT X-RAY  
MAY BE OPENED FOR POSTAL INSPECTION.**

(6) All electronic files and images shall be accompanied by a production transmittal letter which includes:

(a) A summary of the number of records and all underlying images, emails, and associated attachments, native files, and databases in the production; and

(b) An index that identifies the corresponding consecutive document identification number(s) used to identify each person's documents and, if submitted in paper form, the box number containing such documents. If the index exists as a computer file(s), provide the index both as a printed hard copy and in

machine-readable form (provided that the Commission counsel named above determines prior to submission that the machine-readable form would be in a format that allows the agency to use the computer files). The Commission counsel named above will provide a sample index upon request.

**A Bureau of Consumer Protection Production Guide is available upon request from the Commission counsel named above. This guide provides detailed directions on how to fully comply with this instruction.**

**N. Sensitive Personally Identifiable Information:** If any material called for by these requests contains sensitive personally identifiable information or sensitive health information of any individual, please contact us before sending those materials to discuss whether it would be appropriate to redact the sensitive information. If that information will not be redacted, contact us to discuss encrypting any electronic copies of such material with encryption software such as SecureZip and provide the encryption key in a separate communication.

For purposes of these requests, sensitive personally identifiable information includes: an individual's Social Security number alone; or an individual's name or address or phone number in combination with one or more of the following: date of birth, Social Security number, driver's license number or other state identification number, or a foreign country equivalent, passport number, financial account number, credit card number, or debit card number. Sensitive health information includes medical records and other individually identifiable health information relating to the past, present, or future physical or mental health or conditions of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual.

**O. Information Identification:** Each specification of this CID shall be answered separately and fully in writing under oath. All information submitted shall be clearly and precisely identified as to the specification(s) or subspecification(s) to which it is responsive.

**P. Certification of Records of Regularly Conducted Activity:** Attached is a Certification of Records of Regularly Conducted Activity, which may reduce the need to subpoena the Company to testify at future proceedings in order to establish the admissibility of documents produced in response to this CID. You are asked to execute this Certification and provide it with your response.

### **III. SPECIFICATIONS FOR DOCUMENTARY MATERIALS**

Produce the following documents:

1. Complaints Regarding Fraud-Induced Money Transfers: All documents referring or relating to complaints made to Western Union by consumers anywhere in the world, referring or relating to fraud-induced money transfers.
2. Communications with Court-appointed Monitor: All documents referring or relating to

communications with the Monitor appointed by the court in *State of Arizona ex rel. Horne v. Western Union Financial Services, Inc.*, No. CV 2010-005807, including, but not limited to, all information Western Union provided to the Monitor, and any reports, reviews, or other documents prepared by the Monitor, including any drafts of such documents.

**NOTE: The documents demanded by this CID exclude any information for which prior customer notice is required under the Right to Financial Privacy Act, 12 U.S.C. § 3401, et seq. Documents produced should not contain any additional information. If you have any questions about these requests, please contact FTC staff attorney David A. O'Toole at 312.960.5601 before providing responsive documents.**

**CERTIFICATION OF RECORDS OF REGULARLY CONDUCTED ACTIVITY**

**Pursuant to 28 U.S.C. § 1746**

1. I, \_\_\_\_\_, have personal knowledge of the facts set forth below and am competent to testify as follows:
2. I have authority to certify the authenticity of the records produced by Western Union, and attached hereto.
3. The documents produced and attached hereto by Western Union, are originals or true copies of records of regularly conducted activity that:
  - a) Were made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of those matters;
  - b) Were kept in the course of the regularly conducted activity of Western Union; and
  - c) Were made by the regularly conducted activity as a regular practice of Western Union.

I certify under penalty of perjury that the foregoing is true and correct.

Executed on \_\_\_\_\_, 2012.

\_\_\_\_\_  
Signature



United States of America  
Federal Trade Commission

**CIVIL INVESTIGATIVE DEMAND**

1. TO

Lonnie Keene, Monitor  
State of Arizona vs. Western Union Financial Services, Inc.  
Keene Consulting Arizona, LLC  
P.O. Box 270, New York, NY 10021

This demand is issued pursuant to Section 20 of the Federal Trade Commission Act, 15 U.S.C. § 57b-1, in the course of an investigation to determine whether there is, has been, or may be a violation of any laws administered by the Federal Trade Commission by conduct, activities or proposed action as described in Item 3.

2. ACTION REQUIRED

You are required to appear and testify.

LOCATION OF HEARING	YOUR APPEARANCE WILL BE BEFORE
	DATE AND TIME OF HEARING OR DEPOSITION

You are required to produce all documents described in the attached schedule that are in your possession, custody, or control, and to make them available at your address indicated above for inspection and copying or reproduction at the date and time specified below.

You are required to answer the interrogatories or provide the written report described on the attached schedule. Answer each interrogatory or report separately and fully in writing. Submit your answers or report to the Records Custodian named in Item 4 on or before the date specified below.

DATE AND TIME THE DOCUMENTS MUST BE AVAILABLE

**NOV 20 2012**

3. SUBJECT OF INVESTIGATION

See attached resolution

4. RECORDS CUSTODIAN/DEPUTY RECORDS CUSTODIAN

C. Steven Baker, Regional Director (Custodian)  
Douglas M. McKenney, Investigator (Deputy)  
Federal Trade Commission, Midwest Region  
55 W. Monroe Street, Suite 1825, Chicago, IL 60603

5. COMMISSION COUNSEL

David A. O'Toole - 312.960.5601  
Federal Trade Commission, Midwest Region  
55 W. Monroe Street, Suite 1825, Chicago, IL 60603

DATE ISSUED

11/5/12

COMMISSIONER'S SIGNATURE

*David A. O'Toole*

**INSTRUCTIONS AND NOTICES**

The delivery of this demand to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply. The production of documents or the submission of answers and report in response to this demand must be made under a sworn certificate, in the form printed on the second page of this demand, by the person to whom this demand is directed or, if not a natural person, by a person or persons having knowledge of the facts and circumstances of such production or responsible for answering each interrogatory or report question. This demand does not require approval by OMB under the Paperwork Reduction Act of 1980.

**PETITION TO LIMIT OR QUASH**

The Commission's Rules of Practice require that any petition to limit or quash this demand be filed within 20 days after service, or, if the return date is less than 20 days after service, prior to the return date. The original and twelve copies of the petition must be filed with the Secretary of the Federal Trade Commission, and one copy should be sent to the Commission Counsel named in Item 5.

**YOUR RIGHTS TO REGULATORY ENFORCEMENT FAIRNESS**

The FTC has a longstanding commitment to a fair regulatory enforcement environment. If you are a small business (under Small Business Administration standards), you have a right to contact the Small Business Administration's National Ombudsman at 1-888-REGFAIR (1-888-734-3247) or [www.sba.gov/ombudsman](http://www.sba.gov/ombudsman) regarding the fairness of the compliance and enforcement activities of the agency. You should understand, however, that the National Ombudsman cannot change, stop, or delay a federal agency enforcement action.

The FTC strictly forbids retaliatory acts by its employees, and you will not be penalized for expressing a concern about these activities.

**TRAVEL EXPENSES**

Use the enclosed travel voucher to claim compensation to which you are entitled as a witness for the Commission. The completed travel voucher and this demand should be presented to Commission Counsel for payment. If you are permanently or temporarily living somewhere other than the address on this demand and it would require excessive travel for you to appear, you must get prior approval from Commission Counsel.

A copy of the Commission's Rules of Practice is available online at <http://ftl.ftl.gov/FTCRulesofPractice>. Paper copies are available upon request.

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**Form of Certificate of Compliance\***

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I/We do certify that all of the documents and information required by the attached Civil Investigative Demand which are in the possession, custody, control, or knowledge of the person to whom the demand is directed have been submitted to a custodian named herein.

If a document responsive to this Civil Investigative Demand has not been submitted, the objections to its submission and the reasons for the objection have been stated.

If an interrogatory or a portion of the request has not been fully answered or a portion of the report has not been completed, the objections to such interrogatory or uncompleted portion and the reasons for the objections have been stated.

Signature \_\_\_\_\_

Title \_\_\_\_\_

Sworn to before me this day

\_\_\_\_\_  
\_\_\_\_\_  
Notary Public  
\_\_\_\_\_

\*In the event that more than one person is responsible for complying with this demand, the certificate shall identify the documents for which each certifying individual was responsible. In place of a sworn statement, the above certificate of compliance may be supported by an unsworn declaration as provided for by 28 U.S.C. § 1746.

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Jon Leibowitz, Chairman  
William E. Kovacic  
J. Thomas Rosch  
Edith Ramirez  
Julie Brill

RESOLUTION DIRECTING USE OF COMPULSORY PROCESS IN A NONPUBLIC  
INVESTIGATION OF TELEMARKETERS, SELLERS, SUPPLIERS, OR OTHERS

File No. 0123145

Nature and Scope of Investigation:

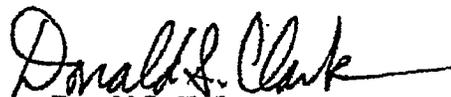
To determine whether unnamed telemarketers, sellers, or others assisting them have engaged or are engaging in: (1) unfair or deceptive acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45 (as amended); and/or (2) deceptive or abusive telemarketing acts or practices in violation of the Commission's Telemarketing Sales Rule, 16 C.F.R. pt 310 (as amended), including but not limited to the provision of substantial assistance or support — such as mailing lists, scripts, merchant accounts, and other information, products, or services — to telemarketers engaged in unlawful practices. The investigation is also to determine whether Commission action to obtain redress for injury to consumers or others would be in the public interest.

The Federal Trade Commission hereby resolves and directs that any and all compulsory processes available to it be used in connection with this investigation for a period not to exceed five years from the date of issuance of this resolution. The expiration of this five-year period shall not limit or terminate the investigation or the legal effect of any compulsory process issued during the five-year period. The Federal Trade Commission specifically authorizes the filing or continuation of actions to enforce any such compulsory process after the expiration of the five-year period.

Authority to Conduct Investigation:

Sections 6, 9, 10, and 20 of the Federal Trade Commission Act, 15 U.S.C. §§ 46, 49, 50, 57b-1 (as amended); and FTC Procedures and Rules of Practice, 16 C.F.R. §§ 1.1 *et seq.* and supplements thereto.

By direction of the Commission.

  
Donald S. Clark  
Secretary

Issued: April 11, 2011

**CIVIL INVESTIGATIVE DEMAND  
Schedule for Documentary Materials**

**I. DEFINITIONS**

As used in this Civil Investigative Demand, the following definitions shall apply:

A. "And," as well as "or," shall be construed both conjunctively and disjunctively, as necessary, in order to bring within the scope of any specification in this Schedule all information that otherwise might be construed to be outside the scope of the specification.

B. "Any" shall be construed to include "all," and "all" shall be construed to include the word "any."

C. "CID" shall mean the Civil Investigative Demand, including the attached Resolution and this Schedule, and including the Definitions, Instructions, and Specifications.

D. "Western Union" shall mean the Western Union Company or Western Union Financial Services, Inc., their wholly or partially owned subsidiaries, unincorporated divisions, joint ventures, operations under assumed names, and affiliates, and all directors, officers, employees, agents, consultants, and other persons working for or on behalf of the foregoing.

E. "Document" shall mean the complete original and any non-identical copy (whether different from the original because of notations on the copy or otherwise), regardless of origin or location, of any written, typed, printed, transcribed, filmed, punched, or graphic matter of every type and description, however and by whomever prepared, produced, disseminated or made, including but not limited to any advertisement, book, pamphlet, periodical, contract, correspondence, file, invoice, memorandum, note, telegram, report, record, handwritten note, working paper, routing slip, chart, graph, paper, index, map, tabulation, manual, guide, outline, script, abstract, history, calendar, diary, agenda, minute, code book or label.

F. "FTC" or "Commission" shall mean the Federal Trade Commission.

G. "Referring to" or "relating to" shall mean discussing, describing, reflecting, containing, analyzing, studying, reporting, commenting, evidencing, constituting, setting forth, considering, recommending, concerning, or pertaining to, in whole or in part.

H. "You" and "Your" shall mean Lonnie Keene, in his capacity as the court-appointed Monitor in the matter *State of Arizona ex rel. Attorney General Thomas C. Horne v. Western Union Financial Services, Inc.*, No. CV 2010-005807 (Ariz. Sup. Ct. Maricopa County).

**II. INSTRUCTIONS**

A. **Sharing of Information:** The Commission often makes its files available to other civil and criminal federal, state, local, or foreign law enforcement agencies. The Commission may

make information supplied by you available to such agencies where appropriate pursuant to the Federal Trade Commission Act and 16 C.F.R. § 4.11 (c) and (j). Information you provide may be used in any federal, state, or foreign civil or criminal proceeding by the Commission or other agencies.

**B. Meet and Confer:** You must contact David A. O'Toole at 312.960.5601 as soon as possible to schedule a meeting (telephonic or in person) to be held within ten (10) days after receipt of this CID in order to confer regarding your response.

**C. Applicable time period:** The applicable time period for the request shall be from January 1, 2010 until the date of full and complete compliance with this CID.

**D. Claims of Privilege:** If any material called for by this CID is withheld based on a claim of privilege or any similar claim, the claim must be asserted no later than the return date of this CID. In addition, pursuant to 16 C.F.R. § 2.8A(a), submit, together with the claim, a schedule of the items withheld, stating individually as to each item:

1. the type, specific subject matter, date, and number of pages of the item;
2. the names, addresses, positions, and organizations of all authors and recipients of the item; and
3. the specific grounds for claiming that the item is privileged.

If only some portion of any responsive material is privileged, all non-privileged portions of the material must be submitted. A petition to limit or quash this CID shall not be filed solely for the purpose of asserting a claim of privilege. 16 C.F.R. § 2.8A(b).

**E. Document Retention:** You shall retain all documentary materials used in the preparation of responses to the specification of this CID. The Commission may require the submission of additional documents at a later time during this investigation. Accordingly, you should suspend any routine procedures for document destruction and take other measures to prevent the destruction of documents that are in any way relevant to this investigation during its pendency, irrespective of whether you believe such documents are protected from discovery by privilege or otherwise. See 15 U.S.C. § 50; see also 18 U.S.C. §§ 1505, 1519.

**F. Petitions to Limit or Quash:** Any petition to limit or quash this CID must be filed with the Secretary of the Commission no later than twenty (20) days after service of the CID, or, if the return date is less than twenty (20) days after service, prior to the return date. Such petition shall set forth all assertions of privilege or other factual and legal objections to the CID, including all appropriate arguments, affidavits, and other supporting documentation. 16 C.F.R. § 2.7(d).

**G. Modification of Specifications:** If you believe that the scope of the required search or response for any specification can be narrowed consistent with the Commission's need for

documents or information, you are encouraged to discuss such possible modifications, including any modifications of definitions and instructions, with David A. O'Toole at 312.960.5601. All such modifications must be agreed to in writing by an Associate Director, Regional Director, or Assistant Regional Director. 16 C.F.R. § 2.7(c).

**H. Certification:** A responsible corporate officer shall certify that the response to this CID is complete. This certification shall be made in the form set out on the back of the CID form, or by a declaration under penalty of perjury as provided by 28 U.S.C. § 1746.

**I. Scope of Search:** This CID covers documents and information in your possession or under your actual or constructive custody or control including, but not limited to, documents and information in the possession, custody, or control of your attorneys, accountants, directors, officers, employees, and other agents and consultants, whether or not such documents and information were received from or disseminated to any person or entity.

**J. Document Production:** You shall produce the documentary material by making all responsive documents available for inspection and copying at your principal place of business. Alternatively, you may elect to send all responsive documents to Douglas M. McKenney, Federal Trade Commission, Midwest Region, 55 W. Monroe St., Suite 1825, Chicago, IL 60603. Because postal delivery to the Commission is subject to delay due to heightened security precautions, please use a courier service such as Federal Express or UPS. Notice of your intended method of production shall be given by email or telephone to Douglas M. McKenney, at 312.960.5634 at least five days prior to the return date.

**K. Production of Copies:** Unless otherwise stated, legible photocopies (or electronically rendered images or digital copies of native electronic files) may be submitted in lieu of original documents, provided that the originals are retained in their state at the time of receipt of this CID. Further, copies of originals may be submitted in lieu of originals only if they are true, correct, and complete copies of the original documents; provided, however, that submission of a copy shall constitute a waiver of any claim as to the authenticity of the copy should it be necessary to introduce such copy into evidence in any Commission proceeding or court of law; and provided further that you shall retain the original documents and produce them to Commission staff upon request. Copies of marketing materials and advertisements shall be produced in color, and copies of other materials shall be produced in color if necessary to interpret them or render them intelligible.

**L. Sensitive Personally Identifiable Information:** If any material called for by these requests contains sensitive personally identifiable information or sensitive health information of any individual, please contact us before sending those materials to discuss whether it would be appropriate to redact the sensitive information. If that information will not be redacted, contact us to discuss encrypting any electronic copies of such material with encryption software such as SecureZip and provide the encryption key in a separate communication.

For purposes of these requests, sensitive personally identifiable information includes: an individual's Social Security number alone; or an individual's name or address or phone number

in combination with one or more of the following: date of birth, Social Security number, driver's license number or other state identification number, or a foreign country equivalent, passport number, financial account number, credit card number, or debit card number. Sensitive health information includes medical records and other individually identifiable health information relating to the past, present, or future physical or mental health or conditions of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual.

M. **Certification of Records of Regularly Conducted Activity:** Attached is a Certification of Records of Regularly Conducted Activity, which may reduce the need to subpoena you to testify at future proceedings in order to establish the admissibility of documents produced in response to this CID. You are asked to execute this Certification and provide it with your response.

### III. SPECIFICATION FOR DOCUMENTARY MATERIALS

Produce the following documents:

1. Reports: All documents referring or relating to the Periodic Reviews of the Monitor appointed by the court in *State of Arizona ex rel. Horne v. Western Union Financial Services, Inc.*, No. CV 2010-005807, including, but not limited to, all drafts of any reports, reviews, or correspondence with Western Union.

**CERTIFICATION OF RECORDS OF REGULARLY CONDUCTED ACTIVITY**

Pursuant to 28 U.S.C. § 1746

1. I, \_\_\_\_\_, have personal knowledge of the facts set forth below and am competent to testify as follows:
2. I have authority to certify the authenticity of the records produced by Lonnie Keene, in his capacity as the court-appointed Monitor in the matter *State of Arizona ex rel. Attorney General Thomas C. Horne v. Western Union Financial Services, Inc.*, No. CV 2010-005807 (Ariz. Sup. Ct. Maricopa County), and attached hereto.
3. The documents produced and attached hereto by Lonnie Keene, in his capacity as the court-appointed Monitor in the matter *State of Arizona ex rel. Attorney General Thomas C. Horne v. Western Union Financial Services, Inc.*, No. CV 2010-005807 (Ariz. Sup. Ct. Maricopa County), are originals or true copies of records of regularly conducted activity that:
  - a) Were made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of those matters;
  - b) Were kept in the course of the regularly conducted activity of Lonnie Keene, in his capacity as the court-appointed Monitor in the matter *State of Arizona ex rel. Attorney General Thomas C. Horne v. Western Union Financial Services, Inc.*, No. CV 2010-005807 (Ariz. Sup. Ct. Maricopa County); and
  - c) Were made by the regularly conducted activity as a regular practice of Lonnie Keene, in his capacity as the court-appointed Monitor in the matter *State of Arizona ex rel. Attorney General Thomas C. Horne v. Western Union Financial Services, Inc.*, No. CV 2010-005807 (Ariz. Sup. Ct. Maricopa County).

I certify under penalty of perjury that the foregoing is true and correct.

Executed on \_\_\_\_\_, 2012.

\_\_\_\_\_  
Signature

**Exhibit B**

## MONITOR ENGAGEMENT LETTER

This Monitor Engagement Letter sets out the purpose and scope of the engagement of Marcy M. Forman, or such corporate entity that she may choose to create for this purpose, as court-appointed Monitor ("Monitor") for the ongoing evaluation of the Southwest Border Area anti-money laundering Program of Western Union Financial Services, Inc. ("Western Union") pursuant to that certain Settlement Agreement between Western Union and the State of Arizona ("State") dated February 11, 2010 ("Agreement"). The actions of the Monitor under this Letter shall be referred to as the "Engagement." The provisions of this Monitor Engagement Letter regarding the Monitor's authority and duties are to be broadly construed to give the Monitor independence of the parties and discretion in carrying out the Engagement, and to effectuate the goal of this engagement, namely, confirmation that Western Union has implemented the Recommendations required under this Monitor Engagement Letter and that Western Union's Program is reasonably designed and executed to detect and prevent money laundering in the Southwest Border Area.

### Background

1. Western Union offers money transfer services in over 200 countries. Accordingly, Western Union has a large and complex Bank Secrecy Act ("BSA") anti-money laundering ("AML") compliance program that spans all of its locations, including those in the Southwest Border Area as defined in the Agreement. The Southwest Border Area is the sole geographic focus of this Engagement, and references herein to the Program, as defined in Paragraph 2, refer to Western Union's AML program in the Southwest Border Area, as such program may be modified or enhanced as described herein.
2. Prior to the execution of the Agreement, Western Union provided to the State a May 8, 2009 report by an independent consulting firm evaluating Western Union's present AML program ("Report"). The Report made a number of recommendations that the consulting firm believes will further enhance Western Union's AML program. As set forth in the Agreement, Western Union has agreed to maintain its AML program for the Southwest Border Area and to implement in the Southwest Border Area additional program measures recommended by a Monitor ("Recommendations") to the extent required in this Monitor Engagement Letter. The existing program for the Southwest Border Area described in the Report and the Recommendations particular to the Southwest Border Area required in the Implementation Plan created pursuant to this Monitor Engagement Letter will be termed the "Program." To ensure that its Program adheres to the principles enunciated in the Financial Action Task Force Risk-Based Approach to Combating Money Laundering and Terrorist Financing ("FATF RBA Guidance"), to its legal obligations, to the Agreement, and to this Monitor Engagement Letter, Western Union has agreed to be overseen by an independent Monitor for a flexible period of time ending between the end of the twenty-ninth month after the Agreement is fully executed and the end of the forty-first month after the Agreement is fully executed.

**General Provisions**

3. **Hiring Authority and Compensation.** The Monitor shall have the authority to employ or contract for the services of personnel, including but not limited to legal counsel, consultants, investigators, and experts, that the Monitor deems reasonably necessary to assist in the proper discharge of the Monitor's duties as specified herein. Western Union and the State shall have the opportunity to perform routine conflicts checks on individuals or entities the Monitor proposes to engage and, within two weeks, shall advise the Monitor if any conflicts exist. The Monitor shall not engage any individual or entity as to which Western Union or the State reasonably believes a conflict of interest exists and provides a statement of reasons to that effect. Furthermore, because the number of firms capable of providing audit services to Western Union is severely limited, the Monitor shall not employ Ernst and Young, KPMG, Deloitte LLP, or PricewaterhouseCoopers without the written consent of Western Union. The reasonable compensation and expenses of the Monitor, and any persons hired or engaged by the Monitor pursuant to his or her authority under the Agreement and this Monitor Engagement Letter, shall be paid through an account as ordered by the Maricopa County Superior Court ("Court"). The Monitor shall be compensated in accordance with his or her typical hourly rate or a reasonable fee determined by the Monitor and approved by the Court, and shall proceed as described in this Court's Appointment Order. The Monitor may hire or engage personnel at their respective typical hourly rates or a reasonable fee determined by the Monitor. The Monitor and Monitor's staff shall be entitled to reimbursement for travel expenses (including airfare, car rental, hotels and meals) at their actual cost. The Monitor will ensure that travel is undertaken at reasonable facilities that are not more expensive for non-government employees than facilities customary to career government employees traveling on official business. The Monitor may also procure insurance reasonably necessary to protect the Monitor and all persons whom the Monitor shall engage from risks ordinarily insured against by professional service providers. Premiums associated with such insurance shall be reimbursed at their actual cost.

4. **No Affiliation.** The Monitor is not, and shall not be treated for any purpose as, an officer, employee, agent, or affiliate of Western Union or the State. The Monitor shall not owe any fiduciary duties or other duties or obligations of any kind to Western Union's directors, officers, employees, shareholders, bondholders, or creditors, or to the State. Neither Western Union or its Affiliates, as defined in the Agreement, nor the State shall cause any personal benefit to the Monitor during the Monitor's Engagement or for a period of five years commencing on the last day of the Monitor's Engagement, by employment, engagement, gift, or otherwise. Western Union, its Affiliates and the State shall not employ or engage any entity or individual hired or engaged by the Monitor to fulfill its responsibilities during the Monitor's Engagement, either directly or indirectly, for a period of five years, commencing on the date that the entity's or individual's engagement commences, unless the other party agrees in writing. The Monitor shall not employ any person who has been an employee of the Arizona Attorney General's Office within the past five years, or who has provided testimony, affidavits or otherwise participated

substantively in litigation against Western Union. At the conclusion of the Monitor's Engagement any equipment or other property purchased by the Monitor shall become the property of the State, provided that any data or other information contained on any such equipment shall be subject to the provisions of Paragraph 9.

5. **No Attorney-Client Relationship.** The Monitor shall be independent of Western Union and the State, and no attorney-client relationship shall be formed between them. Western Union shall not claim any work product privilege as to documents created by the Monitor or by any agents of the Monitor.

6. **Indemnification.** Western Union shall provide an appropriate indemnification agreement to the Monitor with respect to any claims arising out of the performance of the Monitor's duties by the Monitor or by any person employed or engaged by the Monitor in the course of the Monitor's performance hereunder.

7. **No Defense Premised on Monitor's Findings.** Western Union agrees that the Monitor's findings do not constitute a defense to any action that the State may elect to bring against Western Union, as permitted by the Agreement.

8. **Cooperation.** Western Union shall direct its directors, officers, employees, agents, and consultants to cooperate with the Monitor in the execution of his or her duties. If, in the Monitor's judgment, a director, officer, employee, agent, or consultant of Western Union fails to cooperate with the Monitor, the Monitor shall notify Western Union and the State. The Monitor may evaluate Western Union's response to the uncooperative party in evaluating Western Union's cooperation under the Agreement. Further, Western Union agrees that any director, officer, employee, agent, or consultant may communicate with the Monitor directly and that no director, officer, employee, agent, or consultant shall be penalized in any way for providing information to the Monitor. Any director, officer, employee, agent, or consultant communicating with the Monitor may request that the Monitor keep confidential from Western Union the fact and substance of their communication, and the Monitor shall comply with any such request.

9. **Confidentiality.** During the course of the Engagement, the Monitor may have access to or receive Western Union proprietary information or trade secrets that are not otherwise in the public domain through no breach by Monitor of this Letter ("Confidential Information"). The Monitor agrees not to disclose any Confidential Information to anyone other than the Court or the State to carry out the terms of the Engagement. The Monitor also agrees to ensure that any party whom the Monitor engages hereunder shall agree to the same restriction. Within thirty (30) days after the termination of the Engagement, the Monitor and any party whom the Monitor engages hereunder shall return to Western Union all documents received from Western Union or containing any Confidential Information or confirm to Western Union in writing that all such documents have been destroyed. This Monitor Engagement Letter does not require any law enforcement agency or prosecutor's office or person employed or engaged by them to return or destroy any document or

information. The State shall maintain the confidentiality of any materials or information provided by Western Union under this paragraph and shall not provide such material or information to any third party, except to the extent that disclosure is required by law, otherwise authorized by this Agreement, or is in the proper discharge of or otherwise furthers the State's official duties or responsibilities.

**Monitor's Terms of Engagement**

10. **Core Functions.** The Monitor will perform four core functions:

10.1 open and maintain an account for the receipt of payments from Western Union via the clerk of the Court and for the payment and accounting for all Monitor expenses;

10.2 assemble and direct a staff of personnel that the Monitor deems reasonably necessary to assist in the proper discharge of the Monitor's duties;

10.3 determine whether Western Union is in compliance with the terms of the Agreement and this Monitor Engagement Letter and submit an Implementation Plan; progress reports for each six-month period beginning after the Monitor submits the Implementation Plan, and in each six-month period thereafter until the end of the forty-first month after the Agreement is fully executed, or until this Engagement is terminated early as provided in the Agreement; and a final evaluation in a Final Report; and

10.4 include in each report a detailed financial accounting of all of the Monitor's activities and expenses to date and of all Western Union expenses beginning August 1, 2009 that the Monitor has determined were made to implement the Recommendations or to enhance the Program, as described in Paragraph 23.1.2 of the Agreement.

11. **Work Plan.** Within ninety (90) days after the commencement of the Monitor's Engagement, the Monitor shall prepare a written work plan. To conduct an effective initial review, the Monitor's initial work plan shall include such steps as are necessary to develop an understanding of the facts and circumstances surrounding the Program, including a review and verification of the Risk Assessment, as defined in Paragraph 14, and the transaction data that reflects these facts and circumstances. The Monitor shall submit the work plan to the State and Western Union for review. If Western Union or the State objects to any part of the work plan, the Monitor, Western Union, and the State shall use best efforts to reach a resolution agreeable to all parties, but the State shall, in its sole discretion, determine the matter.

12. The Monitor shall provide all work plans, the Implementation Plan, periodic reports, the Final Report, and any other reports to Western Union and to the State.

13. **Initial Review.** In connection with the Monitor's responsibility to determine whether the Program is generally effective in detecting, deterring, and preventing money laundering and to evaluate Western Union's preparation to implement the Recommendations described in this Monitor Engagement Letter, the Monitor shall conduct an initial review and prepare an Implementation Plan evaluating the areas described below.

14. **Risk Assessment.** A comprehensive risk assessment is the foundation of the risk-based compliance program described in the FATF RBA Guidance. Within thirty (30) days after the commencement of the Engagement, Western Union will provide the Monitor with a risk assessment ("Risk Assessment") for the Southwest Border Area that identifies geographic areas, Agents (as defined in the Agreement), consumers, transactions, products, services, and points of consumer interaction that are most susceptible to money laundering activities, and will identify any transaction data upon which any portion of the risk assessment is based. The Risk Assessment will compare transaction data relating to locations at different parts of the Southwest Border Area to identify similarities and differences and to examine changes over time to better identify potential money laundering patterns that span the area or move from one part of it to another in response to changing circumstances. Western Union will update the Risk Assessment as necessary throughout the Engagement, including but not limited to at the request of the Monitor, to address changes in these risks. Its updates will also identify any transaction data upon which any portion of the Risk Assessment is based and show changes, trend lines, and specific examples. The Monitor's evaluation of the Risk Assessment will also be conducted on a regular basis throughout the Engagement.

15. The Monitor shall regularly evaluate, using the FATF RBA Guidance, the Risk Assessment to determine whether it identifies products, services, geographic locations, transactions, categories of consumers, and points of consumer interaction, including Agent locations that are most susceptible to money laundering activities in the Southwest Border Area. The Monitor's evaluation will regularly monitor and compare transaction data from the entire Southwest Border Area to track changes and predict further or future changes. In evaluating the Risk Assessment, the Monitor shall take into account whether Western Union has considered the nature, scale, and complexity of its business; the initial and ongoing due diligence or monitoring conducted on its Agents; its distribution channels; its consumer, product, and activity profile; the capabilities of its electronic monitoring systems; and the volume and size of transactions. The Monitor will test Western Union's comparisons of transaction data relating to locations in different parts of the Southwest Border Area to evaluate and assess the Risk Assessment's identification of similarities and differences and to confirm changes over time that may be related to potential money laundering patterns. The Monitor shall also evaluate whether Western Union has reasonably incorporated in the Risk Assessment the risk categories identified in the FATF RBA Guidance and in this Monitor Engagement Letter. In addition, the Monitor shall evaluate Western Union's policies and procedures for updating the Risk Assessment, in particular the strength of the connection between the process for updating the Risk Assessment and the transaction data and the degree to which the Risk Assessment reflects

larger trends and activities across the entire Southwest Border Area and not limited to smaller geographical subsets of that area. The Monitor shall work with Western Union's risk assessment personnel to establish an organic and flexible approach to regular risk assessment that is firmly founded on transaction data relating to the entire Southwest Border Area and therefore highly responsive to changes in the risk circumstances.

16. **Evaluation of Program Functions.** Giving regard to the principles enunciated in the FATF RBA Guidelines and the provisions of this Monitor Engagement Letter, and the Risk Assessment for the Southwest Border Area as reflected in Western Union's and the Monitor's analysis of the transaction data, the Monitor's evaluation of Western Union's Program shall consider Western Union's preparation to implement the Recommendations described in this Monitor Engagement Letter and whether the Program:

16.1 provides for adequate oversight and controls of Agents, consumers, transactions, products, services, and geographic areas that are more vulnerable to abuse by money launderers and other criminals;

16.2 provides for regular review of the risk assessment and risk management processes;

16.3 designates adequate personnel responsible for managing an effective risk-based AML compliance program;

16.4 ensures that adequate controls are in place before a new product or service is offered;

16.5 contains channels for informing senior management of compliance initiatives, compliance deficiencies, corrective actions, and filing of suspicious activity reports;

16.6 provides for program continuity despite changes in corporate structure or personnel;

16.7 meets all applicable regulatory record keeping and reporting requirements and provides channels for informing personnel of changes in legal requirements;

16.8 implements risk-based policies, procedures, and processes as appropriate;

16.9 provides for adequate supervision of Western Union personnel who handle transactions, complete reports, grant exemptions, monitor for suspicious activity, or participate in any other way in Western Union's Program;

16.10 provides for periodic internal evaluations of whether Western Union personnel are adhering to written AML policies, procedures, and processes;

16.11 incorporates AML compliance into job descriptions and performance evaluations of appropriate personnel;

16.12 provides for appropriate initial and refresher training to be given to appropriate personnel;

16.13 provides for appropriate initial and refresher training for Agents to be given at appropriate intervals;

16.14 provides for on-site and AML compliance reviews and mystery shopping of Agents when appropriate, and

16.15 ensures that AML compliance personnel are involved in all final decisions regarding disciplinary actions taken against Agents if such action includes probation, suspension, or termination.

17. **Evaluation of Program Integrity.** The Monitor shall evaluate the integrity of Western Union's Program based on the principles enunciated in the FATF RBA Guidance, other appropriate industry standards, the Report, and this Monitor Engagement Letter. The Monitor's initial evaluation of the Program's integrity shall consider Western Union's preparation to implement the measures described in this Monitor Engagement Letter and whether:

17.1 Western Union designates an individual or individuals at the executive level with responsibility for the Program, provides such individual(s) with appropriate reporting lines within the corporate structure and sufficient access to Western Union's Board of Directors and senior management, and allots adequate resources and authority to such individual(s) to ensure compliance with Western Union's legal obligations, the Agreement, and this Monitor Engagement Letter;

17.2 senior management makes reasonable efforts to create a culture of compliance within Western Union to encourage personnel at all levels to adhere to AML policies, procedures, and processes; and

17.3 Western Union employs sufficient numbers of AML compliance personnel, including personnel with direct oversight of Agents and personnel assigned to analysis functions, particularly transaction data analysis.

**Implementation Plan.**

18. The Monitor shall issue a written Implementation Plan within one hundred eighty (180) days after the commencement of the Monitor's Engagement setting forth the Monitor's evaluation and making such Recommendations as are reasonably designed to

implement or improve the Program. The Monitor may extend the time period for issuance of the Implementation Plan with prior written approval of the State and Western Union.

19. The Implementation Plan shall describe the Monitor's evaluation of Western Union's performance in the areas described herein. The report shall include the Monitor's methodology, transaction data and other information relied upon, and the basis for evaluation. The Monitor shall formulate his or her conclusions and Recommendations based on, among other things:

19.1 review of documents as the Monitor deems necessary, including all the policies and procedures relating to the Program, the Report, and the documents and materials cited in the Report;

19.2 meetings with and interviews of employees, officers, and directors of Western Union, and any other relevant persons, including representatives of the State, as the Monitor deems necessary;

19.3 on-site observation of Western Union' risk assessment and management systems;

19.4 analyses of transaction data; studies of long-term and short-term border-wide trends, changes, and comparisons based on the transaction data; and testing of the Program; and

19.5 consideration of any written submissions from the State or from Western Union specifically directed to the Monitor (with a copy to the other party) for the purpose of being considered for the Monitor's Implementation Plan.

20. **Identification of Program Recommendations.** In formulating Recommendations for the Implementation Plan, the Monitor may consider any additional measures he or she deems worthy of evaluation, and shall:

20.1 consider all measures mentioned in the Report, whether mentioned as recommendations or otherwise; all measures listed in Paragraph 23 or 24; and all measures suggested by Western Union, whether Western Union suggests the measure as an addition to the above measures or as a potential substitution for any of the above measures designed to accomplish the same or similar purpose in a way or by a method more acceptable to Western Union. For each such measure in Paragraph 23, the Monitor shall either accept it as a Recommendation or provide reasons not to do so, and shall provide some estimate of the cost of its implementation in the Southwest Border Area;

20.2 consider and, as the Monitor deems necessary, solicit and accept input from Western Union, from the State, and from the Alliance-Appointed Staff, of the Southwest Border Anti-Money Laundering Alliance. The Monitor shall conduct his or her inquiries

regarding the evaluation of potential Recommendations in an open and transparent process, working in collaboration with Western Union, the State, and the Alliance-Appointed Staff. In order to place the Participating States in a position to provide optimal consultation to the Monitor and improve the quality of the Program, the Monitor will provide the Alliance-Appointed Staff with information derived from the access described in Paragraph 32 and Western Union transaction data, including the data described in Paragraph 32.5, in the event that the Alliance-Appointed Staff has not obtained it independently.

20.3 with respect to any Recommendation the Monitor intends to include in its Implementation Plan, consider costs, reasonable alternatives, and technical and other feasibility, in addition to potential benefits;

20.4 in the Implementation Plan, set forth why each Recommendation is potentially attainable and reasonably designed to implement or improve the Program and the Monitor's considerations relating to cost, feasibility, and expected benefit;

20.5 in the Implementation Plan, set forth for each Recommendation, to the extent practicable in the context of that Recommendation:

20.5.1 the specific action(s) to be taken by Western Union;

20.5.2 any measurable outcomes, to the extent possible in the form of transaction data, that are expected or required;

20.5.3 any measurable outcomes that will provide a useful gauge to evaluate the value of continued implementation of the Recommendation or its discontinuation in the event that it is not achieving desirable results;

20.5.4 the time frame or mileposts relevant to its implementation, evaluation of success, or discontinuation, particularly referring to the timing of expected changes in transaction data that would indicate continuation or discontinuation.

21. If after participating in the Recommendation identification process and reviewing the specifics of the Monitor's Recommendations in the Implementation Plan, Western Union believes that any Recommendation in the Implementation Plan is not feasible or is unreasonably costly in relation to the expected benefit, or that the benefit identified by the Monitor as the expected benefit is unlikely, Western Union may make a presentation, within thirty (30) days of receiving the implementation plan. The presentation shall include all of the following or state in writing that the requirement is not applicable. If Western Union makes such a presentation, its obligation to begin implementation of the Recommendation at issue, if any, will be delayed until the matter is resolved pursuant to Paragraph 22:

21.1 provide to the Monitor and the State a written explanation of the reason for its objection to the Monitor's Recommendation;

21.2 propose in writing to the Monitor and the State an alternative policy, procedure or system designed to achieve the same objective or purpose, explaining why its alternative is preferable and the factual basis for this belief;

21.3 provide to the Monitor and the State transaction data to support its assertions and any other factual materials it believes support its objections or position; and

21.4 point out additional transaction data or materials that could be assembled or analysis that could be performed that it believes would support its position and/or suggest delay in the implementation of the Recommendation until such transaction data or materials can be assembled and evaluated or such analysis can be performed.

22. Upon a presentation as described in Paragraph 21 with respect to any Recommendation, Western Union and the Monitor shall, for no more than thirty (30) days, make best efforts to reach an agreement on the Recommendation and/or the proposed alternative, if any, or upon a method by which the efficacy of the Recommendation and/or any proposed alternative may be tested, such as by analysis of additional or different transaction data. Such agreement may include (i) the Monitor deleting the Recommendation from the Implementation Plan, (ii) the Monitor modifying the Recommendation, or (iii) the Monitor replacing the Recommendation with an alternative Recommendation. If Western Union and the Monitor are unable to agree on the Recommendation or an alternative proposal within such time, Western Union shall submit the issue and supporting documentation in writing to the State within forty (40) days after Western Union's presentation pursuant to Paragraph 21. The State and Western Union shall make best efforts to reach an agreement. The State and Western Union may seek and consider the opinions of Attorneys General of other U.S. states in the Southwest Border Area as part of this process. If the State agrees with the Monitor that the Recommendation is appropriate, after the State hears and considers Western Union's objections and, if solicited and provided, the opinions of Attorneys General of other U.S. states in the Southwest Border Area, the Monitor will continue to include the Recommendation as part of the Implementation Plan. If the State agrees with Western Union that the particular Recommendation is inappropriate, in whole or in part, the Recommendation will be deleted from the Monitor's Recommendations or will continue to be included only as modified by agreement between the State, in consultation with the Attorneys General of the affected states, and Western Union.

#### **Presumed Program Measures**

23. The following measures will become Recommendations unless the Monitor, with input from Western Union and the State, determines that it is not technically feasible or would not improve the Program:

**23.1 Western Union's Existing Measures.** As described in the Report, Western Union presently maintains or is in the process of implementing a BSA/AML program that addresses organizational structure and governance, Agent selection and training, Agent monitoring and response, a transaction monitoring program, and a Suspicious Activity Report ("SAR") reporting program, among other things. As part of its AML program, Western Union has been focusing extensive efforts on the Southwest Border Area in order to address specific risks associated with illegal activity in that geographic region, such as cross-border drug trafficking and human smuggling from Mexico into the United States. These include potential use of Western Union services by human smugglers ("coyotes") to obtain payment from sponsors of persons being smuggled illegally into the United States. These efforts extend to all U.S. and Mexican states on both sides of the border, and particularly to the Southwest Border Area. These efforts include:

23.1.1 enhancing transaction monitoring (through the implementation of a new automated transaction monitoring application).

23.1.2 developing the ability to aggregate consumer transactions to identify unusual activity on a real-time basis (through its Real Time Risk Assessment initiative).

23.1.3 providing more resources, guidance, and compliance-related materials (such as AML training tools) to its Agents through the deployment of an enhanced Web site.

23.1.4 continuing to acknowledge that "Western Union's AML Program must include procedures for conducting reasonable, risk-based due diligence on potential and existing foreign Agents and counterparties to help ensure that such foreign agents and counterparties are not themselves complicit in illegal activity involving its products and services, and that the foreign agent or foreign counterparty has appropriate AML controls in place to guard against the abuse of the MSB's products and services," to enforce due diligence in that regard, and to monitor foreign Agents to "help ensure that the foreign Agents are not themselves complicit in illegal activity involving Western Union's products and services and the foreign Agents' customers, employees, or contractors are not able to abuse such products and services," as described in the Report.

23.1.5 implementing Transaction Risk Index ("TRI") model variables and formulas (specifically in the way some factors are weighted to impact the overall TRI risk score) to more strategically mitigate the risks associated with certain geographies (e.g., Arizona) and "red flags" such as structuring, sharing of consumer identifying information, high volume, high frequency, and SARs filed by Western Union on transactions facilitated by/through the Agent.

23.1.6 enhancing existing disciplinary procedures to include more concrete metrics designed to limit discretion/subjectivity in the disciplinary process.

23.1.7 adding scenarios customized to transactions facilitated in the Southwest Border Area to the interdiction decision matrix.

23.1.8 developing, to the extent reasonably feasible, Real Time Risk Assessment that will provide the ability to block noncompliant transactions before they are processed, so that when a transaction violates established business rules, a "pop-up screen" will immediately notify the Agent that the transaction cannot be completed.

23.1.9 implementing "Galactic ID" (aggregated identity component bits) designed to assign consumers with unique identification numbers according to the identifying information provided by the consumer.

23.1.10 monitoring transaction data involving all transactions (i.e., starting at \$.01), fed into WireWatch+ and sorted by Consumer, through the creation of "Affinities."

23.1.11 developing an enhanced application to monitor transactions using new, easier to update and modify technology to allow Western Union to more efficiently tune the software and create rules designed to detect new money laundering patterns as they are identified, and to balance risk better by prioritizing suspicious activity by risk level.

23.2 **Presently Planned or Considered Measures.** In addition to the above measures, Western Union either now plans to implement, or the Report identified, a number of potential improvements or enhancements as worthy of consideration. Each such potential improvement or enhancement is included by this reference.

24. **Additional Southwest Border Area Measures.** In addition to the above measures, to the extent that they are not included above, the Monitor may, in the Monitor's discretion, make any of the following measures with regard to Southwest Border Area activities and Agents Recommendations, whether or not Western Union has been implementing them in the past or has plans to do so:

24.1 providing sufficient security for on-site reviewers so that no Agent location is exempted from on-site review by security concerns.

24.2 Making direct inquiries into whether a transaction is being conducted on behalf of another person in states and for transactions in which state law calls for identification of persons on whose behalf the transaction is being conducted, such as Arizona, and taking reasonable measures to verify the identity of any such person.

24.3 building into its ARMOR and WireWatch+ tools consideration of some or all the following as risk factors, in addition to other risk factors: seasonal patterns consistent with criminal proceeds, e.g., marijuana growing season, seasonal illegal immigration; send-to-receive ratio that is not consistent with other Agents in the locale or is consistent with participation in criminal activity; seasonal business fluctuation that is not consistent

with other Agents in the locale or is consistent with participation in criminal activity; ratio of questionable or anomalous customers to customers who are not in such groups is out of the norm for comparable locations; ratio of questionable or anomalous transactions to transactions that are not in such sets is out of the norm for comparable locations.

24.4 assigning the final Agent approval process to a department that engages in risk management and is independent from the sales and marketing function.

24.5 where legally permitted, running credit and criminal background checks on all controlling persons of Agent applicants who own or control at least ten percent (10%) of the Agents in the United States and to the extent possible in Mexico. For the purposes of determining the percentage controlled by any one person, that person's interest shall be aggregated with the interest of any other person controlled by that person or an officer, partner, or agent of that person, or by a spouse, parent, or child of that person.

24.6 risk-ranking Western Union's Agents in the Southwest Border Area and, for the highest risk five per cent (5%) of them, providing annual enhanced examination of the Agent's transaction data history and transaction data integrity, confidential sampling of questioned aspects of the Agent's services, and on-site and off-site contact with the Agent. Whenever Western Union terminates an Agent for AML compliance reasons, it will not allow any controlling person of that Agent to be a controlling person at any Western Union Agent for at least three years thereafter.

24.7 subjecting Arizona authorized delegates to annual criminal checks and declining or removing an Agent if a criminal background check reveals that the applicant has been convicted of, or pleaded guilty or no contest to, any felony charge within the last seven years or any felony charge involving money laundering, the financing of terrorism or terrorist organizations, or the provision of material support to terrorists or terrorist organizations at any time. Western Union will develop a system to control employee sign-ons to its money transmittal system at all locations in the Southwest Border Area to prevent any person from transacting Western Union business unless they are accurately signed on using their correct name.

24.8 incorporating enhanced controls for the higher risk Southwest Border Area Agent locations identified as among the top five per cent (5%) of high risk locations, including:

24.8.1 proactive contact with high volume customers to determine the reason for the transactions, the customer's relationship to the sender or receiver, and the source of funds.

24.8.2 enhanced systematic controls and transaction data integrity at the point of payment.

24.8.3 sufficient programmatic controls to form a reasonable belief that Western Union knows the true identity of each customer who receives more than \$500 in a transaction or totaling \$1,000 or more in any one day at such a location at the time the customer conducts the transaction or during a back-end review of the customer's pattern of activity, to include measures to assure that these authorized delegates/Agents: Identify, verify, and enter into the transaction data record the identity of each such customer conducting or attempting to conduct a transaction at or above \$500 by physical examination of the customer's identification document(s) at the time the transaction is being conducted, to include the following information: the name and social security or taxpayer identification number, if any, of the individual presenting the transaction and the person and the entity on whose behalf the transaction is to be effected; the type and number of the customer's photographic identification; the customer's current occupation; and the customer's current residential address.

24.8.4 accurately identifying United States authorized delegate employees who have access to Western Union's money transmittal system by obtaining full name, address, phone, date and place of birth, valid photographic government-issued identification, and social security number, screening all such employees through E-verify, and taking sufficient additional measures to assure that such authorized delegate employees are not present in the United States in violation of Federal immigration laws.

24.9 implementing enhanced identification requirements for senders or receivers within the Southwest Border Area whose transactions:

24.9.1 aggregate to amounts greater than \$3,000 over a rolling five-day period; or

24.9.2 aggregate to amounts more than \$25,000 during any 12-month period. In each such transaction or series of transactions Western Union will obtain the following information: the name and social security or taxpayer identification number, if any, of the individual presenting the transaction and the person and the entity on whose behalf the transaction is to be effected; the type and number of the customer's photographic identification; the customer's current occupation; and the customer's current residential address.

24.10 implementing a data entry assistance and blocking system for the purpose of assuring the accuracy and consistency of its transaction data, to include recognition and rejection of entries that are not in a correct format, such as a purported Social Security Number or foreign voter identification number that is not in a format that is correct for that type of identification, and, to the extent practical, an automated assistance program that populates transaction data fields with names of cities and states to prevent their being entered as non-standard abbreviations or spelled incorrectly.

24.11 to the extent lawful, offering no service to transfer value, whether by money transmittal or otherwise, to Agents within the Southwest Border Area by which amounts over \$500 are made available for payment to the recipient less than twenty-four (24) hours after the transaction is initiated by the sender at any time during which the Arizona Attorney General's Office does not have a Geographic Targeting Order in effect. The Monitor shall not include this as a Recommendation unless the Arizona Attorney General confirms that other money transmitters in the Southwest Border Area will also agree to similarly limit their services.

25. **Implementation of Recommendations.** Within sixty (60) days after receiving the Monitor's Implementation Plan, or, with regard to any Recommendation added after the Monitor first delivers the Implementation Plan, within sixty (60) days of notice of the addition of such new Recommendation, Western Union shall adopt and begin development and implementation of all Recommendations in the Implementation Plan that are mutually acceptable to both the Monitor and Western Union, except that with respect to Recommendations that Western Union seeks reconsideration pursuant to Paragraph 21, initiation of implementation will not be required until the matter is resolved pursuant to Paragraph 22.

26. **Addition and Deletion of Recommendations.** The Monitor shall allow flexibility for Western Union to adjust its internal systems and controls, to respond to changes in risk conditions, and in particular to respond to tactical changes made by money launderers in their efforts to avoid Western Union's AML efforts. Accordingly, the Monitor may add or delete Recommendations after the Monitor first delivers the Implementation Plan, using the process described in Paragraphs 18-22 for inclusion of new Recommendations in the Implementation Plan. Whenever the Monitor adds or deletes a Recommendation, the Monitor shall immediately provide written notice to Western Union and the State. Compliance with this Monitor Engagement Letter requires compliance with all Recommendations in the Implementation Plan. The timing of compliance with Recommendations added after the initial delivery of the Implementation Plan shall be as described in Paragraph 25.

### **Investigation of Potential Breaches**

27. At any time during the course of the Engagement, should the Monitor discover any evidence indicating that Western Union, or its directors, officers, or employees have breached any provision of the Agreement, including by failure or refusal to implement a required Recommendation, the Monitor shall notify Western Union and the State, unless the Monitor in his or her discretion determines notification directly to the State alone is necessary and appropriate. The Monitor shall provide the State any and all information relating to the evidence of alleged breach(es). This paragraph shall not preclude the Monitor from discussing any matter directly with the State.

28. If at any time during the course of the Engagement, the Monitor discovers evidence of a potential violation by Western Union of money laundering laws in the Southwest Border Area that occurred after the date of the Agreement, the Monitor shall have the discretion to investigate and report to the State and Western Union about the matter. At the sole and reasonable discretion of the State, the State may direct the Monitor to discontinue the investigation to allow for a government investigation to commence.

29. Western Union agrees that during the Engagement, the Monitor shall review activities and transaction data relating to activities that occurred prior to the date of the Agreement for the purpose of informing himself or herself of the facts relevant to the development of Recommendations, the evaluation of Western Union's Risk Assessment, the determination of the advisability of potential Recommendations, and the determination of the efficacy of Recommendations during the course of the Engagement in their historical context.

### **Periodic Reviews and Final Report**

30. The Monitor shall undertake periodic reviews every six months, commencing when the Monitor submits the Implementation Plan, to further monitor and evaluate compliance with this Monitor Engagement Letter and determine whether Western Union's Program is reasonably designed and effectively implemented to detect, deter, and prevent money laundering.

31. With regard to the periodic reviews and Final Report, the requirements set forth above for the Implementation Plan shall apply, except for the following modifications:

31.1 The periodic reviews will not require a work plan, but will instead be periodic evaluations of the Program and its effectiveness and Western Union's progress in implementing the Recommendations required under this Monitor Engagement Letter, and shall include analysis of transaction data relevant to the efficacy of the required Recommendations, whether Recommendations should be added to or deleted from the Implementation Plan based on transaction data or on changes in the risk circumstances, and empirical tests of the effectiveness of the Program;

31.2 In the discretion of the Monitor, the Monitor may designate any periodic review after the end of the twenty-ninth month after the Agreement is fully executed, as the Final Report if the Monitor certifies that the conditions provided in the Agreement for early termination are present. In making its determination whether Western Union has complied with all of the terms of the Agreement, consistent with the principles enunciated in the FATF RBA Guidance, the Monitor's evaluation of the Program shall acknowledge that Western Union cannot be expected to detect and/or prevent all illicit uses of its services, that Western Union's ability to detect and deter money laundering can sometimes be necessarily limited, and that information about risks is not always robust or freely available. The Monitor shall bear in mind that a money services business may act in good

faith to take reasonable and considered steps to prevent money laundering, and document the rationale for its decisions, and yet still be abused by persons engaged in illicit activity. If the Monitor makes no certification of early compliance, the Monitor will make his or her Final Report on the last day of the forty-first month after the Agreement is fully executed.

31.3 The Monitor shall prepare a written work plan for a Final Report and submit it to the State and Western Union for comment at least sixty (60) days prior to issuing the Final Report. If Western Union or the State objects to any part of the work plan, the Monitor, Western Union, and the State shall use best efforts to reach a resolution agreeable to all parties, but the State shall, in its sole discretion, determine the matter. If the Monitor elects to terminate this Engagement before the end of the forty-first month after the Agreement is fully executed, the Monitor's Final Report must certify that Western Union has implemented all of the Recommendations required under this Monitor Engagement Letter and that, in the Monitor's opinion and based on the evaluation described in Paragraph 31.2, the Program is reasonably designed and effectively implemented to deter, detect, and prevent money laundering.

### **Access to Information**

32. Western Union shall cooperate fully with the Monitor, and the Monitor shall have the authority to take such reasonable steps, in his or her view, as may be necessary to be fully informed about the operations of Western Union within the scope of his or her responsibilities under this Engagement. To that end, if requested by the Monitor, Western Union shall provide the Monitor:

32.1 access to all files, books, records, personnel, transaction and other data, and facilities that fall within the scope of responsibilities of the Monitor under this Engagement;

32.2 the right to interview any director, officer, employee, agent, or consultant of Western Union and to participate in any meeting, other than meetings protected by the attorney-client privilege, concerning any matter within or relating to the scope of the Monitor's responsibilities under this Engagement;

32.3 the right to observe Western Union business operations that fall within the scope of responsibilities of the Monitor under this Engagement;

32.4 open access to information relating to the risk involved in its credit card, stored value, and phone transactions to permit evaluation of the product/service risk of new or innovative products or services offered by Western Union in the Southwest Border Area, particularly, but not limited to, products or services that may inherently favor a degree of anonymity or can readily cross international borders, such as online money transmittals, stored value cards or other devices, money orders, and money transmittals by mobile phone;

32.5 full transaction data relating to all person-to-person transactions sent to or from authorized delegate/Agent locations within the Southwest Border Area from January 1, 2005, to the present and throughout the term of this Engagement involving transactions in amounts of \$500 or more; and

32.6 to the extent practicable, access to Western Union transaction data in near real time.

33. In the event that the Monitor seeks access to information, documents, records, data, facilities and/or employees that Western Union seeks to withhold from the Monitor based on a claim of attorney-client privilege or on the attorney work product doctrine, Western Union shall promptly provide written notice of this determination and documentation of its claim to the Monitor and the State. Such notice and documentation shall include a general description of the nature of the information, documents, records, data, facilities and/or employees that are being withheld, as well as the basis for the claim. Except as provided in this Paragraph, Western Union shall not withhold from the Monitor any information, documents, records, data, facilities and/or employees on the basis of an attorney-client privilege or the attorney work product doctrine.

34. If after providing documentation as described in Paragraph 33, Western Union agrees to provide the Monitor with access to the requested information, documents, records, data, facilities and/or employees, the Monitor and the State will agree:

34.1 not to assert that Western Union's provision of such materials in any way constitutes a waiver by Western Union of the attorney-client privilege and/or the work product doctrine;

34.2 that the production of such materials provides no ground to obtain other documents, materials, or information; and

34.3 to maintain the confidentiality of such materials and not to provide them to any third party, except to the extent that disclosure is required by law or may be necessary in furtherance of the Monitor's or the State's discharge of his, her, or its official duties and responsibilities.

35. Except insofar as material is subject to Western Union's attorney-client privilege and/or work product doctrine, Western Union and the Monitor shall not withhold from the State any documents or information on the basis of any privilege or work product claims. Failure of any Western Union director, officer, or employee to cooperate with the Monitor may, in the sole discretion of the Monitor, serve as a basis for the Monitor to refer the non-cooperating individual to Western Union for consideration of whether such director, officer, or employee has in fact failed to cooperate with the Monitor and, if so, whether such non-cooperation warrants disciplinary action.

36. The Monitor shall take appropriate steps to maintain the confidentiality of any information entrusted to him or her while executing his or her duties under the Engagement and shall share such information only with the State, appropriate investigative agencies, and individuals or entities hired by him or her. The Monitor shall also take appropriate steps to ensure that any consultants, entities, and/or individuals engaged by him or her to assist with the duties under the Engagement shall maintain the confidentiality of information obtained while executing his or her duties.

37. Any report or information that is provided to the State or to Western Union by the Monitor that is filed with the Court shall be filed under seal upon a proper showing by a party. The State and Western Union shall maintain the confidentiality of all such information provided to them by the Monitor, including the periodic reports described in this Monitor Engagement Letter, except to the extent that disclosure may be necessary by the State in connection with the discharge of its official duties.

38. The headings and titles in this Monitor Engagement Letter are for ease of reference only and shall not be used to construe or limit the text.

39. In the event of a conflict between the Monitor Engagement Letter and the Agreement, the terms of the Agreement shall control.

40. Resignation/Dismissal. In the event of the death or disability of the Monitor (or, if the Monitor is a corporate entity, the Monitor's principal), Western Union and the State shall proceed as described Section 20 of the Agreement. Monitor may resign at any time upon no less than 60 days written notice to both Western Union and the State. If the Monitor resigns, Monitor shall be entitled to all fees and reimbursements provided for hereunder up to the effective date of the Monitor's resignation.

Accepted and agreed

\_\_\_\_\_  
Marcy M. Forman, Monitor

Dated: \_\_\_\_\_

**Exhibit C**

STATE OF ARIZONA, ex rel.	)	
ATTORNEY GENERAL	)	
TERRY GODDARD,	)	
Plaintiff,	)	<b>SETTLEMENT</b>
	)	<b>AGREEMENT</b>
v.	)	
WESTERN UNION FINANCIAL	)	
SERVICES, INC.,	)	
Defendant,	)	
	)	

Western Union Financial Services, Inc., (“Western Union”) a corporation organized under the laws of Colorado, pursuant to authority granted by its Board of Directors, and the State of Arizona (“State”) hereby enter into this Settlement Agreement (“Agreement”).

**Recitals**

1. Western Union offers money transfer and other payment services at over 50,000 agent locations in the United States and over 375,000 locations around the world. In Arizona, Western Union is licensed to do business as a money transmitter under the Arizona Transmitters of Money Act, A.R.S. §§ 6-1201-1242.
2. Western Union conducts its business through “Agents,” referred to as “authorized delegates” in Arizona. *See* A.R.S. §§ 6-1201(1) and 6-1208. In some foreign countries, such as Mexico, Western Union’s Agents enter into agreements with additional locations (sometimes referred to as “subagents”) entitling the subagents to offer Western Union services to the public.
3. Western Union has developed and implemented a risk-based anti-money laundering (“AML”) compliance program that is designed to prevent, detect, and report potential money laundering activities. In so doing, Western Union has dedicated substantial resources to, among other things: developing transaction monitoring systems to detect potentially suspicious activity; building a team of AML professionals; screening, training, and monitoring its Agents; producing AML policies and manuals; and implementing compliance measures in certain high-risk geographical areas, including all of Arizona and the area within 200 miles north and south of the United States/Mexico border (the “Southwest Border Area”).
4. Prior to the execution of this Agreement, Western Union requested from the State a global resolution of all potential regulatory, civil, and criminal actions that could arise from conduct described in the Statement of Admitted Facts, attached hereto as Exhibit A and incorporated herein by this reference, and it also provided the State with a May 8, 2009 report by an independent consulting firm evaluating Western Union’s current AML

compliance program and its planned enhancements of that program (“Report”). The Report concluded that Western Union “has taken extensive steps to fully appreciate its specific risks for money laundering/terrorist financing by tailoring its own risk assessment, identifying both pervasive and Company-specific threats and vulnerabilities, and to manage its AML risk by dedicating extensive and skilled resources to those areas that management believes pose the greatest risks (e.g., the Southwest U.S. Border region).”

5. To achieve their common goal of combating money laundering activities in the Southwest Border Area, and to reach a global resolution of all potential regulatory, civil, and criminal actions that could arise from conduct described in the Statement of Admitted Facts, Western Union and the State are entering into this Agreement.

### **Settlement**

6. Western Union accepts and acknowledges responsibility for its conduct as set forth in the Statement of Admitted Facts.

7. Western Union and the State agree that they will issue a joint public announcement regarding this Agreement after acceptance of this Agreement by the Maricopa County Superior Court (the “Court”). Western Union and the State shall agree on the language of a press release regarding this Agreement. Western Union expressly agrees that it shall not, through its attorneys, Board of Directors, officers, or authorized spokespersons, make any public statement, including filing or maintaining any civil or regulatory action, contradicting any statement of fact contained in the Statement of Admitted Facts or factual assertions contained in this Agreement. Any such contradictory public statement by Western Union, its attorneys, Board of Directors, officers or authorized spokespersons, shall constitute a breach of this Agreement as governed by Paragraph 14 of this Agreement. The decision whether any action or statement by any such person will be imputed to Western Union for the purpose of determining whether Western Union has breached this term of this Agreement shall be in the sole and reasonable discretion of the State. Upon the State’s notification in writing to Western Union of a public statement by any person that in whole or in part is in breach of this term, Western Union may avoid breach of this Agreement by publicly repudiating such statement within two business days after notification by the State. This paragraph is not intended to apply to any statement made by any individual in the course of any criminal, regulatory, or civil case initiated by a governmental or private party against such individual. In addition, consistent with Western Union’s obligation not to contradict any statement of fact set forth in the Statement of Admitted Facts, Western Union may take good faith positions in litigation involving private parties or governmental agencies. Further, consistent with such obligation, Western Union may make statements regarding the actions it took to detect and prevent the activities described in the Statement of Admitted Facts.

8. The State has determined that it could institute a civil forfeiture action pursuant to A.R.S. §§ 13-2314 and 13-4301-4315 against certain funds transferred by and through Western Union between January 1, 2003, and December 31, 2007, based on probable cause to believe that there have been violations of A.R.S. § 13-2317 in excess of the amount referred to in Paragraph 16. The State has further determined that it could pursue claims for costs and expenses of prosecution and investigation, including the expenses of overseeing restrictions on Western Union's future conduct.

9. In order to settle any forfeiture claims the State may have, as well as any other potential regulatory, civil, and criminal claims or actions that could arise from conduct described in the Statement of Admitted Facts, including but not limited to claims pursuant to A.R.S. §§ 13-2314 and 13-4301-4315 that arose prior to the date of this Agreement, Western Union has agreed to pay the State the sum of \$21,000,000 in reimbursement of the State's costs and expenses of prosecution and investigation and to perform the other actions described in this Agreement.

10. The State and Western Union believe that the Southwest Border Area poses special money laundering risks associated with criminal activity by drug, human, and weapons smuggling organizations. The problems associated with this criminal activity are regional in nature and are not confined to any single U.S. or Mexican border state. Combating such criminal activity requires cooperation between law enforcement agencies in the U.S. Border States and federal government agencies, as well as with law enforcement authorities in Mexico. The State and Western Union further believe that the implementation of effective AML compliance programs by financial services providers in the Southwest Border Area and an effective and cooperative working relationship between financial services providers and law enforcement agencies play an important role in enabling law enforcement to successfully combat money laundering and other criminal activity in the Southwest Border Area.

11. Western Union and the State agree to jointly file an Application for Order Approving Settlement and Appointing Monitor, promptly upon execution of this Agreement, in which Western Union agrees to waive and does thereby expressly waive any and all rights to a speedy trial pursuant to the Sixth Amendment to the United States Constitution, the Arizona Constitution, and the Arizona Rules of Criminal Procedure, for the period that this Agreement is in effect.

12. In entering into this Agreement, Western Union agrees that any violations of the Arizona money laundering laws and related offenses that were not time-barred by the applicable criminal or civil statutes of limitations as of the date of this Agreement may, in the sole reasonable discretion of the State, be charged against Western Union criminally and/or civilly within six months of the State's declaration of any willful and material breach of this Agreement by Western Union, or any event which renders this Agreement null and void, notwithstanding the expiration of any applicable statute of limitations.

13. The State agrees to a global resolution of all potential regulatory, civil, and criminal actions that could arise from conduct described in the Statement of Admitted Facts and that, except in the event of a willful and material breach of this Agreement by Western Union, the State will not pursue any investigation or prosecution of Western Union or any of its current or former parents, subsidiaries, affiliates, successors, assigns, or related entities, or any of its or their current or former directors, officers, or employees (collectively "Western Union Affiliates"), and will bring no criminal charges or civil claims and will take no regulatory action against Western Union or Western Union Affiliates, including any actions authorized by A.R.S. §§ 6-1201-1242 and 13-2317, relating to:

13.1 transactions or events described in or connected to the facts in the Statement of Admitted Facts;

13.2 transactions or events that were the subject of grand jury subpoenas or other State of Arizona subpoenas with which Western Union has complied or complies between January 1, 2009, and the termination of the Monitor's Engagement;

13.3 transactions or events that were the subject of State of Arizona discovery requests or subpoenas with which Western Union has complied or complies in any existing civil action against the State that involves Western Union transactions;

13.4 transactions or events that are the subject of disclosures made by Western Union pursuant to this Agreement; and

13.5 transactions or events described in or connected to the facts in the State's submissions in Maricopa County Superior Court cases SW2006-002172, SW2006-02213, or CV2006-018804.

The term "Western Union Affiliates" does not include Western Union authorized delegates or Agents. This paragraph does not prohibit the State from investigating or prosecuting, or from bringing civil claims or regulatory actions against, any Western Union authorized delegate or Agent or the employees of any such authorized delegate or Agent.

The State's agreement not to take "regulatory action" does not preclude examinations by the Arizona Department of Financial Institutions ("DFI"). Western Union agrees that examinations may continue under the statutory examination process. DFI agrees that it will not pursue any appealable agency action or contested case. DFI will provide any report of an examination of Western Union to the Attorney General and to Western Union. Western Union also agrees that the Monitor may freely provide information to DFI and that the Monitor may receive information from DFI except as restricted by the confidentiality statutes relating to examination reports.

14. Should the State determine in its sole and reasonable discretion that Western Union has committed a willful and material breach of any provision of this Agreement, the State shall provide written notice to Western Union of the alleged breach and provide Western Union with ten business days, or longer at the reasonable discretion of the State, in which to make a presentation to the State to demonstrate that no breach has occurred or, to the extent applicable, that the breach was not willful or material or has been cured. The parties hereto expressly understand and agree that should Western Union fail to make a presentation to the State within such time period after receiving notice, the State may, in its discretion, conclusively infer that Western Union is in willful and material breach of this Agreement and invoke any remedy allowed for such a breach under this Agreement. The parties further understand and agree that the State's exercise of discretion under this Agreement is not subject to review in any court, tribunal, or otherwise, outside of the Arizona Attorney General's Office. In the event of a willful and material breach of this Agreement which results in any civil, criminal, or regulatory proceedings, the State's claims may be premised upon any information provided by or on behalf of Western Union to the State at any time.

15. Western Union and the State understand that this Agreement must be approved by the Court. Should the Court decline to approve this Agreement for any reason, the State and Western Union are released from any obligation imposed upon them by this Agreement and this Agreement shall be null and void.

16. Western Union shall transfer \$21,000,000 to the Anti-Racketeering Revolving Fund established by A.R.S. § 13-2314.01 for the benefit of the Arizona Attorney General's Office, the Arizona Department of Public Safety, and the Phoenix Police Department for expenditure as permitted by A.R.S. § 13-2314.01. Payments shall commence on the first banking day of the first calendar month after Western Union signs this Agreement with an initial payment of \$3,000,000 and shall continue with payments of \$3,000,000 per month thereafter until the full amount has been paid. Such payment constitutes compensation for the expenses the State has incurred to date in connection with its investigations of Western Union and is the sole financial consideration for the State agreeing not to pursue any claims that could arise from conduct described in the Statement of Admitted Facts. No other amount paid by Western Union under this agreement is intended to be, nor shall it be construed as, payment for or a payment in lieu of a civil forfeiture, fine, or penalty.

17. Western Union and the State agree that:

17.1 Western Union shall provide to the State, promptly upon the issuance of an Arizona or federal subpoena, summons, court order, or other appropriate legal process, any relevant document, electronic data, or other object in its possession, custody, and/or control concerning matters relating to the State's or a Participating State's investigation of money laundering or other related criminal activity in the Southwest Border Area or to Western Union's compliance with any Arizona criminal or regulatory statute or with this

Agreement. In addition, Western Union shall provide to any Participating State, as described in Paragraph 23.2.2, promptly upon the issuance of a subpoena under the authority of that state or a federal subpoena; summons; court order; or other appropriate legal process, any relevant document, electronic data, or other object in its possession, custody, and/or control concerning matters relating to that Participating State's investigation of money laundering or other related criminal activity in the Southwest Border Area. Western Union's obligation to provide data pursuant to this Agreement shall at all times be limited to data related to transactions that are sent from or received in the Southwest Border Area or such additional areas of a Participating State as that state requests in writing. Whenever such data is stored in electronic format in the ordinary course of Western Union's business Western Union shall provide access to such data and reasonable assistance in operating computer and other equipment as necessary to retrieve and present the data.

17.1.1 Western Union shall include the transaction data described in Paragraph 32.5 of the Monitor Engagement Letter ("Monitor Engagement Letter" or "Engagement Letter"), a copy of which is attached hereto as Exhibit B, and which includes full transaction data relating to all person-to-person transactions sent to or from authorized delegate/Agent locations within the Southwest Border Area from January 1, 2005, to the present and throughout the term of the Monitor's Engagement involving transactions in amounts of \$500 or more, in the material to be delivered to the State and the Participating States.

17.1.2 Western Union shall accept the Maricopa County Superior Court stipulation and order, attached hereto as Exhibit C and incorporated herein by this reference, appointing the Monitor and directing Western Union to produce the data described in Paragraph 17.1 and produce that data to the Monitor and to the State without further subpoena or process, and, upon a written request of a Participating State, shall produce such data as may pertain to that state to that state without further subpoena or process.

17.1.3 Western Union's obligation under this paragraph shall not include the obligation to provide materials or information covered by the attorney-client privilege or the work product doctrine. The State shall not consider Western Union's withholding of materials or information subject to the attorney-client privilege or the work product doctrine in determining whether Western Union has fully cooperated with the State.

17.1.4 The State shall maintain the confidentiality of any materials or information provided by Western Union under this paragraph and shall not provide such material or information to any third party, except to the extent that disclosure is required by law, otherwise authorized by this Agreement, or is in the proper discharge of or otherwise furthers the State's official duties or responsibilities. When the Arizona Attorney General's Office's duties or responsibilities involve public presentation of Western Union data outside of a law enforcement, investigation, or training context, the

Arizona Attorney General's Office will not attribute that data specifically to Western Union or will aggregate the data with other money transmitters' data.

17.1.5 Western Union agrees that nothing in this Agreement is intended to place any condition or limitation on the State's statutory or other legal authority to obtain records or information from Western Union. Western Union further agrees not to assert this Agreement or to assert the State's failure to comply with any aspect of this Agreement in response to any subpoena, administrative request, or other legal action to obtain records or information from Western Union. Western Union agrees that the State remains free to pursue any legal authority that the State may have to obtain records or information from Western Union without reference to this Agreement and without proving any fact or circumstance or presenting any information that it would not have been required to prove or present in the absence of this Agreement, in addition to and apart from any rights that the Arizona Attorney General or the State may have to obtain records or information under this Agreement.

17.2 Western Union shall, with respect to transactions that are sent from or received in the Southwest Border Area, in all material respects completely, fully, and timely comply with all legal, record keeping, and reporting obligations imposed on it by applicable state law; by the Bank Secrecy Act, 31 U.S.C. §§ 5311 through 5330 ("BSA") and the Bank Secrecy Act implementing regulations; and by the requirements of this Agreement, including, but not limited to, its obligation to maintain its AML Program for the Southwest Border Area, as "Program" is defined in Paragraph 19, and implement additional Program measures recommended by the Monitor in the Southwest Border Area ("Recommendations"), as described in Paragraph 20 of the Monitor Engagement Letter, to the extent required by Paragraphs 18 through 22 and Paragraph 26 of the Engagement Letter.

17.3 Western Union shall dismiss with prejudice its complaints in *Western Union Financial Services, Inc. v. Terry Goddard ex rel. State of Arizona*, CV2006-018804, and *Western Union v. Terry Goddard*, CIV-06-02249-PHX SMM, within ten days of the execution of this Agreement. These dismissals with prejudice shall not prejudice any rights Western Union may have to challenge any Geographic Targeting Orders issued after the filing of CV2006-018804 or any seizure warrant issued after the dismissal of CIV-06-02249-PHX SMM. Western Union and the State will simultaneously dismiss with prejudice *State of Arizona ex rel. Terry Goddard v. Western Union Financial Services, Inc.*, SW2006-002172.

17.4 Western Union shall withdraw its Motion to Quash Seizure Warrant in SW2006-002213 and move to vacate the Superior Court Order Quashing September 21, 2006 Seizure Warrant and Preliminary Injunction and move to dismiss that action. The State shall release its seizure for forfeiture of all funds seized in SW2006-002213 immediately upon vacation of that Order and the granting of Western Union's motion to dismiss the action, and will not file a Petition for Certiorari in that matter. Western

Union and the State have agreed on forms of Stipulation and Order to submit to the court, which are included in Exhibit D hereto.

**AML Compliance Program**

18. The State and Western Union agree that an effective AML compliance program and a strong partnership between government agencies and money services businesses should be informed by the principles described by the Financial Action Task Force in its Guidance on the Risk-Based Approach to Combating Money Laundering and Terrorist Financing (“FATF RBA Guidance”).

19. Western Union agrees to commitment to full compliance with applicable state law and the Bank Secrecy Act and all of its implementing regulations with respect to the Southwest Border Area. Further, to comply with the BSA, A.R.S. §§ 6-1241 and 13-2317, and this Agreement, Western Union agrees to continue to adhere to Western Union’s BSA/AML program measures now in existence or in the process of being implemented in the Southwest Border Area, as described in the Report, incorporated by this reference, consistent with the principles set forth in the FATF RBA Guidance relating to money services businesses, and to implement additional program measures recommended by an independent Monitor in the Southwest Border Area (the “Recommendations”) to the extent required in the Monitor Engagement Letter. The existing program for the Southwest Border Area described in the Report and the Recommendations particular to the Southwest Border Area required in the Implementation Plan created pursuant to the Monitor Engagement Letter (“Implementation Plan”) will be collectively termed the “Program.” To ensure that its Program for the Southwest Border Area adheres to the principles set forth in the FATF RBA Guidance, to its legal obligations, and to this Agreement, and to coordinate it with the independent actions of the remedial undertaking described in Paragraph 23, Western Union agrees to be overseen by an independent Monitor as described in Paragraphs 20 through 22.

**Independent Monitor**

20. A three-person committee created by the Attorney General for this purpose, including a Western Union representative designated by Western Union, will select an independent Monitor (“Monitor”) by majority vote within sixty calendar days after the signing of this Agreement. In the event the Monitor selected through this process was chosen over the objection of the Western Union appointee to the committee, Western Union may file a motion with the Court challenging the selection; provided, however, that the parties agree that: a) such motion may be granted only upon a finding that Western Union has established, by a preponderance of the evidence, that the person selected has demonstrated a bias against Western Union, the money transmitter industry, or its customers; b) the decision of the Court is final; c) the parties expressly waive any rights to appeal the Court’s ruling; and d) the period of the Engagement of the Monitor as

set forth in Paragraph 22 shall be tolled for all time between the filing of such motion and the final appointment of a Monitor. The committee will consider the qualifications of candidates provided by Western Union and by the Attorney General. The successful candidate shall have no less than five years of personal AML compliance or related law-enforcement experience, but will have no prior employment with the Attorney General or any other Arizona state agency.

The Monitor may not be removed from this Engagement except upon a motion by a party with the Court; provided, however, that the parties agree that: a) such a motion will not be made unless the moving party has first provided the Monitor written notice, setting forth the alleged intentional malfeasance with reasonable specificity, and the Monitor has failed to cure such breach within thirty days after the Monitor received the notice; b) such motion may be granted only upon a finding that the moving party has established, by a preponderance of the evidence, that the Monitor has engaged in intentional malfeasance that is material to the Engagement and that cannot be corrected by any means short of removal; c) the decision of the Court is final; d) the parties expressly waive any rights to appeal the Court's ruling; and e) the period of the Engagement of the Monitor as set forth in Paragraph 22 shall be tolled for all time between the filing of such motion and the final appointment of a replacement Monitor.

Western Union and the State agree that neither the State nor any Western Union Affiliates will hire or enter into any contract with or provide any remuneration to the Monitor for at least five years after the conclusion of this Agreement. Western Union and the State also agree that no person employed by either of them during the term of this Agreement or for the five years preceding the date of this Agreement shall be eligible to act as Monitor. If the Monitor resigns or is otherwise unable to fulfill the obligations of the Monitor, a replacement will be selected in the above manner.

21. The Monitor shall evaluate Western Union's compliance with its obligations under this Agreement and the Engagement Letter, review and monitor the effectiveness of Western Union's risk-based AML compliance Program for the Southwest Border Area, and make such Recommendations as the Monitor believes may improve the Program, as provided in the Engagement Letter.

22. Western Union and the State agree that the period of Engagement of the Monitor shall end on the end of the forty-first month after the Agreement is fully executed, except that if, at any time after the end of the twenty-ninth month after the Agreement is fully executed, the Monitor, in the Monitor's sole discretion, certifies that Western Union is in full compliance with the terms of this Agreement and has implemented all of the Recommendations required in the Implementation Plan, and that continuation of the monitored Program is not in the public interest, the Monitor may terminate the Engagement.

**Funding Remedial Undertaking**

23. Western Union agrees to implement Western Union's offer to finance a multi-state border-wide AML effort, the Program, and the Monitor (collectively referred to as the "Remedial Undertaking"), as follows:

23.1 Western Union shall create an account in the amount of \$23,000,000 for non-law enforcement expenses associated with the enhancement of its AML Program for the Southwest Border Area and the Recommendations of the Monitor.

23.1.1 Western Union shall transfer \$4,000,000 from this account to the Clerk of the Maricopa County Superior Court within thirty days after it signs this Agreement, for use by the Monitor to fund the Monitor's expenses. The Clerk shall deposit these funds in an interest-bearing account and shall credit all earned interest to the account. If this amount is insufficient to pay all reasonable expenses of the Monitor, Western Union will use up to a maximum of \$2,000,000 of the balance of the account to fund the Monitor's expenses. If this is still insufficient to pay all reasonable expenses of the Monitor, the Financial Crimes Task Force's account within the Anti-Racketeering Revolving Fund shall be responsible for any additional Monitor expenses. In the event that any money remains in this fund at the time of the termination of the Monitor's Engagement, the Clerk shall transfer the balance to the Anti-Racketeering Revolving Fund for the benefit of the Financial Crimes Task Force.

23.1.2 Western Union shall use the balance of the \$23,000,000 to enhance the Program by funding Western Union's implementation of the Monitor's Recommendations or other monitor-approved Program enhancements from August 1, 2009, forward; provided, however, that none of these sums may be applied to attorneys' fees, legal costs, or expenses. Western Union shall provide the Monitor with an accounting of these expenditures and with full access to its records to verify that Western Union has used the funds for that purpose. In the event that this amount is insufficient to fund the implementation of the Monitor's Recommendations, Western Union shall be responsible for any additional expenses of the Program. If, at the time of the termination of the Monitor's Engagement, the Monitor determines that Western Union has spent less than the \$23,000,000 originally placed into the account (including all sums paid to the Monitor pursuant to Paragraph 23.1.1), Western Union shall transfer the unspent balance to the Anti-Racketeering Revolving Fund for the benefit of the Financial Crimes Task Force.

23.2 In addition, in recognition of the fact that the problems associated with criminal activity in the Southwest Border Area are regional in nature and require cooperation between law enforcement authorities in the four U.S./Mexico border states, and in order to further the mutual interests of Western Union, the State, and the other U.S. border states, Western Union agrees to transfer \$50,000,000 to the State Center, a 501(c)(3) entity, to establish a Southwest Border Anti-Money Laundering Alliance Fund

(the "Alliance Fund") to make grants to law enforcement organizations to combat money laundering and related criminal activity in the Southwest Border Area. The State shall enter into an alliance, to be known as the Southwest Border Anti-Money Laundering Alliance ("Alliance") that shall include the State of Arizona, and, at the election of the Attorney General of each State, may also include the States or the Attorneys General's Offices of California, New Mexico, and Texas.

23.2.1 The Alliance will recommend distributions from the Alliance Fund for investigations and prosecutions in the Southwest Border Area and related expenses with the goal of reducing money laundering and related criminal activity.

23.2.2 The parties contemplate that Arizona and the Participating States will draft and enter into a separate agreement setting up the internal functions and operations of the Southwest Border Anti-Money Laundering Alliance (the "Alliance Governing Agreement"), under which they agree to act with regard to the State Center only pursuant to the direction of an Executive Board to an Authorized Representative State, and subject to the terms of that Governing Agreement. Payments by Western Union under this paragraph shall commence on the first banking day of the first calendar month after such agreement has been signed with an initial payment of \$10,000,000, and shall continue with payments of \$5,000,000 per month thereafter until the full amount has been paid. U.S. States in the Southwest Border Area other than Arizona will become Participating States ("Participating States") by signing the Alliance Governing Agreement.

23.2.3 A Participating State acquires no rights or obligations enforceable under this Agreement and shall have no authority to declare a breach of this Agreement.

23.2.4 The State makes no representations regarding states' willingness to become Participating States, and whether states do or not is not part of the consideration supporting this Agreement.

#### **Continuing Obligation to Make Payments**

24. In the event the State asserts a breach of this Agreement by Western Union, Western Union shall continue to make the payments described in Paragraphs 16 and 23 until such time that the State files a civil or regulatory action or obtains an indictment. No funds transferred by Western Union shall be refunded to Western Union under any circumstances, including in the event of a breach or asserted breach.

#### **Miscellaneous Provisions**

25. Any notice to Western Union under this Agreement shall be in writing and shall be given by personal delivery, overnight delivery by a recognized delivery service or registered or certified mail, in each case addressed to David Schlapbach, Executive Vice

President and General Counsel, Western Union, 100 Summit Avenue, Montvale, NJ 07645, with a copy to [Arizonasettlement@westernunion.com](mailto:Arizonasettlement@westernunion.com). Notice shall be effective upon actual receipt by Western Union.

26. Any notice to the State under this Agreement shall be in writing and shall be given by personal delivery, overnight delivery by a recognized delivery service, or registered or certified mail, in each case addressed to the Attorney General and to the Chief of the Criminal Division for the Attorney General's Office, 1275 West Washington Street, Phoenix, AZ 85007-2926 . Notice shall be effective upon actual receipt by the State.

27. Western Union agrees that if Western Union's business operations are sold, whether by sale of stock, merger, consolidation, sale of a significant portion of its assets, or other form of business combination, or otherwise undergoes a direct or indirect change of control within the term of this Agreement, Western Union shall include in any contract embodying such action a provision binding the purchaser/successor to the obligations of this Agreement.

28. It is understood that this Agreement is binding on Western Union and the State, its agencies, and its subdivisions, including the Arizona Attorney General's Office and the Arizona Department of Financial Institutions. This Agreement specifically does not bind any federal agencies or any other state's authorities. The State agrees to bring the cooperation of Western Union and its compliance with its other obligations under this Agreement to the attention of any federal, state, or local prosecuting offices or regulatory agencies, if requested by Western Union.

29. Western Union and the State agree that, upon acceptance by the Court, this Agreement will be publicly filed in the Superior Court for Maricopa County as an exhibit to an Application for Order Approving Settlement and Appointing Monitor filed jointly by the parties.

30. This Agreement sets forth all the terms of the Agreement between Western Union and the State. No modifications or additions shall be valid unless expressly set forth in writing and signed by the State, Western Union's attorneys, and a duly authorized representative of Western Union. This Agreement supersedes any prior promises, agreements, or conditions between Western Union and the State.

**Acknowledgements:**

I, David Schlapbach, the duly authorized representative of Western Union Financial Services, Inc., hereby expressly acknowledge the following:

- (1) that I have read this entire Agreement;
- (2) that I have had an opportunity to discuss this Agreement fully and freely with Western Union Financial Services, Inc.'s outside attorneys;

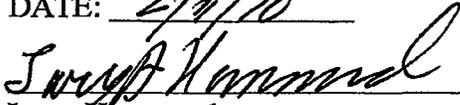
- (3) that Western Union Financial Services, Inc. fully and completely understands each and every one of the terms of the Agreement;
- (4) that the Board of Directors of Western Union Financial Services, Inc. has adopted a resolution reflecting that understanding, a copy of which has been provided to the State;
- (5) that Western Union Financial Services, Inc. is fully satisfied with the advice and representation provided to it by its attorneys; and
- (6) that Western Union Financial Services, Inc. has signed this Agreement voluntarily.

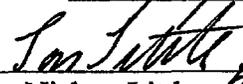
  
 \_\_\_\_\_  
 Western Union Financial Services, Inc.  
 David Schlapbach  
 General Counsel for Western Union Financial Services, Inc.

DATE: 2/11/10

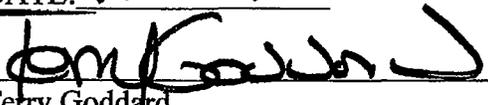
The undersigned are outside counsel for Western Union Financial Services, Inc. In connection with such representation, we acknowledge that:

- (1) we have discussed this Agreement with our client; and
- (2) we believe our client completely understands all of the Agreement's terms.

DATE: 2/9/10  
  
 \_\_\_\_\_  
 Larry Hammond  
 Osborn Maledon PA,  
 Attorneys for Western Union Financial Services, Inc.

DATE: 2/11/10  
  
 \_\_\_\_\_  
 Jan Nielsen Little *by Larry Hammond*  
 Kecker and Van Nest, LLP

**On Behalf of the STATE OF ARIZONA**

DATE: 2-11-10  
  
 \_\_\_\_\_  
 Terry Goddard  
 Arizona Attorney General

DATE: 2/11/10  
  
 \_\_\_\_\_  
 Cameron H. Holmes  
 Senior Litigation Counsel  
 Financial Remedies Section  
 Criminal Division

**Exhibit D**

CERTIFIED COPY

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA **FILED**

IN AND FOR THE COUNTY OF MARICOPA

2-24-10 4:03pm  
MICHAEL K. JEANES, Clerk

By B. Navarro  
Deputy

IN THE MATTER OF:

WESTERN UNION FINANCIAL SERVICES, INC.

Case No: CRIM. MISC.

ORDER APPROVING  
SETTLEMENT AND  
APPOINTING MONITOR

The State of Arizona *ex rel.* TERRY GODDARD, Attorney General ("State"), and WESTERN UNION FINANCIAL SERVICES, INC. ("Western Union"), having applied for the appointment of a Monitor, and whereas:

1) The State and Western Union have agreed that the public interest would be served by their entering a Settlement Agreement ("Agreement").<sup>1</sup> One of the terms of that Agreement is the appointment of a Monitor.

2) The Agreement calls for payments by Western Union to the State and for an independent Monitor with substantial duties relating to evaluating and improving Western Union's anti-money laundering efforts.

3) The duties the Agreement assigns to the Monitor require the engagement and supervision of substantial personnel, and creation by the Court of a Monitor account that permits the payment of the Monitor's necessary expenses from that account under the Agreement.

4) The Monitor's duties under the Agreement and Western Union's duties to the State under the Agreement call for substantial information exchange. The Court finds that the transaction data that Western Union is required to produce in Paragraph 17 of the Agreement and in Paragraph 32.5 of the Monitor Engagement Letter implementing the

<sup>1</sup> Capitalized terms used in this Order have the meaning defined in the Agreement.

Agreement, which includes full transaction data relating to all person-to-person transactions sent to or from authorized delegate/Agent locations within the Southwest Border Area from January 1, 2005, to the present and throughout the term of the Monitor's Engagement involving transactions in amounts of \$500 or more, is reasonable in scope because:

- a) it is reasonably necessary for the Monitor and the State to understand the context of present transaction data and to know what effect the Monitor's Recommendations are having or that other additional or different Recommendations would be likely to have;
- b) the same materials and transaction data are relevant to the investigation of money laundering for the same reason, because the success of Western Union's Undertaking, including the Monitor's Program, is part of the investigation of Western Union;
- c) the Monitor may provide data to representatives of the Southwest Border states to allow the Monitor to elicit information from the states necessary for the Monitor to determine what Recommendations are appropriate;
- d) the State must have access to comprehensive data to determine whether Western Union is in full compliance with the border-wide duties imposed on Western Union by the Agreement.
- 5) This Court has authority to enter this Order under Ariz. Const. art. VI, § 24, the Rules of Civil Procedure, A.R.S. §§ 12-123, and A.R.S. § 13-2314.

**GOOD CAUSE APPEARING, IT IS ORDERED:**

**APPOINTMENT OF MONITOR**

That Marcy Forman, or such corporate entity that she may choose to create for this purpose, is appointed as Monitor, with direction and authority to accomplish the following:

- 1) open and maintain an account for the receipt of payments from Western Union via the Clerk of the Court and for the payment and accounting for all Monitor expenses;
- 2) assemble and direct any personnel reasonably necessary to assist in the proper discharge of the Monitor's duties;
- 3) determine whether Western Union is in compliance with the terms of the Agreement and its implementing Monitor Engagement Letter and submit an Implementation Plan, periodic reports and a final evaluation in a Final Report, all pursuant to the terms of the Agreement and Monitor Engagement Letter;
- 4) include in each report a detailed financial accounting of all of the Monitor's activities and expenses to date and of all Western Union expenses that the Monitor has determined were made to implement the Program Recommendations or to enhance the Program, as described in Paragraph 23.1.2 of the Agreement;
- 5) cooperate with reasonable requests for information or assistance from any Southwest Border Area law enforcement agency, from the Arizona Department of Financial Institutions, or from Western Union consistent with the Monitor Engagement Letter.

That the Monitor shall prepare and serve such reports as are required by the Monitor Engagement Letter, as agreed to between the State and Western Union in the Agreement, or as required by the Court. Before filing any such reports with the Court, the Monitor

shall submit a draft thereof to counsel for all parties for the purpose of receiving their suggestions.

That within ten days after being served with notice of the filing of a report, any party may serve written objections thereto or requests that all or portions of the report be filed under seal upon the other parties. Application to the Court for action upon the report and upon objections thereto or requests relating to sealing shall be by motion and upon notice as prescribed in Rule 6(c), Ariz. R. Civ. P.

**TERMS OF ENGAGEMENT**

As particularizations of the above five obligations:

1) Monitor's Account

a. The Monitor shall open an account at a financial institution that does business in Arizona (the "Monitor's Account") through which the Monitor will conduct all Monitor business.

b. The Clerk of the Court will transfer funds into the Monitor's Account as directed by the Court, starting with an immediate deposit of \$1,500,000 for start-up expenses and replenished thereafter based on the Monitor's periodic reports.

c. The Monitor shall have exclusive control over the Monitor's Account, and shall be responsible for the expenditure and auditing of the Monitor's Account as the Monitor uses those funds to carry out this Court's orders.

d. The Monitor shall file with the Court every six months a detailed financial accounting of all of the Monitor's activities and expenses to date, including an inventory of all property purchased, rented, or leased with Monitor's Account funds.

e. The Monitor shall, as needed, apply to the Court for subsequent orders replenishing the Monitor's Account. In each such application, the Monitor shall request

such additional monies as the Monitor projects will be needed before the Monitor's next application, if any.

2) Employment terms

The Monitor shall take charge of the Monitor operation in general for the entire period of the Monitor's Engagement, as described in the Agreement, and, in particular:

a. The Monitor shall have the authority to employ or contract for the services of personnel, including but not limited to legal counsel, consultants, investigators, and experts, that the Monitor deems reasonably necessary to assist in the proper discharge of the Monitor's duties as specified in the Monitor Engagement Letter. While the Monitor must provide Western Union and the State an opportunity to perform routine conflicts checks on individuals or entities the Monitor proposes to engage, if neither asserts a reasonable belief that a conflict exists within two weeks, the Monitor may proceed to engage that person.

b. The Monitor shall have authority to set reasonable compensation and expenses of the persons engaged by the Monitor. The Monitor may consult with the parties or any other person on hiring, but retains ultimate control of hiring, subject to the terms of the Agreement and the Monitor Engagement Letter. While the Court expects the Monitor and the persons engaged by the Monitor to provide services on a schedule similar to that of a senior Maricopa County employee with regard to hours, sick leave, and vacation days, it is within the reasonable discretion of the Monitor to engage people on a part time or hourly basis, as well.

c. The Monitor and any persons hired or engaged by the Monitor shall be paid through the Monitor's Account, as with all other Monitor expenses. The Monitor may hire or engage personnel at their respective typical hourly rates or a reasonable fee determined by the Monitor.

d. The Court approves the Monitor's annual compensation of \$300,000 per year, from which the Monitor shall pay any health care, health or life insurance, and other employee-related benefits.

e. The Monitor and Monitor's staff are entitled to reimbursement from the Monitor's Account for travel expenses at no higher rate than in accordance with federal employee travel reimbursement policies.

f. The Monitor shall serve until the expiration of the Monitor's Engagement as described in the Agreement, or until relieved by the Court after an evidentiary hearing. If the Monitor chooses to resign prior to such expiration, the Monitor shall provide sixty (60) days written notice to the parties and the Court to provide time to retain a replacement.

g. At the conclusion of the Monitor's Engagement, any equipment or other property purchased by the Monitor shall become the property of the State and the Monitor shall arrange to have it all delivered to the State's representative with a current version of the inventory that the Monitor has periodically produced to the Court.

#### **SETTLEMENT AGREEMENT**

IT IS FURTHER ORDERED accepting and approving the Agreement in all respects, including, but not limited to, and accepting Western Union's waivers in Paragraphs 11 and 12 therein.

#### **FUNDS**

IT IS FURTHER ORDERED that Western Union shall:

1) Transfer \$21,000,000 to the fund established pursuant to A.R.S. § 13-2314.01 for the benefit of the Arizona Attorney General's Office, Arizona Department of Public Safety, and Phoenix Police Department for expenditure for investigations and prosecutions of money laundering in the Southwest Border Area, and related expenses as

permitted by A.R.S. § 13-2314.01, commencing on the first banking day of the first calendar month after it signs this Agreement with an initial payment of \$3,000,000 and continuing monthly installments of \$3,000,000 until the full amount has been paid, except in the event of the filing of an action or prosecution after a breach, as described in the Agreement;

2) Commit \$23,000,000 for the non-law enforcement expenses of Western Union's Undertaking, as described in the Agreement, and promptly transfer \$4,000,000 of that amount to the Clerk of the Court for use in paying the expenses of the Monitor as directed by the Court.

IT IS FURTHER ORDERED that the Clerk of the Court shall create a separate interest bearing account for this \$4,000,000 and shall add the interest to the account as it accrues. In the event that any money remains in this fund at the time of the termination of the Monitor's Engagement, the Clerk will transfer the balance to the fund established pursuant to A.R.S. § 13-2314.01 for the benefit of the Financial Crimes Task Force.

**TURN OVER TO MONITOR AND STATES**

IT IS FURTHER ORDERED that Western Union, upon service of this Order upon them, shall deliver to the Monitor or the Monitor's duly authorized agent, and to the State, the materials described in Paragraph 17.1 of the Agreement and the data described in Paragraphs 32.4 and 32.5 of the Monitor Engagement Letter implementing the Agreement, which includes full transaction data relating to all person-to-person transactions sent to or from authorized delegate/Agent locations within the Southwest Border Area from January 1, 2005, to the present and throughout the term of the Monitor's Engagement involving transactions in amounts of \$500 or more.

IT IS FURTHER ORDERED that Western Union, upon the written request of any Participating State, as that term is defined in Paragraph 23.2.2 of the Agreement, shall

deliver to that state such materials described in Paragraph 17.1 of the Agreement, which includes full transaction data relating to all person-to-person transactions sent to or from authorized delegate/Agent locations within the Southwest Border Area, or such additional areas of the Participating State as that state requests in writing, from January 1, 2005, to the present and throughout the term of the Monitor Engagement involving transactions in amounts of \$500 or more, as may pertain to that requesting state.

IT IS FURTHER ORDERED that Western Union shall supply the transaction data to the State and to the Participating States in the manner described in Paragraph 32.6 of the Monitor Engagement Letter, Exhibit B to the Agreement, if and to the extent indicated by the conditions stated in the Monitor Engagement Letter.

#### **INFORMATION SHARING**

In order to preserve the privacy of the data and information involved:

- 1) All transaction data or investigative information that is received pursuant to this Order by an agency represented on the Executive Board may be shared with another law enforcement or prosecutive agency only if such other law enforcement or prosecutive agency agrees to keep such transaction data or investigative information confidential to the maximum extent permissible under law.
- 2) No agency represented on the Executive Board shall disclose such transaction data or investigative information pursuant to a request by a non-law enforcement person or entity other than the Monitor if that agency obtained the information or material pursuant to an agreement that it would be kept in confidence to the extent permissible by the applicable state laws or unless disclosure is required by a court of competent jurisdiction.
- 3) To the extent permitted by the respective public records laws applicable to any agency represented on the Executive Board, information produced pursuant to this

Order that is exchanged between the Monitor and such agencies, or among such agencies, will be considered by the Monitor and by the agencies to be law enforcement investigatory materials and/or otherwise confidential and exempt from disclosure under the applicable public records laws.

4) Subject to the above, information about the finances of the Monitor shall be made public to the maximum extent permitted by law, unless release of the information could compromise ongoing law enforcement investigations, law enforcement sources, law enforcement methods, or the safety of law enforcement personnel.

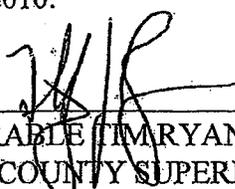
**INDEMNIFICATION**

IT IS FURTHER ORDERED approving the indemnification agreement between Western Union and the Monitor.

**PAYMENTS**

IT IS FURTHER ORDERED that the Monitor and all personnel hired or contracted with by the Monitor as herein authorized are entitled to reasonable compensation for the performance of duties pursuant to this order and for expenses incurred by them, as limited by the Monitor Engagement Letter and approved by the Court, which shall be paid out of the Monitor's Account established pursuant to this Order. The Monitor shall serve on the parties each request for replenishment of the Monitor's Account, with the first such request filed no more than sixty days after the date of this Order. The Monitor shall not increase the rates used as the base for such requests without prior approval of the Court.

DATED this 24<sup>th</sup> day of February, 2010.

  
\_\_\_\_\_  
THE HONORABLE TIM RYAN  
MARICOPA COUNTY SUPERIOR COURT JUDGE

The foregoing instrument is a full, true and correct copy of the original on file in this office.

Attest Feb. 24 20 10  
MICHAEL K. JEANES, Clerk of the Superior Court of the State of Arizona, in and for the County of Maricopa.

By Branamio Deputy

**Exhibit E**

THOMAS C. HORNE, ATTORNEY GENERAL  
FIRM BAR NO. 14000  
Cameron H. Holmes #004983  
Alex Mahon #007596  
1275 WEST WASHINGTON STREET  
PHOENIX, ARIZONA 85007-2926  
TELEPHONE: 602 659-5153  
CAMERON.HOLMES@AZAG.GOV  
ATTORNEYS FOR THE STATE

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

<b>State of Arizona, ex. rel.</b>	)	No. CV 2010-005807
<b>Attorney General Thomas C. Horne,</b>	)	
	)	<b>STATE'S DECISION MEMO</b>
<b>Plaintiff,</b>	)	<b>RE:</b>
	)	<b>APPLICATION FOR ORDER</b>
<b>vs.</b>	)	<b>PERMITTING PRODUCTION</b>
	)	<b>OF MONITOR'S PERIODIC</b>
<b>Western Union Financial Services, Inc.</b>	)	<b>REVIEWS AND OTHER</b>
	)	<b>MATERIALS</b>
<b>Defendant.</b>	)	

The State respectfully supplies the Court with this decision memorandum regarding its application for an Order permitting production of the Monitor's Periodic Reviews, past and future, and other materials to the Federal Trade Commission and the Federal Department of Homeland Security Investigations, as set forth in the following Memorandum.

**MEMORANDUM**

**I. BACKGROUND**

The Monitor is required to make Periodic Reviews pursuant to the Monitor Engagement Letter, Paragraph 30. Both the Department of Homeland Security Investigations (HSI), Laredo, TX office, and the Federal Trade Commission (FTC) have become aware of the Monitor engagement, presumably in the course of their

respective interests in the use of money transmitters to accomplish money laundering, whether in furtherance of drug or human smuggling, fraud, or other crimes.

The Department of Homeland Security Investigations (HSI) investigates various activities in the Laredo area, particularly including drug smuggling, human smuggling, import/export fraud, and the money laundering that makes these crimes possible.

The FTC investigates and prosecutes pursuant to the Consumer Fraud and Abuse Prevention Act and the Federal Trade Commission Act, among others. In particular, its investigations have resulted in a Complaint directed at a competitor of Western Union Financial Services (“Western Union” or “WU”) in connection with consumer frauds perpetrated by money transmitter customers (who receive the funds in question) against other money transmitter customers (who are induced by fraud to send the funds).

The FTC and HSI have separately requested access to the Monitor’s Periodic Reviews and other reports filed by the Monitor to further their respective understandings of the money transmitter industry and to further their respective enforcement goals.

Because the State believes that the production of the Monitor’s materials to the FTC and HSI is so clearly within the provisions of the Settlement Agreement (“Agreement”) regarding disclosures to investigating agencies that Western Union would have no objection, it moved for the subject Order, primarily to clarify the effect of the disclosure, i.e., that the material could be used for any appropriate purpose but that production of these materials will not waive and is without prejudice to any rights Western Union may have or positions it may take with respect to other requests for production from the FTC or HSI.

## **II. THIS APPLICATION IS VERY NARROW IN SCOPE**

Western Union appears to be under the misimpression that it can block the State's release of the materials sought by opposing the requested Order. However, the issue here is not whether these investigative agencies will ultimately receive the materials—the State has unquestionable authority to provide information in its possession to investigating agencies with a need to know—it is whether the receiving agencies will get some guidance from the Court on what they can do with the materials they are getting. The State's proposed Order provides that guidance, and does so in a way that is generally very favorable to Western Union. Without the guidance, these agencies will still get the materials because the State has the inherent authority and duty to share information it has with any appropriate recipient unless prohibited by some specific statute or agreement. There is no such statute and the Agreement does not create any such barrier.

## **III. THE SETTLEMENT AGREEMENT DOES NOT BLOCK DISCLOSURE; IT AUTHORIZES DISCLOSURE.**

The Settlement Agreement between Western Union and the State includes numerous parts, the most relevant here being the Settlement Agreement itself, its attached Monitor Engagement Letter ("Letter"), and an agreed Order Appointing Monitor ("Order"), which was entered accepting the Agreement and appointing the Monitor pursuant to the Letter, among other things.

Each of these three parts of the overall Agreement made it very clear that the Agreement would not interfere with the State's inherent authority to share information other than the kinds of restrictions that apply to law enforcement information flow in general. Indeed, these documents indicate the strong intent to enhance data and other information flow between and among the State, investigative agencies, Western Union, and the Monitor. Several provisions emphasized that nothing in the Agreement would impede information flow.

Reference is made to these three parts in the order of their specificity on the information aspect of the Agreement.

#### **The Settlement Agreement**

The treatment of information flow in the Agreement makes it very clear that information flow is not to be impeded in any way. In Paragraph 17.1.4 it states:

*17.1.4 The State shall maintain the confidentiality of any materials or information provided by Western Union under this paragraph and shall not provide such material or information to any third party, except to the extent that disclosure is required by law, otherwise authorized by this Agreement, or is in the proper discharge of or otherwise furthers the State's official duties or responsibilities. . . .*

So the State may disclose whatever information it has to the extent that it "is in the proper discharge of or otherwise furthers the State's official duties or responsibilities." The State's duties or responsibilities include the proper functioning of all money transmitters because the State licenses and examines all money transmitters. They also include the enforcement of fraud, drug and human smuggling, and money laundering statutes, for which the State has explicit authority and responsibility. The Attorney General's Office has an entire Division dedicated to the protection of consumers from fraud. Working with HSI and the FTC relating to these duties and responsibilities are also duties and responsibilities.

The most explicit provision is Paragraph 17.1.5, which states the general agreement that information flow will not ever be restricted by the Agreement. It begins by stating: "Western Union agrees that nothing in this Agreement is intended to place any condition or limitation on the State's statutory or other legal authority to obtain records or information from Western Union." It then states the agreement provision that undermines WU's objection to this Application, providing:

Western Union further agrees not to assert this Agreement or to assert the State's failure to comply with any aspect of this Agreement in response to any

subpoena, administrative request, or other legal action to obtain records or information from Western Union. Western Union agrees that the State remains free to pursue any legal authority that the State may have to obtain records or information from Western Union without reference to this Agreement and without proving any fact or circumstance or presenting any information that it would not have been required to prove or present in the absence of this Agreement, in addition to and apart from any rights that the Arizona Attorney General or the State may have to obtain records or information under this Agreement.

This free flow of information principle is found throughout the Agreement and its attachments. For example, with regard to the Department of Financial Institutions (DFI), in Paragraph 13 the Agreement states:

DFI will provide any report of an examination of Western Union to the Attorney General and to Western Union. Western Union also agrees that the Monitor may freely provide information to DFI and that the Monitor may receive information from DFI except as restricted by the confidentiality statutes relating to examination reports.

**Monitor Engagement Letter**

The Letter is more succinct, but no less definite.

At Paragraph 9 it again makes the law enforcement general rule very clear and repeats the key clause, stating:

... This Monitor Engagement Letter does not require any law enforcement agency or prosecutor's office or person employed or engaged by them to return or destroy any document or information. The State shall maintain the confidentiality of any materials or information provided by Western Union under this paragraph and shall not provide such material or information to any third party, except to the extent that disclosure is required by law, otherwise authorized by this Agreement, or is in the proper discharge of or otherwise furthers the State's official duties or responsibilities.

The key final clause is the exact language used in the Agreement, quoted above.

The Letter addresses information sharing again in Paragraph 36 to require the Monitor to "take appropriate steps to maintain the confidentiality of any information entrusted to him or her while executing his or her duties under the Engagement." In

the same sentence, it again states the overarching rule, going on to say: “and shall share such information only with the State, appropriate investigative agencies, and individuals or entities hired by him or her.” So, in addition to acknowledging the State’s authority to share information within its duties or responsibilities, the Letter specifically permits the Monitor, a private court-appointed entity, to share such information . . . “with the State, *appropriate investigating agencies*” and the Monitor’s team. (Emphasis added).

Finally, in Paragraph 37, with specific regard to the Monitor’s Periodic Reports, the Letter again acknowledges the general rule that the State may disclose them as “may be necessary by the State in connection with the discharge of its official duties.”

#### **Order Appointing Monitor**

The Order states five core purposes of the Monitor’s duties. One of them is:

5) cooperate with reasonable requests for information or assistance from any Southwest Border Area law enforcement agency, from the Arizona Department of Financial Institutions, or from Western Union consistent with the Monitor Engagement Letter.

Obviously, all federal agencies do business in the Southwest Border Area, so each is a Southwest Border Area agency by its federal nature. The Order devotes an entire section to “Information Sharing” and that section again is founded on the premise of broad exchange of information, within the confines of law enforcement’s usual non-public “need to know” practice. Accordingly, its Section 3) states:

3) To the extent permitted by the respective public records laws applicable to any agency represented on the Executive Board, information produced pursuant to this Order that is exchanged between the Monitor and such agencies, or among such agencies, will be considered by the Monitor and by the agencies to be law enforcement investigatory materials and/or otherwise confidential and exempt from disclosure under the applicable public records laws.

Thus, information is intended to flow freely within law enforcement and the Monitor but would be considered investigatory materials so as to not fall into the public domain, to the extent permitted by the applicable public records laws.

#### IV. WESTERN UNION'S OBJECTIONS ARE WITHOUT MERIT.

**“Investigative agency” is not limited to money laundering investigative agencies.**

The anticipated assertion that an “investigating agency” is not an “appropriate investigating agency,” as that term is used in Paragraph 36 of the Letter, unless it is focused on money laundering is meritless for two reasons:

First, there is no mention of any such qualification in the Agreement, Letter, or Order. As we have seen in the quoted materials above, none of the relevant portions of these documents create any such requirement.

Second, even if the words of the documents were somehow changed by interpretation to permit only inquiries related to money laundering, these agencies are both qualified under even that unsupported interpretation. This assertion in the context of the HSI is frivolous—HSI is a premier anti-money laundering agency. This objection is aimed at the FTC's request.

Based on the FTC's public Complaint against WU's competitor, MoneyGram, the FTC is apparently investigating possible complicity of money transmitters' agents with perpetrators of fraud who use money transmitters to get paid by their victims. In very brief form, according to the Complaint (attached as Exhibit A), a typical event would start with a phone “boiler room” call to a potential victim, informing the victim that he or she has won the Canadian Lottery. The caller informs the victim that in order to collect the prize they must send some funds, variously called taxes, administrative fees, etc. The caller directs the victim to use a money transmitter such as WU or MoneyGram because they know that once that payment is picked up at the destination location it is not reversible, unlike a credit card payment, and payment is

made too fast to allow second thoughts, unlike a check. Because there are no actual Canadian lottery winnings, the transaction is a fraud, so the money being sent is the proceeds of that fraud/theft. Any investigation of fraud/theft in the context of the transaction of the proceeds of that conduct is necessarily an investigation of money laundering, because it is the investigation of the transaction of fraud/theft proceeds, which fulfills the elements of money laundering. In this context of money transmission of the fraud/theft proceeds, fraud and money laundering are inseparable—the fraud business model would not work without the money laundering aspect of the operation and every transaction is a money laundering violation. Whether the perpetrators are charged with fraud, theft, money laundering, or all three is of no significance; the investigation is a money laundering investigation because it is an investigation of conduct that fulfills all of the elements of money laundering.

**There is no Special Protection for the Monitor's Periodic Reports.**

WU is understandably reluctant to have negative reports circulated, even just within law enforcement. Nevertheless, its Agreement does not support its anticipated argument that these reports are somehow sacrosanct. As an initial matter, public display of all court filings is normal and universally required short of a compelling showing of necessity to deny the public access to judicial proceedings. The only potential deviation from the universal rule found in the Agreement is the provision on page 3 of the Order allowing (not requiring) filing under seal upon the request of a party. This does not require the Court to actually allow filing under seal; it simply permits such filing if a party makes the requisite showing.

The effect of such sealing is actually very limited. Even if a document is filed under seal, the only effect of such filing is that the specific document is not available to the public *through the court record*. It does not mean that the document is to be encased in lead and lowered to the bottom of the ocean. The Monitor is not Western Union's attorney. There is no Monitor/Western Union privilege. The Agreement

does not even attempt to invent some “Monitor privilege” that attaches to the Monitor’s reports. Therefore, any method of dissemination of that document other than going to the public court file to get it is still available to any person that wants it. This is true of a friendly request for it, a request by subpoena, a request addressed to someone else who has access to it, such as the State in this case, or any number of other ways that a document may be acquired.

Western Union has not to date filed a timely motion to seal this Monitor’s Periodic Review, which it has an affirmative responsibility to do if it wants the Court to so order, and which the State asserts is a waiver of such a request. It has merely filed a Notice of Objection [to the State’s Motion to File Application for Order Permitting Production Under Seal], and of its Intent to Provide [a] Response [to the State’s Motion to File Application for Order Permitting Production Under Seal], providing no support whatsoever, legal or factual, for filing these documents under seal. But even if WU had filed a motion to file these documents under seal and even if the motion was granted, the State is still free to provide these materials or any other materials to any requestor within the very low standard in the Agreement, which is: “otherwise authorized by this Agreement, or is in the proper discharge of or otherwise furthers the State’s official duties or responsibilities.” In the final analysis, there is no language in the Agreement that would limit the State’s normal freedom to exchange information with law enforcement. The Agreement provides no basis to, in effect, hide these documents from investigative agencies forever. The State is always free to share whatever it chooses to share within the furtherance of its duties or responsibilities. The State clearly has a duty or responsibility with regard to consumer fraud on money transmitter customers, money laundering, and everything relating to the operation of money transmitters, which are licensed by the State.

## V. THE PROPOSED ORDER

WU would prefer that these reports not be shared with appropriate investigating agencies that are legitimately concerned about money transmitter activities and that have jurisdiction to investigate such conduct. WU's legitimate concerns are considered in the existing Proposed Order, which:

- 1) prevents further dissemination "without permission of this Court other than as needed to further enforcement purposes;" and
- 2) provides that "production of these materials and information does not waive and is without prejudice to any rights Western Union may have or positions it may take with respect to other requests for production from the FTC or HSI during or after the term of the Settlement Agreement and Monitor Engagement." Therefore, in the event that Western Union gets other requests for production from either of these agencies, this Order would not prejudice its position in regard to that.

## CONCLUSION

This Court should overrule WU's objection to the State's proposed Order releasing these documents to the FTC and HSI. The materials are subject to being released by the State to these agencies in any event, so the Order sought is just a clarification of the terms of their possession, none of which are adverse to Western Union.

Respectfully submitted this 13<sup>th</sup> day of July, 2012.

By Alex Mahon  
Alex Mahon # 007596  
Assistant Attorney General  
Office of the Attorney General  
1275 W. Washington  
Phoenix, AZ 85007  
Attorneys for the State of Arizona

ORIGINAL hand delivered this 13<sup>th</sup> day of July, 2012, to:

Hon. Warren Granville  
Judge of the Superior Court  
175 West Madison St.  
Phoenix, AZ 85003

COPY of the foregoing emailed this <sup>th</sup> 13 day  
of July, 2012 to:

Larry A. Hammond, 004049  
Kathleen Brody O'Meara, 026331  
Osborn Maledon  
2929 N. Central  
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Attorneys for Western Union Financial Services, Inc.  
lhammond@omlaw.com  
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Lonnie Keene  
Keene Consulting Arizona, LLC  
P.O. Box 270  
New York, NY 10021  
lkeene@wumonitor.com

C. Keppeler

**Exhibit F**

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

State of Arizona, ex.rel. )  
Attorney General )  
Thomas C. Horne, )  
  
Plaintiff, )  
  
vs. )  
  
Western Union Financial )  
Services, )  
  
Defendant. )

CV2010-005807

REPORTER'S TRANSCRIPT OF PROCEEDINGS

(Oral Argument on Motions)

Phoenix, Arizona  
September 25, 2012  
11:00 a.m.

Before: The Honorable Warren J. Granville, Judge

kwiktag \* 094 416 345



(COPY)

PREPARED BY: Elva Cruz-Lauer, RMR, CRR  
Arizona Certified Reporter No. 50390

1 APPEARANCES:

2 For the Plaintiff: MR. CAMERON H. HOLMES,  
3 MR. ALEX MAHON,  
4 Assistant Attorney Generals,

5 For the Defendant: MR. LAWRENCE HAMMOND,  
6 MS. KATHLEEN B. O'MEARA,  
7 Attorneys at Law,

8 (Whereupon, Elva Cruz-Lauer, was first duly  
9 sworn to act as the Official Reporter herein.)

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1 THE COURT: This is the time set for oral  
2 argument on motions, State of Arizona versus Western  
3 Union Financial Services, CV2010-005807.

4 Appearances please.

5 MR. HOLMES: Cameron Holmes on behalf of  
6 the State, Your Honor, with Alex Mahon on behalf of  
7 the State.

8 THE COURT: Good morning.

9 MR. KEENE: Lonnie Keene, monitor, Your  
10 Honor.

11 THE COURT: Good morning.

12 MR. HAMMOND: Good morning, Your Honor,  
13 Larry Hammond and Kathy O'Meara, Anne Chapman and  
14 Yaser Ali -- and we will get the spellings for the  
15 court reporter -- and with me is our general counsel  
16 who you have met before, John Dye.

17 THE COURT: Good morning. Please be  
18 seated.

19 There were a couple of pleadings that had  
20 been filed, one dealt with the monitor's request to  
21 have access to documents, data, personnel and other  
22 materials relating to Western Union Business  
23 Solutions.

24 The Court has read the monitor's request,  
25 the Attorney General's Office pleadings, Western

1 communication with me constantly on the -- back and  
2 forth with the proposed order. And they are both  
3 perfectly okay with the proposed order with the  
4 confidentiality provision in it. So we do know what  
5 they would say if asked, will they comply. The  
6 answer is yes.

7 THE COURT: While I have great respect and  
8 believe everything that you say, Mr. Holmes, I have a  
9 trust but verify mentality, so I have been trained  
10 long ago not to order somebody to do something or not  
11 do something unless they are in the room.

12 So without prejudice, the Court is going to  
13 deny the monitor's request or the -- I am sorry, the  
14 Attorney General's Office's request to allow the  
15 monitor to provide information to FTC or Homeland  
16 Security pursuant to the settlement agreement.

17 To the extent that the monitor or the  
18 Attorney General's Office has outside rights or  
19 obligations to reveal the information, I make no  
20 comment on.

21 To the extent that the FTC or Homeland  
22 Security has a right to secure information that the  
23 monitor has or the Attorney General's Office has, I  
24 make no comment on.

25 But for the Court to order disclosure to

1 these agencies pursuant to the agreement, I would  
2 want them in the courtroom to know what the scope of  
3 the agreement is, that it is going to be a two-way  
4 street. It would benefit the monitor in doing the  
5 monitor's job.

6 I heard Mr. Keene talk about that it may  
7 assist him in determining cooperation and learning  
8 from these other folks, but it is not clear what  
9 other information those folks would give you.

10 So in the absence of that, I am denying the  
11 request without prejudice. The last issue is the  
12 expiration of the agreement. The agreement on its  
13 face has an expiration date.

14 One issue is whether -- can they extend it  
15 at the Court's discretion or solely by agreement of  
16 the parties?

17 Mr. Holmes in his reply raised that issue.  
18 Western Union hadn't had a chance to respond to that  
19 part, so the Court will treat that section as a  
20 motion to extend the deadline of the agreement or the  
21 expiration date of the agreement and defer to counsel  
22 as to the pleadings and oral argument on that.

23 Mr. Hammond.

24 MR. HAMMOND: Your Honor, we -- you're  
25 correct that this suggestion that the agreement be

**Exhibit G**

Michael K. Jeanes, Clerk of Court  
\*\*\* Filed \*\*\*

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2010-005807

01/28/2013

HONORABLE WARREN J. GRANVILLE

CLERK OF THE COURT  
B. McDonald  
Deputy

STATE OF ARIZONA, et al.

CAMERON H HOLMES  
ALEX MAHON  
CATHERINE ADAMS

v.

WESTERN UNION FINANCIAL SERVICES  
INC

LAWRENCE A HAMMOND  
  
ANNE CHAPMAN  
KATHLEEN O'MEARA  
MICHAEL C LEDLEY  
RICHARD KROLLMAN

RULING

This Court has taken under advisement the request by the Monitor and the State of Arizona to authorize the Monitor to comply with a Civil Investigation Demand issued by the Federal Trade Commission for the Monitor's Periodic Reviews and other related information. This Court has reviewed the Monitor's Application for Order Construing Monitor Engagement Letter, Reply, and attachments, Western Union's Response, the State of Arizona's Reply, the Settlement Agreement, and the arguments of counsel.

The Federal Trade Commission (FTC) has issued a Civil Investigative Demand (CID) requesting the Monitor's Periodic Reviews and related documents. The Monitor seeks this Court's authorization to comply with the CID without requiring the FTC to resort to a formal enforcement action in federal court. The documents being sought by the FTC are the work product of the Monitor that he was able to create as a result of the Settlement Agreement between the State of Arizona and Western Union that was begun in September, 2010 and is set to expire on July 31, 2013. The State of Arizona supports the Monitor's request. Western Union objects.

This Court appears to be the only participant involved in this dispute that is perplexed by its standing to resolve the issue of whether a federal FTC CID is enforceable under these

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2010-005807

01/28/2013

circumstances. Having unsuccessfully attempted to avoid ruling, this Court makes the following findings and rulings:

While the parties quote commas and clauses from the Settlement Agreement and Monitor's Engagement Letter, this Court's focus is on the intent and purpose of the Agreement. The Settlement Agreement created a symbiotic arrangement among the State of Arizona, Western Union, and a court-appointed Monitor. The laudable goal of the Settlement Agreement was to seek to eliminate the prospect of criminals using Western Union's business facilities to launder the money proceeds of the criminals' international and inter-state illegal drug sales.

The Agreement established a court-appointed Monitor who would have unprecedented and unfettered access to the daily business practices and records of Western Union. Under the Agreement, the Monitor would be given access to Western Union's practices and records that government agencies are not usually privy. By examining Western Union's practices and policies, the Monitor would be able assess the vulnerabilities of Western Union to customers with unlawful intents, and to make specific recommendations on how and where to shut down those areas of vulnerability.

In exchange for the Monitor's broad access to Western Union's policies and practices, the Settlement Agreement provided that the State of Arizona would not, except in the case of a willful and material breach of the Agreement, bring any civil, criminal, or administrative prosecution or enforcement action and may not conduct any investigation of Western Union, based on, among other categories of information, information and documents disclosed by Western Union pursuant to the Settlement Agreement.

Reaching the goals of the Settlement Agreement has proven to be a more arduous task than its framers expected. Despite the herculean efforts of the Monitor, the parties realize that success cannot be achieved within the specified life-span of the Agreement. Nonetheless, the parties have performed pursuant to the Agreement. While there has been sabre rattling, no party has yet sought a finding by this Court of a breach of the Agreement.

No third party can read the Settlement Agreement without appreciating the significance of confidentiality of the information and access provided by Western Union to the Monitor. In practice, the State of Arizona, the Monitor, and Western Union have been scrupulous about filing pleadings under seal and reminding the Court of the "under seal" status of those filings.

This Court finds that Western Union voluntarily gave the Monitor access to its otherwise private practices and proprietary data to assist in the public interest goal of eliminating money laundering opportunities and because of an expectation of confidentiality. This Court finds that Western Union had a reasonable expectation that their information and the Monitor's Reports

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

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would be accessible only to the State of Arizona and this Court except if they were found in breach of the Agreement or the State of Arizona made disclosure pursuant to their official duties. This Court finds it reasonable that Western Union did not expect that their proprietary information and practices would be otherwise provided to a third party who has no enforceable limitation on its use or disclosure.

In his Reply, the Monitor asserts that, while the State and Western Union are bound by confidentiality for information provided to and by the Monitor, he is not. Similarly, the State posits that Western Union has no standing to object to whether the Monitor's Reports and related information may be disclosed to the FTC. This Court rejects both of these arguments. These contentions disregard the "but for" fact that the Monitor's Reports and related information exist only because of Western Union's compliance with the Settlement Agreement in providing the Monitor the access and information that form the bases of the Reports and related information. They also ignore the fact that the practice of the parties and the Monitor since the beginning of the Agreement has been consistently to reflect the importance of confidentiality of the Reports and related information.

The State of Arizona claims that it may disclose information obtained pursuant to the Settlement Agreement in the proper discharge of its official duties or responsibilities. The issue of whether disclosure to the FTC for the records sought by the CID is within the Attorney General's official duties or responsibilities is not before this Court at this time. The State of Arizona is not hereby seeking permission to or forgiveness for releasing the information pursuant to that power. Instead, the State and the Monitor are seeking this Court's imprimatur for the Court's appointed Monitor to release the information without requiring the FTC to seek a formal enforcement action in federal court. This Court addresses that issue only. Nothing in this ruling should be construed as any decision on the merits of the Attorney General's power to release the information sought under their official duties powers retained in the Settlement Agreement.

All three parties weigh in on the status, jurisdiction, purpose, and powers of the FTC. No one from that agency has made any appearance or filed any pleading. The FTC letter attached to the Monitor's pleading is not enforceable and is contradicted by the state's repeated reference to the Agreement's provision, "This Agreement specifically does not bind any federal agencies..."

This Court agrees that it has no jurisdiction, and makes no attempt to determine the enforceability of the FTC's CID. This Court perceives the issue now as whether this Court should permit its agent to disclose confidential information without requiring a formal enforcement action in federal court. Because this Court interprets the Agreement to create a limited expectation of confidentiality by Western Union, this Court would require the proper federal judicial authority to address the enforceability of the FTC's CID in these circumstances.

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MARICOPA COUNTY

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Whether defined as privilege, or Rule 408, or voluntariness, this Court finds that the goals hoped to be achieved by the Settlement Agreement were intended to be built upon the prospect of Western Union providing unfettered access of its internal records and procedures to the court appointed Monitor. This Court finds that Western Union granted access because of an expectation of confidentiality that could be lost only in limited circumstances, none of which has yet been triggered.

For the foregoing reasons, IT IS ORDERED denying the Monitor's request to comply with the FTC's CID in the absence of a formal enforcement action order issued by the appropriate federal jurisdiction.

As stated earlier, this Court perceives the issue raised here as the Monitor asking whether he *may* disclose his Reports and related information to the FTC. This Court's decision declining his request in no way addresses the issue of whether the FTC has authority to take them and what they may do with them if they get them. That issue is left to another day in another forum.

ALERT: The Arizona Supreme Court Administrative Order 2011-140 directs the Clerk's Office not to accept paper filings from attorneys in civil cases. Civil cases must still be initiated on paper; however, subsequent documents must be eFiled through AZTurboCourt unless an exception defined in the Administrative Order applies.

**Exhibit H**

**From:** Kossow, Todd M. [mailto:TKOSSOW@ftc.gov]  
**Sent:** Thursday, January 24, 2013 12:47 PM  
**To:** Parnes, Lydia B.  
**Cc:** Dodge, Karen D.  
**Subject:** Revised Confidentiality Agreement

Lydia,

We've considered the various issues that we discussed with you and David Fallek on Tuesday and provide the attached revised confidentiality agreement.

As to David Fallek's question regarding the FTC's jurisdiction to seek worldwide complaints in the CID, the FTC's authority is laid out in Section 5(a)(4)(A)(ii) and (B) of the FTC Act. Those sections provide:

- 1) "For purposes of subsection (a) the term 'unfair or deceptive acts or practices' includes such acts or practices involving foreign commerce that – . . . involve material conduct occurring within the United States." 15 U.S.C. § 45(a)(4)(A) (ii).
- 2) "All remedies available to the Commission with respect to unfair and deceptive acts or practices shall be available for acts and practices described in this paragraph, including restitution to domestic or foreign victims." 15 U.S.C. § 45(a)(4)(B).

Western Union engages in material conduct within the United States in establishing its policies and procedures for the handling of fraud-induced money transfers and complaints and for monitoring the activities of its agents worldwide. As a result, the Commission clearly has jurisdiction to seek worldwide complaint information in the CID.

We look forward to talking later this afternoon. Todd

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**Exhibit I**

**DECLARATION OF DAVID A. O'TOOLE  
PURSUANT TO 28 U.S.C. § 1746**

I, **David A. O'Toole**, hereby declare as follows:

1. I am an attorney employed by the Federal Trade Commission ("FTC" or "Commission"), in the Midwest Regional Office in Chicago, Illinois. My business address is 55 West Monroe Street, Suite 1825, Chicago, Illinois 60603. I have personal knowledge of the facts and matters discussed in this declaration, and, if called as a witness, could and would testify to them.

2. It is our understanding that the State of Arizona has applied to the Court in *State of Arizona ex rel. Horne v. Western Union Financial Services, Inc.*, No. CV 2010-005807, for an order permitting production to the FTC of the past and future Periodic Reviews prepared by the Court-appointed monitor in the action, and to permit the FTC to discuss the contents and bases of such materials with the Monitor.

**The FTC: Its Authority and Mission**

3. This declaration is provided to explain the federal consumer protection laws enforced by the FTC, and its interest in information relating to Western Union Financial Services, Inc. ("WU") and any possible role it might have played in facilitating unfair or deceptive practices.

4. The FTC, composed of a Chairman and four Commissioners, is an independent agency of the United States government created in 1914 by the Federal Trade Commission Act ("FTC Act"). The FTC, *inter alia*, investigates and brings enforcement actions for violations of the FTC Act, 15 U.S.C. §§ 41 *et seq.*, and the FTC's Trade Regulation Rule entitled "Telemarketing Sales Rule" ("TSR"), 16 C.F.R. Part 310.

16. The complaint in *Moneygram* alleged further (§ 23) that:

Defendant has not adhered to its own KYA policy with respect to its agents in that it has

~~failed to conduct adequate background checks of prospective agents; failed to adequately~~

train and monitor agents; failed to investigate, suspend, or terminate suspicious agents;

and failed to adopt other reasonable measures to prevent fraud-induced money

transmissions.

The *Moneygram* complaint alleged that through these and other measures MoneyGram had both engaged in unfair practices (Count I) and also had assisted and facilitated violations of the TSR (Count II). <http://ftc.gov/os/caselist/0623187/091020moneygramcmpt.pdf>

#### **Other FTC Involvement with Money Transmitters**

17. The FTC sponsors and conducts public workshops addressing the potential role of money transmission services in perpetuating various scams. *See, e.g., Congratulations! You're a Winner! Lottery, Prize, and Sweepstakes Scams and the Role of Money Transfer Services* (May 2-3, 2011) (<http://www.ftc.gov/bcp/workshops/moneytransfer/>). The FTC regularly publishes consumer alerts and brochures providing advice on money transmission and ways to avoid the scams that most frequently use money transmission services. *See, e.g., Wiring Money, Money Matters* (<http://www.ftc.gov/bcp/edu/microsites/moneymatters/scam-watch-wiring-money.shtml>). In addition, FTC officials have made presentations at conferences sponsored by money transmitters, including WU.

#### **FTC Interest in the Monitor's Report**

18. WU historically has housed consumer protection compliance personnel within its Anti-Money Laundering division. Thus measures it has taken to address money laundering are

very likely exactly the same measures, with the same personnel, that have been employed in efforts to combat unfair or deceptive acts or practices involving consumers.

~~19. Thus the FTC has an interest in whether, and to what extent, WU has adopted~~  
sufficient anti-money laundering measures and, if so, if those policies have been adhered to. The Monitor should be particularly able to provide insight into WU compliance efforts.

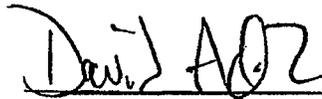
20. For instance, it seems likely that the Monitor can provide information to the FTC illuminating the extent to which WU monitors and disciplines its own agents that may be complicit in law violations. Besides supporting possible legal action against WU, this information could support FTC investigations into such agents for violations of the FTC Act and TSR.

21. It also seems likely that the Monitor can provide information to the FTC illuminating what WU knows about the use of its system by so-called "money mules," individuals who collect money sent by victims through WU and then forward the money to scammers. In other words, considerable sums of money from unfair or deceptive acts or practices may be laundered by these mules. In addition to providing insight as to what WU knows about how money mules use its system, it seems likely that the Monitor will be able to provide the FTC with insight into what measures WU can, or does, undertake to identify these mules and halt their activities

22. Finally, it also seems likely that the Monitor's Reviews would provide insight into how WU complies with applicable laws and consent agreements.

I declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct.

~~Executed in Chicago, Illinois on August 29, 2012.~~

  
\_\_\_\_\_  
David A. O'Toole

**PETITION EXHIBIT 6 (Public Version)**

Federal Trade Commission Order Denying Petition to Quash  
Civil Investigative Demands  
March 4, 2013

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Edith Ramirez, Chairman  
Jon Leibowitz  
Julie Brill  
Maureen K. Ohlhausen  
Joshua D. Wright

_____	)	
In the Matter of	)	
	)	
DECEMBER 12, 2012 CIVIL INVESTIGATIVE	)	
DEMAND ISSUED TO THE WESTERN	)	File No. 012 3145
UNION COMPANY	)	
AND	)	March 4, 2013
NOVEMBER 5, 2012 CIVIL INVESTIGATIVE	)	
DEMAND ISSUED TO LONNIE KEENE,	)	Redacted Public
MONITOR, STATE OF ARIZONA V.	)	Version
WESTERN UNION FINANCIAL	)	
SERVICES, INC.	)	
_____	)	

ORDER DENYING PETITION TO QUASH  
CIVIL INVESTIGATIVE DEMANDS

**By OHLHAUSEN, Commissioner:**

Western Union Company (“Western Union”) has filed a petition to quash civil investigative demands (“CIDs”) issued by the Federal Trade Commission (“FTC” or “Commission”) to Western Union and to Mr. Lonnie Keene, an independent monitor appointed pursuant to Western Union’s settlement of money laundering charges by the State of Arizona. *See Arizona v. Western Union Financial Services, Inc.*, No. CV 2010-5807 (Ariz. Super. Ct. Maricopa Cnty. Feb. 24, 2010). For the reasons stated below, the petition is denied.

**I. BACKGROUND**

Over the past several years, money transfers have become the payment method of choice for those seeking to defraud consumers in the U.S. and abroad. There are several reasons for this development. First and foremost, a money transfer through companies

like Western Union or MoneyGram is essentially the same as sending cash. Thus, consumers have no chargeback rights, as they would have if they had paid by credit card. A money transfer also enables the perpetrators of a scheme to get consumers' funds quickly. Indeed, a money transfer can be picked up by the recipient within a matter of minutes at multiple locations virtually anywhere in the world, rather than a single designated location. In many instances, the recipient is not even required to provide identification. All of these factors make it extremely difficult for the FTC and other enforcement agencies to identify and take action against perpetrators of frauds that employ money transfers.

The FTC continues to receive a high volume of complaints about fraudulent and deceptive practices that rely on money transfers as the method of payment. In 2012 alone, the FTC's database of consumer complaints ("Consumer Sentinel") received more than 102,000 complaints from consumers who lost money through a fraud-induced money transfer, with reported losses exceeding \$450 million. In the same year, money transfers were by far the most common payment method for consumers complaining of fraudulent or deceptive practices, accounting for 47% of all Consumer Sentinel complaints that reported a method of payment.<sup>1</sup> In many of these schemes perpetrators outside the U.S. target U.S. consumers.

Money transfer companies can play an important role in addressing the use of money transmission services to facilitate fraud. They can often identify suspicious outlets, locations, or agents, and can detect patterns of transactions consistent with ongoing fraudulent and deceptive practices. Through diligent and effective antifraud policies and procedures, these companies can address and deter those activities. For example, as required by the consent order in *FTC v. MoneyGram Int'l, Inc.*, No. 09-cv-6576 (N.D. Ill. Oct. 19, 2009), MoneyGram must establish, implement, and maintain a comprehensive antifraud program that "is reasonably designed to protect Consumers by detecting and preventing Fraud-Induced Money Transfers *worldwide* and to avoid installing and doing business with MoneyGram agents *worldwide* who appear to be involved in or complicit in processing Fraud-Induced Money Transfers."<sup>2</sup>

Following the consent order with MoneyGram, FTC staff asked Western Union to provide, on a voluntary basis, information about steps the company was taking to reduce

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<sup>1</sup> See FTC, Consumer Sentinel Network Data Book for January – December 2012, at 8 (Feb. 2013), *available at* <http://ftc.gov/sentinel/reports/sentinel-annual-reports/sentinel-cy2012.pdf>.

<sup>2</sup> Stipulated Order for Permanent Injunction and Final Judgment at 7-8, *FTC v. MoneyGram Int'l, Inc.*, No. 09-cv-6576 (N.D. Ill. Oct. 19, 2009) (emphasis added).

fraud-induced money transfers. In June 2012, FTC staff requested that Western Union voluntarily provide the FTC with reports produced by a monitor appointed pursuant to an agreement with the State of Arizona that settled charges that Western Union's money transfer business was being used to facilitate human smuggling or narcotics trafficking.

After Western Union refused to provide the reports voluntarily,<sup>3</sup> the Arizona Attorney General sought an order clarifying that the terms of the settlement were broad enough to allow Arizona to share the Monitor's reports with the FTC.<sup>4</sup> The reports had been filed under seal (and therefore kept off the public record) pursuant to a provision in the Settlement Agreement allowing – but not requiring – either Western Union or the Arizona Attorney General to request that the reports be filed under seal.<sup>5</sup>

The state court denied the Arizona Attorney General's request, without prejudice, on September 25, 2012. The ruling was premised on the court's view that "for the Court to order disclosure to [the FTC and Department of Homeland Security] pursuant to the agreement, I would want them in the courtroom to know what the scope of the agreement is, that it is going to be a two-way street. It would benefit the monitor in doing the monitor's job."<sup>6</sup> The court made clear that it was making no comment on "the extent that the FTC or Homeland Security has a right to secure information that the monitor has or the Attorney General's Office has."<sup>7</sup>

The Commission then issued CIDs to obtain the reports and related materials, first to the Monitor and then to Western Union directly. Specifically, on November 5, 2012,

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<sup>3</sup> Western Union did provide other information about its antifraud program and contributed complaints from U.S.-based consumers to the Commission's online complaints database. Starting in August 2012, FTC staff also requested foreign complaints, but Western Union declined based on privacy concerns.

<sup>4</sup> Pet. Ex. E. The Arizona Attorney General pointed out that such a release is consistent with the Monitor Engagement Letter ("MEL") (*see* Pet. Ex. E, at 5-6; *see also* Pet. Ex. B ¶ 9) and is specifically authorized by Paragraph 17.1.4 of the Settlement Agreement (providing that the state has leave to disclose any materials or information provided by Western Union where such disclosure "is required by law, otherwise authorized by this Agreement, or is in the proper discharge of or otherwise furthers the State's official duties or responsibilities.").

<sup>5</sup> Pet. Ex. D, at 4.

<sup>6</sup> Pet. Ex. F, at 21-22.

<sup>7</sup> Pet. Ex. F, at 21.

the Commission issued a CID to the Monitor, seeking

All documents referring or relating to the Periodic Reviews of the Monitor appointed by the court in *State of Arizona ex rel. Horne v. Western Union Financial Services, Inc.*, No. CV 2010-005807, including, but not limited to, all drafts of any reports, reviews, or correspondence with Western Union.

The Commission directed a separate CID to Western Union on December 12, 2012. In addition to the Monitor's reports, the CID requires Western Union to produce (1) internal documents that refer or relate to communications with the Monitor – *i.e.*, documents showing Western Union's internal reaction to the findings and recommendations in the Monitor's reports; and (2) complaints from consumers worldwide referring or relating to fraud-induced transactions. As defined, such complaints include complaints made by foreign consumers about transactions that were picked up either in the U.S. or in a foreign jurisdiction.

After receiving the CID, the Monitor sought to confirm his authority to provide the requested materials to the FTC by filing a motion in the settled Arizona action. On January 28, 2013, the state court denied that request “in the absence of a formal enforcement action order issued by the appropriate federal jurisdiction.”<sup>8</sup> The court reasoned that Western Union had an expectation of confidentiality when it “voluntarily gave the Monitor access to its otherwise private practices and proprietary data.” Accordingly, the court concluded, it was reasonable “that Western Union did not expect that [its] proprietary information and practices would be otherwise provided to a third party who has no enforceable limitation on its use or disclosure.”<sup>9</sup> The state court specifically noted that (1) “it has no jurisdiction, and makes no attempt to determine the enforceability of the FTC's CID,” and (2) it was “in no way address[ing] the issue of whether the FTC has authority to take” the Monitor's reports and what the FTC “may do with them.”<sup>10</sup>

On January 31, 2013, Western Union filed the instant petition to quash.<sup>11</sup>

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<sup>8</sup> Pet. Ex. G, at 4.

<sup>9</sup> Pet. Ex. G, at 2-3.

<sup>10</sup> Pet. Ex. G, at 3-4.

<sup>11</sup> It is by no means certain that Western Union has standing to seek to quash the CID issued to the Monitor. Generally, the target of a government investigation lacks standing to dispute the validity of administrative subpoenas directed to a third party. *See, e.g., Greene v. Phila. Hous. Auth.*, 789 F. Supp. 2d 582, 586 (E.D. Pa. 2011); *see also*

## II. ANALYSIS

### A. The Applicable Legal Standards.

Compulsory process such as a CID is proper if the inquiry is within the authority of the agency, the demand is not too indefinite and the information sought is reasonably relevant to the inquiry, as defined by the Commission's investigatory resolution.<sup>12</sup> Agencies have wide latitude to determine what information is relevant to their law enforcement investigations and are not required to have "a justifiable belief that wrongdoing has actually occurred."<sup>13</sup>

Western Union argues that the CIDs should be quashed because they do not satisfy these standards. First, Western Union claims that the CIDs were not issued pursuant to a valid resolution. Second, Western Union claims that the requested materials are not relevant to the purpose of the investigation. Third, it claims that the FTC lacks authority to compel the production of materials prepared pursuant to, or as a consequence of, a state court settlement. Fourth, Western Union contends that the Commission exceeded its authority in seeking complaints and information related to money transfers between foreign countries. As explained below, we are not persuaded that these contentions have merit.

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*FTC v. Trudeau*, 2012 U.S. Dist. LEXIS 160545, at \*8 (N.D. Ohio Nov. 8, 2012). Western Union contends that its privacy interests are sufficient to confer standing. Pet. 7 n.3. We note, however, that Western Union's claimed privacy interests are inconsistent with the terms of the MEL. See Pet. Ex. B ¶ 5 ("The Monitor shall be independent of Western Union and the State, and no attorney-client relationship shall be formed between them."). Thus, the decision of the Sixth Circuit in *American Motors Corp. v. FTC*, 601 F.2d 1329, 1338-39 (6th Cir. 1979), cited by petitioner, is questionable authority for Western Union's assertion that it has retained "privacy rights." Pet. 7 n.3. In any event, even if Western Union has an interest that is sufficient to confer standing, its petition to quash the Monitor's CID is without merit for the reasons discussed herein.

<sup>12</sup> *United States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950); *FTC v. Invention Submission Corp.*, 965 F.2d 1086, 1089 (D.C. Cir. 1992); *FTC v. Texaco, Inc.*, 555 F.2d 862, 874 (D.C. Cir. 1977).

<sup>13</sup> See, e.g., *Morton Salt*, 338 U.S. at 642-43 ("[Administrative agencies have] a power of inquisition, if one chooses to call it that, which is not derived from the judicial function. It is more analogous to the Grand Jury, which does not depend on a case or controversy for power to get evidence but can investigate merely on suspicion that the law is being violated, or even just because it wants an assurance that it is not.").

**B. The CIDs Are Supported by a Specific and Valid Resolution.**

Western Union's contention that the resolution would permit the FTC to investigate any party "engaged in sales with respect to any form of practice or conduct" is not borne out by the text of the resolution. In issuing the CIDs, the Commission relied on omnibus resolution No. 0123145, *Resolution Directing Use of Compulsory Process in a Nonpublic Investigation of Telemarketers, Sellers, Suppliers, or Others* (Apr. 11, 2011). The resolution authorizes the use of compulsory process to determine whether telemarketers, sellers, or others assisting them have or are violating Section 5 of the FTC Act, 15 U.S.C. § 45, or the Telemarketing Sales Rule, 16 C.F.R. Part 310.<sup>14</sup> The resolution also provides specific notice that it pertains to investigations relating to telemarketing activities, and includes investigations of telemarketers or sellers as well as entities such as Western Union who may be providing substantial assistance or support to telemarketers or sellers.

This statement of the purpose and scope of the investigation is more than sufficient under applicable standards, and courts have enforced compulsory process issued under similar resolutions.<sup>15</sup> Indeed, this resolution has been in effect for many years and has

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<sup>14</sup> The resolution describes the nature and scope of the investigation as follows:

To determine whether unnamed telemarketers, sellers, or others assisting them have engaged in or are engaging in: (1) unfair or deceptive acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45 (as amended); and/or (2) deceptive or abusive telemarketing acts or practices in violation of the Commission's Telemarketing Sales Rule, 16 C.F.R. pt 310 (as amended), including but not limited to the provision of substantial assistance or support – such as mailing lists, scripts, merchant accounts, and other information, products, or services – to telemarketers engaged in unlawful practices. The investigation is also to determine whether Commission action to obtain redress for injury to consumers or others would be in the public interest.

*Resolution Directing Use of Compulsory Process in a Nonpublic Investigation of Telemarketers, Sellers, Suppliers, or Others*, File No. 0123145 (Apr. 11, 2011).

<sup>15</sup> See Opinion and Order at 11-12, *FTC v. LabMD, Inc.*, No. 1:12-cv-3005-WSD (N.D. Ga. Nov. 26, 2012); *FTC v. Nat'l Claims Serv., Inc.*, 1999 WL 819640, at \*2 (E.D. Cal. Feb. 9, 1999) (approving use of omnibus resolution citing provisions of the FTC Act and the Commission's Franchise Rule); *FTC v. O'Connell Assocs., Inc.*, 828 F. Supp. 165, 171 (E.D.N.Y. 1993) (enforcing CIDs issued pursuant to omnibus resolution citing provisions of the FTC Act and the Fair Credit Reporting Act). The Commission has

supported multiple other investigations, including CIDs issued to Western Union's competitor, MoneyGram, in 2007 and 2008.

Western Union's reliance on the decision of the D.C. Circuit in *FTC v. Carter*, 636 F.2d 781, 788 (D.C. Cir. 1980), is misplaced. Although *Carter* held that a bare reference to Section 5 of the FTC Act, without more, "would not serve very specific notice of purpose," the Court approved the resolution at issue, noting that it also referred to specific statutory provisions of the Cigarette Labeling and Advertising Act, and further related it to the subject matter of the investigation.<sup>16</sup> With this additional information, the Court felt "comfortably apprised of the purposes of the investigation and the subpoenas issued in its pursuit."<sup>17</sup> Similarly, the resolution here provides substantially more information than the bare text of Section 5, and thus adequately notifies Western Union of the nature and scope of the investigation.

Western Union's argument also fails in light of the history of communications between the company and the FTC. The purpose of an authorizing resolution is to notify a CID recipient of the nature and scope of the investigation.<sup>18</sup> Given the lengthy dialogue between staff and Western Union, there is no doubt that the company is aware of the nature of staff's investigation. The Commission has previously found that such interactions may be considered along with the resolution in evaluating the notice provided to Petitioners: "[T]he notice provided in the compulsory process resolutions, CIDs, and other communications with Petitioner more than meets the Commission's obligation of providing notice of the conduct and the potential statutory violations under investigation."<sup>19</sup>

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repeatedly rejected similar arguments about such omnibus resolutions. *See, e.g., LabMD, Inc.*, No. 123099, at 9 (Apr. 20, 2012); *Firefighters Charitable Found.*, No. 102-3023, at 4 (Sept. 23, 2010); *D.R. Horton, Inc.*, Nos. 102-3050, 102-3051, at 4 (July 12, 2010); *CVS Caremark Corp.*, No. 072-3119, at 4 (Dec. 3, 2008).

<sup>16</sup> *Carter*, 636 F.2d at 788.

<sup>17</sup> *Id.* Western Union also contends that the resolution fails to conform to the FTC's Operating Manual. Pet. 9. But for the reasons stated above, the resolution at issue is sufficiently specific to comply with the Operating Manual. FTC Operating Manual, Ch. 3.3.6.7.4.1. In any event, the manual itself confers no rights on Western Union. *Id.*, Ch. 1.1.1; *see also FTC v. Nat'l Bus. Consultants, Inc.*, 1990 U.S. Dist. LEXIS 3105, 1990-1 Trade Cas. (CCH) ¶ 68,984, at \*29 (E.D. La. Mar. 19, 1990).

<sup>18</sup> *O'Connell Assocs., Inc.*, 828 F. Supp. at 170-71.

<sup>19</sup> *Assoc. First Capital Corp.*, 127 F.T.C. 910, 915 (1999).

**C. The Documents Sought Are Relevant to the Commission’s Investigation.**

Western Union claims that the CID specification calling for the Monitor’s reports and related documents is irrelevant to the FTC’s investigation into consumer fraud and telemarketing. Specifically, Western Union claims that the Monitor’s reports relate to human and drug trafficking in the Southwest border area and that these issues are far outside the stated purposes of the FTC’s investigation.<sup>20</sup>

In the context of an administrative CID, “relevance” is defined broadly and with deference to an administrative agency’s determination.<sup>21</sup> An administrative agency is to be accorded “extreme breadth” in conducting an investigation.<sup>22</sup> As the D.C. Circuit has stated, the standard for judging relevance in an administrative investigation is “more relaxed” than in an adjudicatory proceeding.<sup>23</sup> As a result, the agency is entitled to the documents unless the CID recipient can show that the agency’s determination is “obviously wrong” or the documents are “plainly irrelevant” to the investigation’s purpose.<sup>24</sup> We find that Western Union has not met this burden.

Although Western Union tries to couch the settlement and the Monitor’s tasks as relating to human or drug trafficking, a review of the Monitor Engagement Letter shows that it is more general and relates to oversight by the Monitor of Western Union’s anti-money laundering (“AML”) program as required by the Bank Secrecy Act (“BSA”) and related guidance.<sup>25</sup> The statutory and regulatory provisions relating to Western Union’s

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<sup>20</sup> Pet. 13-14.

<sup>21</sup> *FTC v. Church & Dwight Co., Inc.*, 665 F.3d 1312, 1315-16 (D.C. Cir. 2011); *FTC v. Ken Roberts Co.*, 276 F.3d 583, 586 (D.C. Cir. 2001).

<sup>22</sup> *Linde Thomsen Langworthy Kohn & Van Dyke, P.C. v. RTC*, 5 F.3d 1508, 1517 (D.C. Cir. 1993).

<sup>23</sup> *Invention Submission Corp.*, 965 F.2d at 1090.

<sup>24</sup> *Id.* at 1089; *Carter*, 636 F.2d at 788. We note that Western Union has not contested the relevance of the worldwide complaints that are the subject of Specification 1. Its arguments on relevance are limited to the Monitor’s reports and related documents sought under Specification 2.

<sup>25</sup> “To ensure that its Program adheres to the principles enunciated in the Financial Action Task Force Risk-Based Approach to Combating Money Laundering and Terrorist Financing (‘FATF RBA Guidance’), to its legal obligations, to the Agreement, and to this

money services business (“MSB”) authorities do not segregate AML and antifraud programs. Western Union is required by the BSA and its implementing regulations to implement an AML program,<sup>26</sup> which includes filing Suspicious Activity Reports (“SARs”) for “possible violation[s] of law or regulation.”<sup>27</sup> Those reports are not limited to money laundering. Instead, the BSA is clear that the SARs required from Western Union’s AML program must report *any* type of suspicious transaction, including consumer fraud.<sup>28</sup> Indeed, in guidance published to examiners of money services businesses for compliance with the BSA, the Department of the Treasury made it plain that an AML program must detect and report on transactions that involve more than just money laundering, and that the business itself should not try to distinguish one type of illegal conduct from another for purposes of its reporting requirement:

MSBs are required to report suspicious activities above prescribed dollar thresholds that may involve money laundering, BSA violations, terrorist financing, *and certain other crimes*. However, MSBs cannot be expected and are not required to investigate or confirm the underlying crime (e.g., terrorist financing, money laundering, tax evasion, identity theft, *or fraud*).<sup>29</sup>

Thus, from a regulatory perspective, there is substantial overlap between an AML program and a program to detect consumer fraud and other illegal activities. Indeed, until the summer of 2012, Western Union’s AML and antifraud personnel were housed within the same corporate group, meaning that a common set of personnel were involved in

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Monitor Engagement Letter, Western Union has agreed to be overseen by an independent Monitor . . . .” Pet. Ex. B ¶ 2.

<sup>26</sup> 31 U.S.C. §§ 5312(a)(2)(R), 5318(h); 31 C.F.R. § 1022.210(d).

<sup>27</sup> 31 U.S.C. § 5318(g); 31 C.F.R. § 1022.320(a).

<sup>28</sup> 31 U.S.C. § 5318(g) (“The Secretary may require any financial institution, and any director, officer, employee, or agent of any financial institution, to report any suspicious transaction relevant to a possible violation of law or regulation.”); 31 C.F.R. § 1022.320(a) (“Every money services business . . . shall file with the Treasury Department, to the extent and in the manner required by this section, a report of any suspicious transaction relevant to a possible violation of law or regulation.”).

<sup>29</sup> Fin. Crimes Enforcement Network & Internal Revenue Serv., Bank Secrecy Act/Anti-Money Laundering Examination Manual for Money Services Businesses 86 (2008) (emphasis added) (footnote omitted), *available at* [http://www.fincen.gov/news\\_room/rp/files/MSB\\_Exam\\_Manual.pdf](http://www.fincen.gov/news_room/rp/files/MSB_Exam_Manual.pdf).

responding to complaints of consumer fraud as well as suspected money laundering activity.

The overlap is further demonstrated by a comparison of the Monitor's obligations for overseeing the AML program, as outlined in the MEL, and Western Union's antifraud program, as described in the overview document that Western Union provided to FTC staff in September 2012.<sup>30</sup> For example, the Monitor is required to evaluate whether Western Union's AML program, among other things:

- Provides for adequate oversight and controls of Agents, consumers, transactions, products, services, and geographic areas that are more vulnerable to abuse by money launderers and other criminals;
- Provides for regular review of the risk assessment and risk management processes;
- Contains channels for informing senior management of compliance initiatives, compliance deficiencies, corrective actions, and filing of suspicious activity reports;
- Provides for appropriate initial and refresher training for Agents to be given at appropriate intervals.<sup>31</sup>

None of these tasks is unique to anti-money laundering activities. Indeed, the same tasks are specifically mentioned in Western Union's Anti-Fraud Program overview.<sup>32</sup>

Similarly, the Monitor is charged with developing an "Implementation Plan" that includes the Monitor's own recommendations for Western Union and that presumptively includes certain "existing measures" already employed by Western Union as part of its

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<sup>30</sup> Letter from John R. Dye, EVP, Gen. Counsel & Sec'y, Western Union, to David Vladeck, Dir., Bureau of Consumer Prot., FTC (Sept. 14, 2012) [hereinafter Anti-Fraud Program].

<sup>31</sup> Pet. Ex. B, at 6-7.

<sup>32</sup> See, e.g., Anti-Fraud Program 7

; *id.* at 4

*id.* at 5-6

*id.* at

23-24

AML program.<sup>33</sup> Many of these existing AML measures are also part of Western Union's antifraud program, as described in the company's own materials:

- One of the "existing measures" for the AML program is "developing the ability to aggregate consumer transactions to identify unusual activity on a real-time basis (through its Real Time Risk Assessment initiative)."<sup>34</sup>

[REDACTED]

35

- Another "existing measure" is "developing, to the extent reasonably feasible, Real Time Risk Assessment that will provide the ability to block noncompliant transactions before they are processed, so that when a transaction violates established business rules, a 'pop-up screen' will immediately notify the Agent that the transaction cannot be completed."<sup>36</sup>

[REDACTED]

37

- A third "existing measure" is "implementing Transaction Risk Index ('TRI') model variables and formulas . . . to more strategically mitigate the risks associated with certain geographies (e.g., Arizona) and 'red flags' such as structuring, sharing of consumer identifying information, high volume, high frequency, and SARs filed

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<sup>33</sup> Pet. Ex. B ¶¶ 18-23. Specifically, paragraph 23 of the MEL, entitled "Presumed Program Measures," provides that Western Union's existing AML measures will become part of the Monitor's recommendations "unless the Monitor, with input from Western Union and the State, determines that it is not technically feasible or would not improve the Program." Pet. Ex. B ¶ 23.

<sup>34</sup> Pet. Ex. B ¶ 23.1.2.

<sup>35</sup> Anti-Fraud Program 14-16

[REDACTED]

<sup>36</sup> Pet. Ex. B ¶ 23.1.8.

<sup>37</sup> Anti-Fraud Program 4.

by Western Union on transactions facilitated by/through the Agent.”<sup>38</sup>

[REDACTED]

<sup>39</sup>

We conclude, therefore, that the steps Western Union must take to eliminate various forms of any suspected illegal transactions from its system are essentially the same. Both the AML and antifraud programs are intended to prevent illegal transactions occurring through the company’s money transfer system, and both programs employ similar tools to do so: analysis of transaction data to identify patterns, computer-based rules that prevent illegal transactions from entering the system, training to help agents identify illegal transactions, and disciplinary action against agents that are complicit in the illegal activity or continue to generate high levels of complaints.<sup>40</sup> To the extent the Monitor’s reports include an assessment of, and recommendations for, each of these facets of Western Union’s AML program, they are highly relevant to the current inquiry into the adequacy of the company’s antifraud program.<sup>41</sup>

It is also important to note that the CID directed to Western Union is not limited to the Monitor’s reports. Rather, the CID requests “[a]ll documents referring or relating to

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<sup>38</sup> Pet. Ex. B ¶ 23.1.5.

<sup>39</sup> Anti-Fraud Program 3.

<sup>40</sup> To provide another example of the overlap between Western Union’s AML and antifraud programs: one of the key issues identified in the Arizona action was Western Union’s awareness of, and failure to terminate, complicit U.S. and foreign agents who “were knowingly engaged in a pattern of money laundering violations.” See Settlement Agreement Ex. A (“Statement of Admitted Facts”), *Arizona v. W. Union Fin. Servs., Inc.*, No. CV 2010-5807 (Ariz. Super. Ct. Maricopa Cnty. Feb. 24, 2010), available at <https://www.azag.gov/sites/default/files/sites/all/docs/swbamla/State%20of%20Arizona%20v.%20Western%20Union%20Settlement%20Agreement%20compact.pdf>.

[REDACTED]

Anti-Fraud Program 4.

<sup>41</sup> The Monitor’s reports are also uniquely valuable because they provide the perspective of an independent third party who owes no duties to Western Union. Indeed, to ensure the Monitor’s independence, the MEL specifies that neither Western Union nor the State of Arizona shall provide any personal benefit to the Monitor during the term of the Monitor’s engagement or for five years afterward. Pet. Ex. B ¶ 4.

communications with the Monitor.”<sup>42</sup> The CID thus encompasses Western Union’s internal communications and reactions to the findings and recommendations of the Monitor, which are relevant to determining the strength of the company’s culture of compliance and whether there is a widespread commitment to eliminating illegal transactions from Western Union’s system. These documents, which have not been shared with the Monitor or with the Arizona Attorney General, are not covered by any confidentiality provisions in the settlement documents and thus must be produced in response to the CID directed at Western Union.

In short, the Monitor’s reports and related materials are relevant to assessing Western Union’s commitment to eliminating illegal transactions from its system, and thus are “reasonably relevant” to the purposes of the Commission’s investigation. Western Union has not satisfied its burden to demonstrate that the information requested by the CID is “plainly irrelevant” or “obviously wrong.”<sup>43</sup>

#### **D. The CIDs Are Valid Exercises of the Commission’s Authority.**

##### *1. The FTC Has Authority to Obtain the Monitor’s Reports and Related Documents.*

Western Union next argues that the Commission may not use its process to obtain access to documents that are subject to confidentiality restrictions imposed by an Arizona state court. Citing the state court’s observations that the Monitor materials would not exist but for the settlement agreement and that the confidentiality protections were a material inducement for Western Union to settle, Western Union contends that the Commission has failed to establish its entitlement to these confidential and sensitive materials.<sup>44</sup> We are not persuaded.

First, the confidentiality provisions of the Arizona settlement documents do not by their terms limit the Commission’s ability to use investigatory process to obtain the Monitor’s reports and related information. The settlement documents do not address the question of whether the reports and related documents must be released in response to compulsory process of a federal agency. On the contrary, the Settlement Agreement specifically states that it “does not bind any federal agencies or any other state’s authorities.”<sup>45</sup> Indeed, the settlement documents state that the Monitor’s reports and the

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<sup>42</sup> Pet. Ex. A, at 7-8.

<sup>43</sup> *Invention Submission Corp.*, 965 F.2d at 1089; *Carter*, 636 F.2d at 788.

<sup>44</sup> Pet. 15-16.

<sup>45</sup> Pet. Ex. C ¶ 28.

underlying information may be shared in certain circumstances — including with investigative agencies or in furtherance of the Attorney General’s duties.<sup>46</sup>

Second, Western Union errs in contending that CIDs represent an improper attempt to circumvent an order of a state court. The September 2012 ruling dealt solely with the Arizona Attorney General’s request to share copies of the reports that had been provided to him.<sup>47</sup> Similarly, the January 2013 order dealt solely with the request made by the Monitor, pursuant to the CID addressed to the Monitor, to disclose copies of the reports in the Monitor’s custody.<sup>48</sup> Neither the ruling nor the order purports to address the copies of the Monitor’s reports that reside in Western Union’s own files, or the other materials sought in Specification 2 of the CID addressed to Western Union – which includes materials besides the Monitor’s reports, such as “information Western Union provided to the Monitor” and Western Union’s internal reactions to the Monitor’s reports.<sup>49</sup> The state court’s ruling and order, by their own terms, are simply inapplicable to the documents that Western Union seeks to shield from disclosure.

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<sup>46</sup> For example, the Monitor is required to “take appropriate steps to maintain the confidentiality of any information entrusted to him or her” and to “share such information only with the State, *appropriate investigative agencies*, and individuals or entities hired by him or her.” Pet. Ex. B ¶ 36 (emphasis added). For its part, the office of the Arizona Attorney General must “maintain the confidentiality of any materials or information provided by Western Union under this paragraph and shall not provide such material or information to any third party, except to the extent that disclosure is required by law, otherwise authorized by this Agreement, or *is in the proper discharge of or otherwise furthers the State’s official duties and responsibilities.*” *Id.*, Ex. C ¶ 17.1.4 (emphasis added). With respect to the reports themselves, the Arizona Attorney General is required to maintain their confidentiality “*except to the extent that disclosure may be necessary by the State in connection with the discharge of its official duties.*” *Id.*, Ex. B ¶ 37 (emphasis added).

<sup>47</sup> Pet. Exs. E, F.

<sup>48</sup> Pet. Ex. G.

<sup>49</sup> Although the MEL requires the State of Arizona and Western Union to “maintain the confidentiality of all such information provided to them by the Monitor,” Pet. Ex. B ¶ 37, there is nothing in the settlement documents or the state court’s subsequent ruling or order that restricts Western Union from disclosing its own business records – such as its communications to the Monitor and its internal documents discussing the Monitor’s reports and recommendations.

Third, the Arizona state court did not purport to prohibit the Commission from using its process to obtain the reports or related information either from the Monitor or the State of Arizona. On the contrary, on both occasions the court specifically noted that it was not addressing the scope of the Commission's process authority. When ruling on the Arizona Attorney General's request, the state court explained that it was "mak[ing] no comment" on "the extent that the FTC or Homeland Security has a right to secure information that the monitor has or the Attorney General's Office has."<sup>50</sup> Similarly, when ruling on the Monitor's request, the state court recognized that "it has no jurisdiction, and makes no attempt to determine the enforceability of the FTC's CID," and therefore specifically declined to address "whether the FTC has authority to take" the reports and what the Commission "may do with them" thereafter.<sup>51</sup>

Fourth, even if the Arizona state court had intended to prohibit the FTC from obtaining the Monitor's reports and related materials, confidentiality restrictions under state law must give way if they conflict with federal agencies' statutory power to gather evidence. Agencies of the United States may use their compulsory process to obtain documents whose disclosure would otherwise be barred by state statute.<sup>52</sup> Put differently, even when a state legislature has specifically acted to prohibit disclosure of certain information, those state statutes are preempted to the extent they frustrate the federal statutory schemes that entitle federal agencies to "have access to relevant evidence."<sup>53</sup>

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<sup>50</sup> Pet. Ex. F, at 21.

<sup>51</sup> Pet. Ex. G, at 3-4.

<sup>52</sup> See, e.g., *EEOC v. Ill. Dep't of Emp't Sec.*, 995 F.2d 106, 107 (7th Cir. 1993) (enforcing EEOC subpoena for transcript of unemployment compensation hearing, despite state statute making such proceedings confidential); *United States ex rel. Office of Inspector Gen., U.S. Dep't of Hous. & Urban Dev. v. Phila. Hous. Auth.*, 2011 WL 382765, at \*5 (E.D. Pa. Feb. 4, 2011) (enforcing HUD OIG subpoena seeking employees' partial Social Security Numbers, despite state statutes restricting disclosure of sensitive personal information); *United States v. United Network for Organ Sharing*, 2002 WL 1726536, at \*1-\*2 (N.D. Ill. May 17, 2002) (enforcing HHS OIG subpoena, despite state statute restricting disclosure of peer review documents); *United States ex rel. Agency for Int'l Dev. v. First Nat'l Bank of Md.*, 866 F. Supp. 884, 887 (D. Md. 1994) (enforcing USAID OIG subpoena, despite state statute restricting disclosure of financial documents); *United States v. N.Y. State Dep't of Taxation & Fin.*, 807 F. Supp. 237, 240-43 (N.D.N.Y. 1992) (enforcing DOL OIG subpoena, despite state statute restricting disclosure of tax and wage records); *EEOC v. County of Hennepin*, 623 F. Supp. 29, 32 (D. Minn. 1985) (enforcing EEOC subpoena, despite state statute permitting production of government personnel information only in response to a court order).

<sup>53</sup> *County of Hennepin*, 623 F. Supp. at 32.

The same considerations apply when a state court purports to restrict the Commission's ability to use its investigative process. "To . . . federal statute and policy, conflicting state law and policy must yield. Constitution, Art. VI, cl. 2."'<sup>54</sup>

Fifth, the fact that the requested documents were generated as a result of Western Union's settlement with the Arizona Attorney General does not change the analysis. Documents created pursuant to settlement or in reliance on confidentiality protections are not automatically shielded from all disclosure. For example, even in the context of purely private rights, the Third Circuit has recognized that parties' reliance on a confidentiality order is only one of several factors that must be considered when nonparties seek access to confidential settlement materials.<sup>55</sup> The threshold to forestall disclosure of documents submitted to facilitate settlement is even higher when a case involves – as it does here – “a government agency and an alleged series of deceptive trade practices culminating (it is said) in widespread consumer losses,” because “[t]hese are patently matters of significant public concern.”<sup>56</sup>

Moreover, Western Union's cited cases – *United States v. Bleznak*, 153 F.3d 16 (2d Cir. 1998), and *McCoo v. Denny's Inc.*, 2000 WL 156824 (D. Kan. Feb. 11, 2000) – do not support the proposition that the Commission may not use process to obtain documents that would not exist but for the Arizona settlement agreement. Notably, the persons seeking disclosure in *Bleznak* and *McCoo* were seeking evidence to use in vindicating their purely private rights. By contrast, the Commission is an agency of the United States and seeks materials in connection with its statutory mandate to prevent unfair and deceptive practices in furtherance of the public interest. Furthermore, in both

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<sup>54</sup> *Liner v. Jafco, Inc.*, 375 U.S. 301, 309 (1964) (quoting *Sola Elec. Co. v. Jefferson Elec. Co.*, 317 U.S. 173, 176 (1942)).

<sup>55</sup> *Pansy v. Borough of Stroudsburg*, 23 F.3d 772, 787-90 (3d Cir. 1994) (noting that parties' reliance “should not be outcome determinative,” and instructing courts to also consider factors such as privacy interests, the purpose for which the information is being sought, whether the information is important to public health and safety, whether sharing would promote fairness and efficiency, and whether the case involves issues important to the public); *see also Daines v. Harrison*, 838 F. Supp. 1406, 1408-09 (D. Colo. 1993) (finding that parties' reliance on confidentiality order was “not enough to tip the balance in their favor” in light of competing interests favoring disclosure, such as the public right of access to court records and the involvement of public agencies and public funds); *cf. Palmieri v. New York*, 779 F.2d 861, 864-66 (2d Cir. 1985) (recognizing that orders sealing court records and a settlement agreement could be modified if warranted by “extraordinary circumstances” or “compelling need”).

<sup>56</sup> *FTC v. Standard Fin. Mgmt. Corp.*, 830 F.2d 404, 412 (1st Cir. 1987).

cases, the consent decree at issue specifically barred the requested disclosure.<sup>57</sup> As noted above, the Arizona settlement documents specifically contemplate that the Monitor's reports and the underlying information may be shared in certain circumstances, including with investigative agencies or in furtherance of the Attorney General's duties. Thus, the provisions considered in *Bleznak* and *McCoo* are not comparable to the confidentiality provisions at issue here.

Finally, Western Union suggests that the "appropriate procedure" would be for the Commission to appear before the Arizona state court or seek to intervene.<sup>58</sup> However, the Commission is an agency of the United States not subject to the jurisdiction of state courts. A state may not interfere with a valid exercise of federal authority.<sup>59</sup> Thus, there is no basis for the contention that the Commission must appear before a state tribunal or seek to intervene in a state proceeding to use its statutory process authority to obtain the requested documents – a principle the Arizona court recognized implicitly when it held that "it has no jurisdiction, and makes no attempt to determine the enforceability of the FTC's CID."<sup>60</sup>

## 2. *The FTC May Obtain Western Union's Worldwide Complaints.*

Specification 1 of the CID requires Western Union to produce "[a]ll documents referring or relating to complaints made to Western Union by consumers anywhere in the world, referring or relating to fraud-induced money transfers."<sup>61</sup> Under the governing

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<sup>57</sup> The intervenors in *Bleznak*, who were parties in a separate private action against the defendants, sought to circumvent specific language in the consent decree that the tapes created pursuant to the settlement would not be "subject to civil process" or "admissible in evidence in civil proceedings." 153 F.3d at 19. Similarly, the *McCoo* plaintiffs were using discovery to seek the materials at issue, an act specifically prohibited by the consent decree provisions barring the Monitor and the parties from disclosing "Confidential Information to any person who is not a party to this Decree, including without limitation any person who seeks such Confidential Information in other litigation through discovery process in other courts." 2000 WL 156824, at \*2.

<sup>58</sup> Pet. 16.

<sup>59</sup> See *Goodyear Atomic Corp. v. Miller*, 486 U.S. 174, 180 n.1 (1988) (Supremacy Clause "immunizes the activities of the Federal Government from state interference"); *Mayo v. United States*, 319 U.S. 441, 445 (1943) ("[T]he activities of the Federal Government are free from regulation by any state.").

<sup>60</sup> Pet. Ex. G, at 3.

<sup>61</sup> Pet. Ex. A, at 7 (Specification III.1).

law, this specification must be enforced if the inquiry is within the authority of the agency, the demand is not too indefinite, and the information sought is reasonably relevant to the purpose of the inquiry, as set forth in the Commission's investigatory resolution.

Western Union does not claim that the specification is too indefinite or not reasonably relevant. It contends, however, that the Commission has exceeded its authority in requesting information about transactions that occurred outside the U.S. and further, that the request cannot be reconciled with foreign data privacy laws. We are not persuaded by either of these claims.

The FTC is authorized to obtain through compulsory process Western Union's worldwide complaints about fraud-induced money transfers. In 2006, Congress passed the U.S. SAFE WEB Act, which enhanced the FTC's ability to protect U.S. consumers from perpetrators of fraud operating abroad and to prevent the U.S. from becoming a haven for fraudulent activity targeting foreign victims by amending Section 5's core provisions to confirm the agency's cross-border jurisdictional authority. The SAFE WEB amendments provide that the term "unfair or deceptive acts or practices" in Section 5(a) of the FTC Act "includes such acts or practices involving foreign commerce" that either: "(i) cause or are likely to cause reasonably foreseeable injury within the United States; or (ii) involve material conduct occurring within the United States." 15 U.S.C. § 45(a)(4)(A).

Indeed, the Senate Report on the U.S. SAFE WEB Act cited by Western Union makes it clear that Congress intended to empower the FTC to combat cross-border fraud by obtaining and sharing information from foreign jurisdictions. The report states that the Act will

authorize the FTC to: (1) share information involving cross-border fraud with foreign consumer protection agencies; (2) secure confidential information from those foreign consumer protection agencies; (3) take fraud-based legal action in foreign jurisdictions; (4) seek redress on behalf of foreign consumers victimized by United States-based wrongdoers; (5) make criminal referrals for cross-border criminal activity; [and] (5) strengthen its relationship with foreign consumer protection agencies.<sup>62</sup>

For this reason, Western Union's reliance on the Supreme Court's decision in *Morrison v. National Australia Bank Ltd.*, 130 S. Ct. 2869 (2010), is misplaced. In *Morrison*, the Supreme Court held, in the context of a private class action involving foreign buyers and sellers operating on foreign security exchanges, that there was no

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<sup>62</sup> S. Rep. No. 109-219, at 3 (2006).

“affirmative indication” that Section 10(b) of the SEC Act applies extraterritorially. The “presumption against extraterritoriality” affirmed in *Morrison* does not apply to the FTC’s CID here, given Congress’ express intent in extending the FTC Act to specified acts and practices involving foreign commerce. *See* 15 U.S.C. § 45(a)(4).

Further, the request in the CID for Western Union’s worldwide complaints is proper under both the “material conduct” and “cause or likely to cause reasonably foreseeable injury” tests in Section 45(a)(4).

For one, the FTC’s investigation has focused primarily on whether Western Union has adopted and implemented policies and procedures that are sufficient to prevent or limit wrongdoers from using its money transfer system to perpetrate fraud. The “material conduct” at issue is therefore Western Union’s actions in developing and administering its antifraud program – activities that Western Union does not dispute occur within the United States.<sup>63</sup> Any complaints from foreign consumers related to fraud-induced money transfers in non-U.S. jurisdictions certainly “involve” this “material conduct” and call into question the effectiveness of these policies and procedures to protect U.S. and non-U.S. consumers alike.<sup>64</sup> The FTC is entitled to such worldwide complaints to help it assess the levels of fraud perpetrated through Western Union’s network, the extent of Western Union’s knowledge of the number of any fraud-induced money transfers being picked up at particular agent locations, and the adequacy of Western Union’s actions in response to

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<sup>63</sup> Western Union asserts that its oversight of its antifraud program cannot be “material conduct” because it is an “act of omission” involving an alleged failure to act. Pet. 11. This argument ignores the affirmative duty imposed by the BSA on Western Union to implement an AML program. *See* II.C., *supra*. It also ignores the detailed information Western Union already provided the Commission that describes its antifraud program, including program documentation. This information confirms that, far from performing an “act of omission,” Western Union affirmatively sets policy and dictates procedures within the U.S. that are designed to detect and curtail fraudulent activities both within and outside the U.S. Western Union also employs procedures developed here to receive complaints, analyze complaint data, and to take remedial action in response to that data. *See generally* Anti-Fraud Program 5-24, 29-33. In further support, we note that the complaints sought by the CID are maintained in the United States.

<sup>64</sup> We note that Western Union does not address the fact that documents responsive to Specification 1 include any complaints by non-U.S. consumers about fraudulent transactions picked up in the U.S. Such complaints, which the company has also refused to provide, directly touch the U.S., and none of the arguments advanced by Western Union calls into question the Commission’s authority to use its investigative process to require the company to produce them.

such complaints.<sup>65</sup>

For similar reasons, any failure by Western Union to take effective remedial action against a problematic foreign agent would necessarily cause or be likely to cause reasonably foreseeable injury to consumers within the U.S. As explained above, if Western Union, through complaints it receives from U.S. and foreign victims, or even from foreign victims alone, is able to identify a problem agent abroad, then it may need to take immediate action to suspend or terminate that agent from its system to prevent additional consumers from being victimized. Any future victims may include both U.S. and foreign consumers, because a problem agent in a foreign jurisdiction that is receiving fraud-induced transactions from foreign victims may also likely be receiving fraud-induced transactions from U.S. victims.

Western Union's assertions on this issue fail to account for the worldwide nature of the networks that may be perpetrating fraud through its system. As we have learned, funds transferred by a single consumer victim may subsequently be transferred multiple times through a money transfer network before the funds reach the ultimate perpetrator of the scheme. For example, a U.S. consumer who is the victim of a lottery scheme could transfer funds to a money transfer outlet in Canada, which, in turn, may transfer the funds to another outlet in Romania. The transfer from Canada to Romania injures the U.S. consumer, because it was her funds that were transferred. Similarly, the funds transferred by consumer victims in the U.K. that are picked up in Romania may subsequently be transferred to a con artist operating in the U.S. The fact that the complained-of transfer might have been routed through an agent in Romania, rather than directly to the U.S., would not negate the effects of such a transfer on the U.S.<sup>66</sup>

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<sup>65</sup> Western Union's claim that fraud is somehow being conducted "unbeknownst" to the company by foreign con artists is troubling and serves to underscore the need for staff to investigate. Pet. 12. The FTC and other law enforcers have put the company on notice that the perpetrators of fraudulent or deceptive practices may be using its money transfer services, and the company has acknowledged and committed to improving its processes for detecting such activities. Indeed, Western Union has a legal obligation to detect and report such unlawful conduct. If Western Union now claims that it is unaware of this fraud, this highlights a need to examine the antifraud program more closely and its ability to detect such conduct.

<sup>66</sup> Though Western Union does not address it, Section 5(a)(4)(B) of the FTC Act, which addresses remedies for U.S. and foreign victims of consumer frauds, also supports the CID's request for worldwide complaints. If Western Union's failure to take reasonable steps to detect and prevent con artists from using its money transfer system causes harm to U.S. and foreign victims, the FTC is empowered by the SAFE WEB Act to remedy this harm. Any complaints from worldwide victims could bear on the scope of

Western Union's references to the need to promote international comity and avoid conflicts among data protection laws do not provide any basis for quashing the CID. Western Union has not cited any actual foreign data protection law, or described how such law would preclude Western Union from providing the FTC with any worldwide complaints.

Furthermore, Western Union's reliance on *Societe Nationale Industrielle Aerospatiale v. U.S. Dist. Ct.*, 482 U.S. 522, 546 (1987), is misplaced. First, *Aerospatiale* involved private interests, not a federal agency's use of compulsory process in a law enforcement investigation. Second, contrary to Western Union's assertion, nothing in *Aerospatiale* stands for the proposition that discovery rules "ought never to be construed to violate the law of nations if any other possible construction remains . . . ." <sup>67</sup> Instead, the Supreme Court concluded that the litigants were not required to use the procedures of the Hague Convention to obtain documents maintained outside the United States -- even from foreign corporations. <sup>68</sup> Indeed, federal courts analyzing the *Aerospatiale* decision have often applied the factors described there to order compliance with U.S. discovery requests even in the face of a foreign blocking or other statute. <sup>69</sup>

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the harm and the proper amount of restitution.

<sup>67</sup> Pet. 12-13 (quoting *Societe Nationale Industrielle Aerospatiale v. U.S. Dist. Ct.*, 482 U.S. 522, 546 (1987)). The text quoted by Western Union actually appears in a much older case, *Murray v. Schooner Charming Betsy*, 6 U.S. (2 Cranch) 64, 118 (1804), and was intended to promote international comity as was the Court's decision in *Aerospatiale*. But the *Aerospatiale* Court also explicitly recognized the interests of the United States as an important factor in developing a comity analysis, following the *Charming Betsy* canon, that balances respect for other countries' judicial sovereignty against U.S. discovery requirements.

<sup>68</sup> 482 U.S. at 538-43. The Court explained that foreign blocking statutes

do not deprive an American court of the power to order a party subject to its jurisdiction to produce evidence even though the act of production may violate that statute. Nor can the enactment of such a statute by a foreign nation require American courts to engraft a rule of first resort onto the Hague Convention, or otherwise to provide the nationals of such a country with a preferred status in our courts.

*Id.* at 544 n. 29 (citations omitted, citing *Societe Internationale Pour Participations Industrielles et Commerciales, S.A. v. Rogers*, 357 U.S. 197, 204-206 (1958)).

<sup>69</sup> See, e.g., *Devon Robotics v. Deviedma*, No. 09-cv-3522, 2010 U.S. Dist. LEXIS

Finally, Western Union fails to cogently explain how the CID undermines the FTC's role in enforcing the U.S.-EU Safe Harbor Framework.<sup>70</sup> Generally, the European Union's Directive on Data Protection requires that transfers of personal data take place only to non-EU countries that provide an "adequate" level of protection. The Framework is deemed adequate and provides a "safe harbor" to receive personal data from the European Union for those U.S. organizations that pledge to comply with a defined set of privacy principles and certify to that commitment.<sup>71</sup> The FTC then enforces that commitment and certification under Section 5 of the FTC Act. Contrary to what Western Union's brief appears to suggest,<sup>72</sup> the FTC has not brought cases for violations of EU data protection laws.<sup>73</sup> Instead, the FTC may treat false certifications of compliance with the Framework as deceptive acts or practices.<sup>74</sup> As the European Commission itself has recognized, "U.S. law will apply to questions of interpretation and compliance with the Safe Harbor principles."<sup>75</sup> The Safe Harbor framework is clear that in the event of a

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108573, \*10-\*17 (E.D. Pa. Oct. 8, 2010) (ordering disclosure notwithstanding an Italian blocking statute); *Accessdata Corp. v. Alste Techn*, No. 2:08-cv-569, 2010 U.S. Dist. LEXIS 4566, \*4-\*8 (D. Utah. Jan. 21, 2010) (ordering disclosure notwithstanding a German blocking statute). This is particularly true in cases involving the enforcement of U.S. law. *See, e.g., In re Air Cargo Shipping Services Antitrust Litigation*, 278 F.R.D. 51, 52-54 (E.D.N.Y. 2010) (finding that "strong national interest[]" in U.S. enforcing antitrust laws outweighed France's interest in controlling access to information within its borders).

<sup>70</sup> Pet. at 13.

<sup>71</sup> *See* Export.gov, U.S.-E.U. Safe Harbor Overview, [http://export.gov/safeharbor/eu/eg\\_main\\_018476.asp](http://export.gov/safeharbor/eu/eg_main_018476.asp) (last updated Apr. 26, 2012). As stated in that overview, "the Principles were solely designed to [deem the Framework to be adequate and] ... cannot be used as a substitute for national provisions implementing the Directive that apply to the processing of personal data in the Member States."

<sup>72</sup> Pet. 13.

<sup>73</sup> The cases referenced by Western Union all involved allegations that companies falsely self-certified that they met the Safe Harbor requirements.

<sup>74</sup> *See, e.g., In re Facebook, Inc.*, FTC File No. 092 3184 (July 27, 2012).

<sup>75</sup> *See* Commission Decision of 26 July 2000 Pursuant to Directive 95/46/EC of the European Parliament and of the Council on the Adequacy of the Protection Provided by the Safe Harbour Privacy Principles and Related Frequently Asked Questions Issued by the US Department of Commerce, at Annex 1 (attaching U.S. Department of Commerce

conflict between U.S. law and the law of another jurisdiction, U.S. companies must still follow U.S. law. The Safe Harbor Framework itself provides that “where U.S. law imposes a conflicting obligation, U.S. organizations whether in the safe harbor or not must comply with the law.”<sup>76</sup>

#### IV. CONCLUSION

For the foregoing reasons, **IT IS HEREBY ORDERED THAT** the Petition of Western Union to Quash Civil Investigative Demands be, and it hereby is, **DENIED**.

**IT IS FURTHER ORDERED THAT** all responses to the specifications in the Civil Investigative Demand to Western Union must now be produced on or before March 18, 2013.

By the Commission, Commissioner Leibowitz not participating.

Richard C. Donohue  
Acting Secretary

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Safe Harbor Privacy Principles (July 21, 2000)), <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000D0520:en:NOT>.

<sup>76</sup> See Export.gov, Damages for Breaches of Privacy, Legal Authorizations and Mergers and Takeovers in U.S. Law, at § B, [http://export.gov/safeharbor/eu/eg\\_main\\_018482.asp](http://export.gov/safeharbor/eu/eg_main_018482.asp) (last updated Jan. 30, 2009). We note that Western Union is not presently among the organizations that have certified their compliance with the Safe Harbor privacy requirements. See <http://safeharbor.export.gov/list.aspx> (last visited March 4, 2013).

**PETITION EXHIBIT 7**

Correspondence between the Federal Trade Commission and  
Western Union  
March 18, 2013 to Present



UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
MIDWEST REGION

55 West Monroe Street, Suite 1825  
Chicago, Illinois 60603

Todd M. Kossow  
Assistant Director

Direct Dial  
(312) 960-5616

March 19, 2013

**VIA ELECTRONIC MAIL**

Lydia Parnes  
Wilson, Sonsini, Goodrich & Rosati  
1700 K Street, NW, 5<sup>th</sup> Floor  
Washington, DC 20006

**Re: Civil Investigation Demand to The Western Union Company**

Dear Lydia:

I am writing to address The Western Union Company's ("Western Union") failure to comply with the Civil Investigation Demand (CID) issued on December 12, 2012. As you know, on March 4, 2013, the Commission denied Western Union's Petition to Quash both the CID to Western Union and the CID that was issued to the Monitor in *State of Arizona ex rel. Horne v. Western Union Financial Services, Inc.*, No. CV 2010-005807 ("Monitor"). The Commission's March 4 Order directed Western Union to produce the documents responsive to its CID on or before March 18, 2013. Despite that Order, Western Union did not produce the responsive documents by yesterday's deadline. Based on our telephone conversation after the close of business yesterday, however, it is my understanding that Western Union now intends to comply with the Commission's CID, but requires additional time to do so. In light of your representation that Western Union will be producing responsive documents, staff is willing to refrain, at this time, from referring this matter to the Office of the General Counsel ("OGC") for the initiation of a CID enforcement proceeding upon the conditions described herein.

Western Union must produce all of the responsive documents according to the following production schedule:

**Specification 1:**

Produce all of the documents responsive to Specification 1 on or before March 26, 2013.

Lydia Parnes  
March 19, 2013  
Page 2

**Specification 2:**

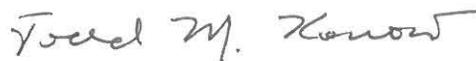
Produce the reports, reviews, or other documents, prepared by the Monitor, including drafts of such documents, on or before March 26, 2013.

Produce all other documents responsive to Specification 2, specifically all documents referring or relating to communications with the Monitor, and assert any claims of privilege, by no later than April 2, 2013.

Given that the Commission's CID was served on Western Union over three months ago, this additional time should be more than sufficient for Western Union to provide its response.

Finally, I want to make clear that this letter does not constitute a modification of the CID and does not extend the March 18 deadline imposed by the Commission for Western Union's compliance. This letter merely states the conditions under which staff will forbear from immediately referring this matter to OGC for enforcement. Furthermore, Western Union's failure to meet any of these deadlines, or to fully comply with the CID, will result in the referral of this matter to OGC. Please let us know by no later than the close of business tomorrow – i.e., by 5:00 p.m. CDT – whether Western Union intends to comply with the CID by the deadlines set forth in this letter.

Very truly yours,



Todd M. Kossow

cc: Leslie R. Melman

**Kossow, Todd M.**

---

**From:** Kossow, Todd M.  
**Sent:** Thursday, March 21, 2013 1:47 PM  
**To:** 'Parnes, Lydia B.'  
**Cc:** Melman, Leslie R.  
**Subject:** RE: Western Union CID

Lydia,

Thanks for your email. We're happy to talk tomorrow, but given that Western Union's response to the Commission's CID is now well past due, I want to be clear about the issues we are willing to discuss at this point, and those that should not be part of any Western Union proposal.

At this stage, and only because you represented in our March 18 telephone conversation that Western Union will make production in response to the CID but that it needs additional time to do so, we are willing to refrain from referring this matter immediately to the Office of General Counsel for enforcement if Western Union can produce documents in accordance with the schedule set out in my March 19 letter. If Western Union is unable to meet that schedule with respect to particular categories of documents, then it should make a firm commitment in any response as to when it would be able to produce those categories of documents. In proposing any alternate schedule, Western Union should be mindful of the fact that it already has had more than three months to gather documents responsive to the CID.

Because the Monitor's reports themselves are readily available to you, however, those reports must be produced by no later than March 26. Western Union has known since March 4 that the Commission had rejected its arguments opposing production of those reports, and if Western Union intends to produce them, as you indicated it did, there is no reason the reports cannot be produced immediately.

As I indicated in our March 18 telephone conversation, we will not agree to limit the scope of Western Union's production – *i.e.*, we will not agree to postpone Western Union's production of the "relating to" documents, nor will we agree to any limitations on the worldwide complaint information.

We look forward to your prompt response, as the Office of General Counsel needs to provide the Commission with an update on the status of Western Union's production.

Best regards,

Todd

Todd M. Kossow  
Assistant Director  
FTC Midwest Region  
55 West Monroe Street, Suite 1825  
Chicago, IL 60603  
312-960-5616 (ph)  
312-960-5600 (fax)  
[tkossow@ftc.gov](mailto:tkossow@ftc.gov)

**From:** Parnes, Lydia B. [<mailto:lparnes@wsgr.com>]  
**Sent:** Wednesday, March 20, 2013 2:52 PM  
**To:** Kossow, Todd M.  
**Cc:** Melman, Leslie R.; Parnes, Lydia B.  
**Subject:** RE: Western Union CID

Todd,

I am responding to your email and letter of March 19, which I was not able to review until today. My Western Union client contacts are traveling this week and have not had an opportunity to review the letter. I expect they will be able to review it in the next day and that we will be able to respond to your letter by Friday.

Best,

Lydia

Lydia Parnes | Partner, Wilson Sonsini Goodrich & Rosati  
1700 K Street, NW Washington DC | Direct Dial: (202) 973-8801 | Cell: (202) 285-2966

---

**From:** Kossow, Todd M. [<mailto:TKOSSOW@ftc.gov>]  
**Sent:** Tuesday, March 19, 2013 7:03 PM  
**To:** Parnes, Lydia B.  
**Cc:** Melman, Leslie R.  
**Subject:** Western Union CID

Lydia,

Please see the attached letter.

Best regards, Todd

Todd M. Kossow  
Assistant Director  
FTC Midwest Region  
55 West Monroe Street, Suite 1825  
Chicago, IL 60603  
312-960-5616 (ph)  
312-960-5600 (fax)  
[tkossow@ftc.gov](mailto:tkossow@ftc.gov)

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others is strictly prohibited. If you are not the intended recipient, please contact the sender immediately and permanently delete the original and any copies of this email and any attachments thereto.

Edward B. Schwartz  
Steptoe & Johnson LLP  
1330 Connecticut Avenue, NW  
Washington, DC 20036-1795  
202 429 6220  
www.steptoel.com



By Email and U.S. Mail

Todd M. Kossow  
Assistant Director  
Federal Trade Commission  
Midwest Region  
55 West Monroe Street Suite 1825  
Chicago, Illinois 60603

March 26, 2013

**Re: Federal Trade Commission Civil Investigative Demand  
to The Western Union Company Issued December 12, 2012**

Dear Mr. Kossow:

I am writing on behalf of The Western Union Company in regard to the above referenced Civil Investigative Demand (the "CID"), and in response to your March 19, 2013 letter and March 21, 2013 email to Lydia Parnes of Wilson, Sonsini, Goodrich & Rosati regarding same.

As discussed below, and as Western Union has previously communicated to both the staff and the Office of the General Counsel, in light of the Commission's denial of the Company's petition to quash, the Company is prepared to comply fully with the CID with narrow exceptions intended to (1) avoid producing voluminous materials from numerous custodians that are wholly irrelevant to the Company's anti-fraud program and efforts; and (2) protect the Company from potentially violating foreign privacy laws. Thus, after seeking and obtaining approval from the Maricopa County Superior Court, Western Union is prepared to forego its objections to producing the Monitor Reports without receiving additional confidentiality protections beyond those automatically conferred upon CID documents, and to produce the reports without condition. However, as also discussed below, the Company regrettably cannot, without exception, produce every document that is facially responsive to the CID.

**BACKGROUND**

Western Union was first contacted by the FTC regarding the Company's anti-fraud program in approximately November 2009. Since then, the staff has requested a substantial amount of data and voluminous documents regarding that program and related issues, and has asked Western Union to make very significant changes to its anti-fraud program. Until the staff asked Western Union to produce voluntarily the reports of the Monitor appointed by the Superior

Todd M. Kossow  
March 26, 2013  
Page 2



Court of Arizona in *State of Arizona ex rel. Horne v. Western Union Financial Services, Inc.*, No. CV 2010-005807,<sup>1</sup> the Company had voluntarily produced virtually all, if not all, of the documents, data and other information that the staff had requested. Moreover, in part as a result of the very productive discussions between the Company and the staff, Western Union had committed to substantially enhancing its anti-fraud program in accordance with the staff's requests, and is already doing so. Those changes involve a very substantial investment by the Company that reflects the Company's sincere desire both to satisfy the Commission's concerns and to ensure that the Company's anti-fraud efforts are not just effective but state-of-the-art. We understand that Western Union recently presented data to the staff indicating a substantial reduction in fraud complaints and that the staff advised Western Union that it was encouraged by the Company's progress with respect to upgrading its anti-fraud program.

The Monitor Reports concern Western Union's anti-money laundering program along the Southwest Border Area (Arizona, and parts of California, New Mexico and Texas). Thus, from Western Union's perspective, the Reports are of no discernible relevance to the Commission's investigation into telemarketing scams and related fraudulent activities. In light of the Company's cooperation with the Commission, the measures it has implemented to better protect consumers and the Southwest Border monitorship, Western Union was (and remains) puzzled by the staff's request for – and then insistence upon the Company's production of – the Monitor Reports.

Western Union also has had deep concerns regarding the production of the Monitor Reports because (1) it agreed to the creation of those reports on the condition that they would be treated as strictly confidential; (2) the Arizona court recognized that Western Union has an expectation of confidentiality in the reports and has not authorized release of the reports to the FTC; and (3) it is very concerned about the potential harm to the Company should those reports be distributed outside the FTC. While the Company was negotiating with then-Bureau Director David Vladeck over the terms under which the Company would produce the reports, the FTC (to the Company's surprise) served the CID.

Following service of the CID, the Company continued to negotiate with the staff regarding production of the Monitor Reports, as well as the other documents sought in the CID. As you know, the Company also had significant concerns about producing some of those other documents and information called for in CID Specifications 1 and 2. Those concerns, and the Company's proposed resolutions, included:

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<sup>1</sup> The Monitor Reports were prepared pursuant to a settlement agreement between Western Union and the State of Arizona resolving certain claims that might have been brought by the State regarding the Company's anti-money laundering activities and program in the Southwest Border area. The State's claims were not predicated upon any facts relating to the Company's anti-fraud program.

Todd M. Kossow  
March 26, 2013  
Page 3



**Specification 1 (seeking all documents relating to complaints from consumers located “anywhere in the world” regarding fraud-induced transfers):** Notwithstanding that Western Union does not believe that the FTC has the jurisdictional authority to require the Company to produce complaints involving fraudulent transactions between two foreign countries, the Company agreed to produce all requested information, subject to the need to redact certain personal information, the production of which would potentially violate foreign privacy laws; and

**Specification 2 (seeking the Monitor Reports and all documents “referring or relating” to all communications between Western Union and the Monitor):** Separate from the Company’s concerns over producing the Monitor Reports themselves, the Company has serious reservations about producing all documents “referring or relating to” the Monitor’s activities, including potentially hundreds of thousands of pages of emails and other documents bearing no relation whatsoever to the Company’s anti-fraud efforts.

Despite the Company’s serious concerns over the scope of the CID, the Company made sincere efforts to reach an agreement with the Commission over the terms of the Company’s production. In that regard, the Company offered to:

1. Produce the Monitor Reports under conditions that would have provided Western Union with at least minimally acceptable confidentiality protections;<sup>2</sup>
2. Produce all documents “referring or relating to” all communications with the Monitor that could in any way relate to the Company’s anti-fraud efforts by, for example, using mutually agreed-upon search terms to identify potentially relevant documents; and
3. Identify a way to satisfy the staff’s desire to see the global fraud complaints without exposing the Company to significant legal risk arising from potential violations of foreign privacy laws by, for example, redacting certain personal information from the documents to be produced.

The Company believed that it had made substantial progress in negotiating an agreement with the Commission over the scope of the Company’s production. With the deadline for compliance approaching, the Company asked the staff for an extension to give the parties more time to

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<sup>2</sup> As you know, given the uniquely confidential nature of those reports, the Company was seeking certain confidentiality protections beyond those automatically accorded CID materials.

Todd M. Kossow  
March 26, 2013  
Page 4



negotiate an agreement. The staff refused. That refusal left Western Union no choice but to file the Petition to Quash on January 31, 2013.

#### **THE PARTIES' CURRENT POSITIONS**

After Western Union filed the Petition, it met with the staff and Office of the General Counsel in an effort to negotiate a resolution. Those meetings did not result in an agreement. Since the Commission denied Western Union's Petition on March 4, 2013, Western Union has continued its attempts to negotiate an agreement with the Commission that would accommodate both the staff's desire to see the requested documents and Western Union's concerns identified above. As part of those efforts, Western Union advised the staff and the Office of the General Counsel that it would drop its request for additional confidentiality protections for the Monitor Reports, and would produce them as requested without condition. Moreover, Western Union, again, made sincere efforts to close the gap between it and the Commission over the remaining CID requests. The Company believed that the discussions were productive and was optimistic about the chances of them resulting in a resolution of the parties' differences.

Yet, as those discussions were proceeding (and, indeed, not one hour after Lydia Parnes concluded a discussion with Acting Bureau Director Chuck Harwood regarding those issues), you contacted Ms. Parnes to advise her that Western Union must comply fully with the CID, without exception, and without regard to the Company's privacy and other concerns. You confirmed that position in your March 19, 2013 letter and your March 21, 2013 email.

While Western Union remains prepared to set aside its concerns about the relevance and confidentiality of the Monitor Reports in order to resolve this dispute, it cannot agree to produce voluminous and wholly irrelevant documents "referring or relating to" all communications with the Monitor, or set aside its concerns about producing unredacted versions of the global complaint documents without regard to the application of foreign privacy laws. To be clear, the Company has been and remains prepared to:

1. Produce all of the Monitor Reports, without condition;<sup>3</sup>
2. Produce the following documents "referring or relating to" the Company's communications with the Monitor:
  - a. All such documents containing search terms agreed to by the Company and the staff; and

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<sup>3</sup> If the parties can negotiate a resolution, Western Union will ask the Maricopa County Superior Court for an order permitting it to produce the Monitor Reports to the Commission. Western Union expects that neither the Court nor the State of Arizona will object to such a request.

Todd M. Kossow  
March 26, 2013  
Page 5

**Steptoe**  
STEP TOE & JOHNSON LLP

- b. All communications to and from the Monitor; and
3. Produce all requested global complaint documents, subject to the Company redacting personal information, the production of which could violate foreign privacy laws.

Western Union firmly believes that its offer in this regard goes well beyond what it is required to do under the relevant authorities. Nevertheless, the Company has made this offer in an effort to avoid what it just as firmly believes would be litigation that is wholly unnecessary, which would waste substantial resources of both Western Union and the Commission, and that it fears would distract the parties from devoting their time and efforts to the substantive issues relating to the Western Union anti-fraud program.

We hope the Commission agrees and look forward to hearing from you.

Sincerely,

*Edward B. Schwartz / vhm*

Edward B. Schwartz  
Partner  
Steptoe & Johnson LLP

Cc: Chairman Edith Ramirez  
Commissioner Julie Brill  
Commissioner Maureen K. Ohlhausen  
Commissioner Joshua D. Wright  
Acting General Counsel David C. Shonka  
Acting Director Bureau of Consumer Protection  
Charles A. Harwood  
John R. Dye, The Western Union Company  
Lydia B. Parnes, Wilson, Sonsini,  
Goodrich & Rosati LLP



UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

Office of the General Counsel

~  
David C. Shonka  
Acting General Counsel

~  
Direct Dial  
(202) 326-2436

March 29, 2013

**BY E-MAIL AND FEDEX**

Edward B. Schwartz  
Steptoe & Johnson LLP  
1330 Connecticut Avenue, N.W.  
Washington, D.C. 20036-1795  
E-mail: eschwartz@steptoe.com

Re: Civil Investigative Demand Issued to the Western Union Company, December 12, 2012

Dear Mr. Schwartz:

This responds to your letter of March 26, 2013. In your letter, you reiterate Western Union's concerns about the scope of the outstanding CID and propose a number of conditions short of full and unconditional compliance. Your letter also describes your view of the most recent discussions between Western Union and FTC staff regarding Western Union's compliance.

Before responding to your proposals, I want to make it clear that the Commission and its staff have afforded Western Union ample opportunity to be heard. In June 2012, David Vladeck, then-Director of the Bureau of Consumer Protection made an informal request for Western Union to provide the reports prepared by the Monitor appointed in *Arizona ex rel. Horne v. Western Union Financial Servs., Inc.* Staff in the Commission's Midwest Region Office and Western Union then discussed that request for a full six months – to December 2012. When Western Union did not provide the materials voluntarily after months of discussion, the Commission issued the instant CID. In response, on January 31, 2013, Western Union filed a formal petition to quash.

On February 22, 2013, while that petition was pending before the Commission, you and other representatives for Western Union met with me, other attorneys from the Office of General Counsel ("OGC"), and staff from both the Midwest Region and the Bureau of Consumer Protection, and discussed many of the concerns that you raise in your current letter. Subsequently, Western Union counsel met with Commissioner Ohlhausen and her staff, along

with OGC attorneys, and reiterated Western Union's concerns. On March 4, 2013, the Commission denied Western Union's petition in its entirety and directed Western Union to comply with the outstanding CID no later than March 18, 2013 ("Order").

In denying the petition to quash, the Commission addressed and rejected the very concerns you have raised in your letter. For instance, the Commission addressed the relevance of the Monitor's reports at length in its Order and explained why these materials were relevant to its investigation of Western Union's anti-fraud program. Similarly, you have reasserted Western Union's claim that providing complaints from consumers worldwide would violate "foreign privacy laws," but you have not identified which "foreign privacy laws" you mean.<sup>1</sup>

It is apparent from your letter that Western Union believes that negotiations over the terms of its compliance remain ongoing. This is not an accurate reading of the present posture of this matter. In denying the petition to quash, the Commission directed Western Union to comply with the CID on or before March 18, 2013. In a conversation the evening of this deadline, Lydia Parnes, your co-counsel, told Midwest Region staff that Western Union intended to "make production" in response to the CID. Relying on that representation, Todd Kossow, Assistant Regional Director, by letter dated March 19, 2013, stated that staff would forbear from sending an enforcement recommendation to the General Counsel so long as Western Union committed to a production schedule. Specifically, that schedule required Western Union to produce the Monitor's reports no later than March 26, 2013. Mr. Kossow further requested that Western Union indicate promptly whether it intended to meet this schedule. Ms. Parnes, responding by e-mail on March 20, stated that Western Union's responsible officials were traveling and promised a response by Friday, March 22, 2013. Mr. Kossow replied by e-mail on March 21, 2013, indicating that staff would continue to forbear from recommending enforcement provided that Western Union commit to a schedule for compliance and produce the Monitor's reports by March 26, 2013. (Copies of the foregoing correspondence are attached hereto.)

Ms. Parnes did not respond by March 22. Instead, on March 26 – the date set by staff for production of the Monitor's reports – we received your letter in which you merely reiterated Western Union's desire to comply. Yet Western Union still has not provided these reports and, by your letter, has imposed a number of conditions on the production of other materials required by the CID.

For example, you have offered to produce documents "referring or relating to" Western Union's communications with the Monitor only after staff and Western Union reach agreement on a set of search terms. You claim these search terms are necessary because of the "voluminous" nature of these documents. As you have stated it, this condition is not acceptable. For one, Western Union's claim that these materials are voluminous is new. Western Union raised no claim of burden in its petition to limit or quash the CID. In any event, negotiations among attorneys to reach an agreed-upon set of keyword search terms are widely recognized as an inefficient and unproductive method for arriving at a set of responsive documents that is

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<sup>1</sup> You have also reiterated your claim that providing these complaints are outside of the FTC's jurisdiction. The Commission addressed and rejected this argument in its Order. Order, at 18-20. Further, we understand that all of Western Union's complaints – from domestic and foreign customers alike – are maintained in the United States and thus are plainly within the FTC's jurisdiction.

neither underinclusive nor overinclusive.<sup>2</sup> This is particularly true where Commission staff have not yet seen the underlying Monitor's reports.

Similarly, you have offered – again – to provide worldwide consumer complaints with redacted customer information out of deference to “foreign privacy laws.” Without a more specific discussion of any such foreign privacy law and how it would prevent production of this information, we see no reason to even consider accepting these complaints in redacted form, especially as Western Union's counsel has conceded that consumer complaints are maintained in the United States.

As you know, the Midwest Region has now referred this matter to my office and asked me to seek judicial enforcement of the outstanding CID. Staff has done so because, despite Western Union's repeated assurances that it intends to cooperate, Western Union has yet to produce any materials specified in the CID. I am now evaluating that recommendation.

If you would like to discuss this, I am happy to meet with you, but given the Commission's Order and the circumstances related above, it is appropriate to limit such a meeting to a discussion of a timetable for Western Union to produce the materials identified in the CID. Such discussions are more likely to be productive if Western Union makes demonstrable, good faith steps to meeting its obligations. Specifically, Western Union should produce without further delay the following materials, as offered in your letter of March 26: (1) the Monitor's reports;<sup>3</sup> and (2) all communications between Western Union and the Monitor. Western Union should also produce: (3) all consumer complaints responsive to the CID that can be accessed by Western Union from within the United States. Assuming Western Union produces these three categories of documents, I believe effective discussions could be had regarding an effective search methodology for any remaining materials responsive to the CID, or the production of complaints that are not accessible by Western Union in the United States and therefore require cross-border transfers of data and implicate specific foreign privacy laws.

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<sup>2</sup> See, e.g., *William A. Gross Constr. Assocs., Inc. v. Am. Mfrs. Mut. Ins. Co.*, 256 F.R.D. 134, 136 (S.D.N.Y. 2009); *Victor Stanley, Inc. v. Creative Pipe, Inc.*, 250 F.R.D. 251, 260, 262 (D. Md. 2008); *United States v. O'Keefe*, 537 F. Supp. 2d 14, 24 (D.D.C. 2008).

<sup>3</sup> You have stated that Western Union must seek approval from the Maricopa County Superior Court to produce these reports. Paragraph 37 of the Monitor Engagement Letter (MEL) does not require such approval. It provides only that “Western Union shall maintain the confidentiality of all such information provided to [it] by the Monitor, including the periodic reports . . . .” As we discussed on February 22, 2013, the FTC has substantial confidentiality protections provided by statute and regulations for materials produced pursuant to compulsory process, as these reports would be. See, e.g., 15 U.S.C. § 21; 16 C.F.R. § 4.10. These confidentiality provisions have been upheld by courts repeatedly, even with respect to the most highly confidential and commercially sensitive materials. The Commission routinely receives highly sensitive material pursuant to compulsory process.

Given how long this matter has continued already, I would like to conclude this matter within the next two weeks. Please contact my office if you are interested in setting up such a meeting.

Sincerely,

A handwritten signature in blue ink, appearing to read "David C. Shonka".

David C. Shonka

Attach.

cc: Lydia Parnes, Wilson, Sonsini, Goodrich & Rosati LLP



UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
MIDWEST REGION

55 West Monroe Street, Suite 1825  
Chicago, Illinois 60603

Todd M. Kossow  
Assistant Director

Direct Dial  
(312) 960-5616

March 19, 2013

**VIA ELECTRONIC MAIL**

Lydia Parnes  
Wilson, Sonsini, Goodrich & Rosati  
1700 K Street, NW, 5<sup>th</sup> Floor  
Washington, DC 20006

**Re: Civil Investigation Demand to The Western Union Company**

Dear Lydia:

I am writing to address The Western Union Company's ("Western Union") failure to comply with the Civil Investigation Demand (CID) issued on December 12, 2012. As you know, on March 4, 2013, the Commission denied Western Union's Petition to Quash both the CID to Western Union and the CID that was issued to the Monitor in *State of Arizona ex rel. Horne v. Western Union Financial Services, Inc.*, No. CV 2010-005807 ("Monitor"). The Commission's March 4 Order directed Western Union to produce the documents responsive to its CID on or before March 18, 2013. Despite that Order, Western Union did not produce the responsive documents by yesterday's deadline. Based on our telephone conversation after the close of business yesterday, however, it is my understanding that Western Union now intends to comply with the Commission's CID, but requires additional time to do so. In light of your representation that Western Union will be producing responsive documents, staff is willing to refrain, at this time, from referring this matter to the Office of the General Counsel ("OGC") for the initiation of a CID enforcement proceeding upon the conditions described herein.

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Lydia Parnes  
March 19, 2013  
Page 2

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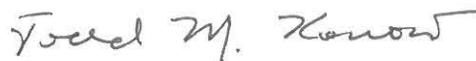
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Produce all other documents responsive to Specification 2, specifically all documents referring or relating to communications with the Monitor, and assert any claims of privilege, by no later than April 2, 2013.

Given that the Commission's CID was served on Western Union over three months ago, this additional time should be more than sufficient for Western Union to provide its response.

Finally, I want to make clear that this letter does not constitute a modification of the CID and does not extend the March 18 deadline imposed by the Commission for Western Union's compliance. This letter merely states the conditions under which staff will forbear from immediately referring this matter to OGC for enforcement. Furthermore, Western Union's failure to meet any of these deadlines, or to fully comply with the CID, will result in the referral of this matter to OGC. Please let us know by no later than the close of business tomorrow – i.e., by 5:00 p.m. CDT – whether Western Union intends to comply with the CID by the deadlines set forth in this letter.

Very truly yours,



Todd M. Kossow

cc: Leslie R. Melman

**Kossow, Todd M.**

---

**From:** Kossow, Todd M.  
**Sent:** Thursday, March 21, 2013 1:47 PM  
**To:** 'Parnes, Lydia B.'  
**Cc:** Melman, Leslie R.  
**Subject:** RE: Western Union CID

Lydia,

Thanks for your email. We're happy to talk tomorrow, but given that Western Union's response to the Commission's CID is now well past due, I want to be clear about the issues we are willing to discuss at this point, and those that should not be part of any Western Union proposal.

At this stage, and only because you represented in our March 18 telephone conversation that Western Union will make production in response to the CID but that it needs additional time to do so, we are willing to refrain from referring this matter immediately to the Office of General Counsel for enforcement if Western Union can produce documents in accordance with the schedule set out in my March 19 letter. If Western Union is unable to meet that schedule with respect to particular categories of documents, then it should make a firm commitment in any response as to when it would be able to produce those categories of documents. In proposing any alternate schedule, Western Union should be mindful of the fact that it already has had more than three months to gather documents responsive to the CID.

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As I indicated in our March 18 telephone conversation, we will not agree to limit the scope of Western Union's production – *i.e.*, we will not agree to postpone Western Union's production of the "relating to" documents, nor will we agree to any limitations on the worldwide complaint information.

We look forward to your prompt response, as the Office of General Counsel needs to provide the Commission with an update on the status of Western Union's production.

Best regards,

Todd

Todd M. Kossow  
Assistant Director  
FTC Midwest Region  
55 West Monroe Street, Suite 1825  
Chicago, IL 60603  
312-960-5616 (ph)  
312-960-5600 (fax)  
[tkossow@ftc.gov](mailto:tkossow@ftc.gov)

**From:** Parnes, Lydia B. [<mailto:lparnes@wsgr.com>]  
**Sent:** Wednesday, March 20, 2013 2:52 PM  
**To:** Kossow, Todd M.  
**Cc:** Melman, Leslie R.; Parnes, Lydia B.  
**Subject:** RE: Western Union CID

Todd,

I am responding to your email and letter of March 19, which I was not able to review until today. My Western Union client contacts are traveling this week and have not had an opportunity to review the letter. I expect they will be able to review it in the next day and that we will be able to respond to your letter by Friday.

Best,

Lydia

Lydia Parnes | Partner, Wilson Sonsini Goodrich & Rosati  
1700 K Street, NW Washington DC | Direct Dial: (202) 973-8801 | Cell: (202) 285-2966

---

**From:** Kossow, Todd M. [<mailto:TKOSSOW@ftc.gov>]  
**Sent:** Tuesday, March 19, 2013 7:03 PM  
**To:** Parnes, Lydia B.  
**Cc:** Melman, Leslie R.  
**Subject:** Western Union CID

Lydia,

Please see the attached letter.

Best regards, Todd

Todd M. Kossow  
Assistant Director  
FTC Midwest Region  
55 West Monroe Street, Suite 1825  
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312-960-5600 (fax)  
[tkossow@ftc.gov](mailto:tkossow@ftc.gov)

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April 2, 2013

By Fax and US Mail

David C. Shonka  
Acting General Counsel  
Federal Trade Commission  
600 Pennsylvania Avenue NW  
Washington DC 20580

Re: **Civil Investigative Demand Issued to the Western Union Company December 12, 2012**

Dear Mr. Shonka:

Thank you for your letter of March 29, 2013 responding to my letter to Todd Kossow dated March 26, 2013. Western Union very much appreciates the Commission's continued willingness to attempt to address the company's concerns regarding the scope of the CID – and your personal willingness to meet again with the company – in an effort to avoid litigation.

Western Union believes that your letter creates a path to do so. In order to help facilitate that process, the company is prepared to take steps along the lines of those suggested in your letter (page 3). In particular, and with respect to the three categories of documents addressed in your letter, Western Union is prepared to do the following:

**Produce the Monitor Reports.** Assuming that the parties are in agreement with respect to the terms under which Western Union can satisfy its obligations under the CID, the company is prepared to produce the reports without condition once it receives approval from the Maricopa Superior Court to do so. We understand the Commission's view (letter page 3 footnote 3) that such approval is unnecessary. Western Union, however, remains subject to the jurisdiction of the Superior Court under the terms of the settlement agreement with the State of Arizona and the court's order approving that settlement. The reports at issue were created pursuant to that settlement agreement and order. Western Union remains very concerned that its production of the Monitor's Reports without having secured the prior approval of the court would violate the

David C. Shonka  
April 2, 2013  
Page 2



consent decree and the court's order. However, Western Union is confident that it can expeditiously obtain the approval of the Superior Court, and commits to producing the reports once it has done so;

**Produce all communications to and from the Monitor.** Again, assuming that the parties are in agreement regarding scope and process, Western Union will produce these documents, without delay, with the understanding that it will subsequently produce additional documents "referring or relating to communications with the Monitor" based upon search terms agreed to by the FTC and Western Union. In so agreeing, Western Union assumes that the search terms to which the parties will agree will be those likely to identify documents that are relevant to the investigation pursuant to which the CID was issued into unfair, deceptive or abusive acts or practices by telemarketers, sellers or others assisting them.<sup>1</sup> Western Union would appreciate your confirmation that the Commission shares this understanding; and

**Work with you to produce the global complaints.** Western Union understands the Commission's view that the company has, to date, failed to identify the "foreign privacy laws" it references in connection with its position that it will incur undue legal risk in producing unredacted versions of the global complaint documents, wherever they reside. Accordingly, we plan to send you by the end of this week additional information with respect to the specific laws to which it is referring. Western Union would then like to discuss with you the circumstances, if any, under which it can produce those documents in an unredacted form.

We look forward to discussing these issues with you in an effort to satisfy the Commission's desire to receive the documents requested by the CID as quickly as possible.

Sincerely,

A handwritten signature in black ink that reads "Ed B. Schwartz".

Edward B. Schwartz  
Partner  
Steptoe & Johnson LLP

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<sup>1</sup> That investigation was authorized by Resolution No. 0123145 (Resolution Directing Use of Compulsory Process in a Nonpublic Investigation of Telemarketers, Sellers, Suppliers, or Others). As you know, Western Union does not believe that documents relating solely to money laundering, the company's anti-money laundering policy, and/or Western Union's views regarding or reactions to the Monitor's statements and/or recommendations relating to that policy and its implementation are relevant to the Commission's investigation.

David C. Shonka  
April 2, 2013  
Page 3



Cc: John R. Dye, The Western Union Company  
Lydia B. Parnes, Wilson, Sonsini,  
Goodrich & Rosati LLP



UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

Office of the General Counsel

~  
David C. Shonka  
Acting General Counsel

~  
Direct Dial  
(202) 326-2436

April 5, 2013

BY E-MAIL

Edward B. Schwartz, Esq.  
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E-mail: [eschwartz@steptoe.com](mailto:eschwartz@steptoe.com)

Re: Civil Investigative Demand Issued to the Western Union Company, December 12, 2012

Dear Mr. Schwartz:

This responds to your letter dated April 2, 2013. Although your letter reiterates Western Union's commitment to comply with the CID, it seeks to impose a number of conditions -- some of which have already been rejected by the Commission in denying Western Union's petition to quash. Your letter proposes that we enter into an open-ended period of further discussions and negotiation.

I believe you have misunderstood the purpose of my March 29, 2013, letter. In that letter, I stated that fruitful discussions depend on Western Union providing promptly, and *without further delay*, three categories of documents: (1) the Monitor's reports; (2) all communications between Western Union and the Monitor; and (3) all consumer complaints (including worldwide complaints) that are maintained in, or retrievable from, the United States. Your April 2 letter does not identify any cognizable reason why those three categories of documents cannot be produced immediately. Although you have clearly said that Western Union is willing to produce the first two categories of information unconditionally, you have never offered a specific production date.

I also must clarify that my offer to engage in discussions regarding effective search methodologies for the documents relating to the Monitor's reports was not an offer to negotiate an agreed-upon set of keyword search terms applicable to the remaining documents sought by the CID. As I indicated in my letter, and as courts have recognized, lawyers discussing keywords is not a productive way to locate and produce responsive documents. This concern is

Edward B. Schwartz, Esq.  
April 5, 2013  
Page Two

particularly applicable here, given that FTC staff has not been able to review the Monitor's reports. Without knowing more about the terms that Western Union uses internally in discussing or referring to the Monitor's reports, any selection by the FTC staff of keywords would be mere guesswork. What we are willing to do is discuss the various alternatives for Western Union to provide us with sufficient assurances that it has undertaken a reasonable search and production process. For the reasons set forth in the Commission's ruling, that process must encompass materials relating to Western Union's money laundering program.<sup>1</sup>

Finally, although I remain willing to engage in fruitful discussions with Western Union, I so no reason why this matter cannot be resolved by April 12, 2013.

Sincerely,



David C. Shonka

cc: Lydia Parnes, Esq.

---

<sup>1</sup> We disagree, of course, as did the Commission in its Order denying the Petition to Quash, with your letter's suggestion that otherwise responsive documents that purport to relate solely to Western Union's money laundering program are not relevant to the Commission's investigation.

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

<hr/>		)	
FEDERAL TRADE COMMISSION,		)	
		)	
	Petitioner,	)	
		)	
	v.	)	Misc. No.
		)	
THE WESTERN UNION COMPANY,		)	(Nature of Case M 18-304:
		)	Administrative Subpoena Proceedings)
and		)	
		)	
LONNIE KEENE, MONITOR, STATE OF		)	
ARIZONA v. WESTERN UNION		)	
FINANCIAL SERVICES, INC., KEENE		)	
CONSULTING ARIZONA, LLC,		)	
		)	
	Respondents.	)	
<hr/>		)	

**PETITION OF THE FEDERAL TRADE COMMISSION  
FOR AN ORDER ENFORCING CIVIL INVESTIGATIVE DEMANDS ISSUED  
IN FURTHERANCE OF A LAW ENFORCEMENT INVESTIGATION**

*Preamble*

Petitioner, the Federal Trade Commission (FTC or Commission), by its designated attorneys and pursuant to Section 20 of the Federal Trade Commission Act (FTC Act), 15 U.S.C. § 57b-1, petitions this Court for an Order requiring Respondents The Western Union Company (Western Union), and Lonnie Keene, Esq., of Keene Consulting Arizona, LLC (Monitor), to comply with the civil investigative demands (CIDs) issued to them by the FTC. The CIDs seek documents and information relevant to an ongoing Commission law enforcement investigation. The Commission issued the CIDs to obtain information about the perpetrators and victims of telemarketing fraud, and about the effectiveness of Western Union’s programs, policies, and

procedures to reduce the instances of money transfers connected with such fraud in violation of Section 5 of the FTC Act, 15 U.S.C. § 45.

The Declaration under penalty of perjury of Todd M. Kossow, which verifies the allegations of this Petition, is attached hereto as Petition Exhibit (Pet. Exh.) 1. Additional exhibits are as follows:

- Pet. Exh. 2 Resolution Directing Use of Compulsory Process in a Nonpublic Investigation of Telemarketers, Sellers, Suppliers or Others, April 11, 2011 (FTC File No. 0123145);
- Pet. Exh. 3 Civil Investigative Demand to Lonnie Keene, Monitor, State of Arizona v. Western Union Financial Services, Inc., Keene Consulting Arizona, LLC, November 5, 2012;
- Pet. Exh. 4 Civil Investigative Demand to Western Union Company, December 12, 2012;
- Pet. Exh. 5 The Western Union Company's Petition to Quash Civil Investigative Demands, January 31, 2013;
- Pet. Exh. 6 Federal Trade Commission Order Denying Petition to Quash Civil Investigative Demands, March 4, 2013; and
- Pet. Exh. 7 Correspondence between the Federal Trade Commission and Western Union following March 18, 2013.<sup>1</sup>

***Petition Allegations***

To support this Petition, the Commission alleges the following:

1. The Commission is an administrative agency of the United States government, organized and existing pursuant to the FTC Act, 15 U.S.C. § 41 *et seq.* The Commission is authorized and directed by Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), to prevent the use of

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<sup>1</sup> Petition Exhibit 6 contains nonpublic information. Accordingly, the Commission is filing a redacted version of this exhibit with the petition and has separately submitted an unredacted version under seal.

unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce. The Commission is also authorized by the Telemarketing Sales Rule to prevent deceptive or abusive telemarketing acts or practices. 16 C.F.R. pt 310.

2. Section 3 of the FTC Act, 15 U.S.C. § 43, empowers the Commission to prosecute any inquiry necessary to its duties in any part of the United States. Section 6 of the Act, 15 U.S.C. § 46, empowers the Commission to gather and compile information concerning, and to investigate from time to time, the organization, business, conduct, practices and management of, any person, partnership or corporation engaged in or whose business affects commerce, with certain exceptions not relevant here. Section 20 of the FTC Act, 15 U.S.C. § 57b-1, empowers the Commission to require by CID the production of documents or other information relating to any Commission law enforcement investigation.

3. This Court has jurisdiction to enforce the Commission's duly issued CIDs, including the CIDs issued to respondent, under Section 20(e) of the FTC Act, 15 U.S.C. 57b-1(e), which provides, in pertinent part:

Whenever any person fails to comply with any civil investigative demand duly served upon him under this section, or whenever satisfactory copying or reproduction of material requested pursuant to the demand cannot be accomplished and such person refuses to surrender such material, the Commission, through such officers or attorneys as it may designate, may file, in the district court of the United States for any judicial district in which such person resides, is found, or transacts business, and serve upon such person, a petition for an order of such court for the enforcement of this section.

Both respondents reside, are found, or transact business in this district. Pet. Exh. 1, ¶¶ 3-4.

4. Western Union is a public company, incorporated in Delaware, with its principal place of business in Englewood, Colorado. Western Union offers a number of financial services, including money transfers. The company operates through a global network of 510,000 agents in

200 countries. It has numerous agents in New York City. Western Union is engaged in, and its business affects “commerce,” as that term is defined in Section 4 of the FTC Act, 15 U.S.C. § 44. Pet. Exh. 1, ¶ 3.

5. Lonnie Keene resides in New York City and is an attorney admitted to practice before New York State courts. His limited liability company, Keene Consulting Arizona, LLC, was appointed to serve as a Monitor pursuant to a settlement agreement between the Attorney General for Arizona and Western Union. *See State of Arizona v. Western Union Fin. Servs., Inc.*, No. CV-2010-005807 (Ariz. Super. Ct. Maricopa Cnty. Feb. 24, 2010). Keene Consulting Arizona, LLC’s business address is also in New York City. Pet. Exh. 1, ¶ 4.

6. On April 11, 2011, the Commission issued a Resolution Directing Use of Compulsory Process in a Nonpublic Investigation of Telemarketers, Sellers, Suppliers or Others (FTC File No. 0123145). Pet. Exh 1, ¶ 5; Pet. Exh. 2. The Resolution authorized all compulsory process available to the Commission to be used in connection with an investigation into possible violations of Section 5 by “telemarketers, sellers, or others assisting them . . . including but not limited to the provision of substantial assistance or support . . . to telemarketers engaged in unlawful practices.” Pet. Exh. 2.

7. The present inquiry concerns telemarketing fraud and Western Union’s programs, policies, and procedures to reduce fraud-based money transfers connected with such fraud. Pet. Exh. 1, ¶¶ 6-9.

8. As part of this inquiry, the FTC asked Western Union to produce voluntarily reports prepared by the Monitor pursuant to the settlement in *State of Arizona v. Western Union Financial Services, Inc.* This settlement resolved criminal charges against Western Union

relating to money laundering in connection with human smuggling and drug trafficking in the southwest border area. The Monitor's reports related to Western Union's development and implementation of an anti-money laundering (AML) program consistent with the terms of the settlement. These reports are relevant to assessing Western Union's anti-fraud program and efforts to reduce fraud-based money transfers because of substantial overlaps between the AML program and the anti-fraud program. Though the FTC requested these reports in June 2012, Western Union did not provide them. Pet. Exh 1, ¶¶ 10-11; Pet. Exh. 5, at Exhs. B, C, D.

9. After the FTC requested the reports from Western Union, the Arizona Attorney General sought permission from the Arizona Superior Court to disclose the reports to the FTC under the terms of the settlement. The court denied permission without prejudice, without commenting on the FTC's authority to compel the reports through compulsory process. Pet. Exh 1, ¶ 12; Pet. Exh. 5, at Exhs. E, F.

10. Accordingly, on November 5, 2012, the Commission issued the CID to the Monitor. This CID contained only one specification and requested all documents related to the Monitor's reports, including drafts, reviews, and correspondence with Western Union. This CID was authorized by Resolution No. 0123145. Pet. Exh. 1, ¶ 13; Pet. Exh. 3.

11. On December 12, 2012, the Commission issued the CID to Western Union, also authorized by Resolution No. 0123145. This CID contained two specifications. The first called for all documents referring or relating to complaints by consumers worldwide relating to fraud-induced money transfers. The second CID specification requested all documents referring or relating to communications with the Monitor, including, but not limited to, all information

Western Union provided to the Monitor and, any reports, reviews or other documents prepared by the Monitor. Pet. Exh. 1, ¶ 14; Pet. Exh. 4.

12. Western Union has represented that they maintain in the United States all of the worldwide consumer complaints sought by the Commission. As discussed in the attached Declaration from Todd M. Kossow, the consumer complaint information is directly relevant to identifying the perpetrators and victims of telemarketing fraud, and to assessing the effectiveness of Western Union's anti-fraud program because numbers and patterns of consumer complaints provide information on the company's success in policing its own operations and protecting consumers from sending fraud-based money transfers. Pet. Exh. 1, ¶ 15.

13. After receiving the CID, the Monitor filed a motion in the settled Arizona case asking leave to share his reports with the FTC. On January 28, 2013, the Arizona court denied the motion, but explicitly stated that it did not determine the enforceability of the FTC's CID. Pet. Exh. 1, ¶ 16; Pet. Exh. 5 at Exh. G.

14. Meanwhile, Western Union and staff of the Midwest Region Office attempted to negotiate terms by which Western Union would provide the Monitor's reports and other information specified in the CID directed to Western Union. When those negotiations proved unsuccessful, Western Union filed on January 31, 2013, a petition to quash both the CID issued to Western Union and the CID issued to the Monitor. Pet. Exh. 1, ¶ 17; Pet. Exh. 5.

15. The Commission ruled on the petition on March 4, 2013, denying it in its entirety and ordering Western Union to comply by March 18, 2013. Pet. Exh. 1, ¶ 18; Pet. Exh. 6.

16. Western Union did not comply as directed. Instead, in correspondence following the March 18, 2013 deadline, the company has expressed a desire to comply but reiterated many

of the arguments and positions advanced and rejected by the Commission's March 4, 2013, ruling. In addition, Western Union also raised new arguments that had not been raised in its petition to quash the CIDs. The company also requested that Commission staff engage in further discussions or negotiations regarding compliance. Despite several discussions, Western Union declined to produce any of the information specified in the CID. Pet. Exh. 1, ¶ 19; Pet. Exh. 7.

17. The Monitor did not himself file a petition to limit or quash the CID. As such, the Commission's March 4, 2013, ruling did not address his obligation to comply. Relying on the Arizona Superior Court's ruling of January 28, 2013, the Monitor has not produced any of the information called for by the Commission's CID. Instead, on January 31, 2013, the Monitor responded by objecting to the CID pursuant to Section 2.11 of the FTC's Rules of Practice, claiming that the Monitor Engagement Letter incorporated in the settlement prevented his compliance absent a federal court enforcement order. Pet. Exh. 1, ¶ 20; Pet. Exh. 6.

18. The CID directed to Western Union and the Monitor are within the Commission's statutory authority, the information and documents sought are reasonably relevant to the Commission's investigation, and the CIDs do not impose an unreasonable burden on either respondent. Further delays in the Commission's investigation caused by respondents' failure to comply impede the Commission's investigation and are contrary to the public interest. Pet. Exh. 1, ¶ 21. Therefore, the CIDs should be enforced in full.

19. No previous application for the relief sought herein has been made to this Court or any other.

***Prayer for Relief***

WHEREFORE, the Commission invokes the aid of this Court and prays:

- a. For the immediate issuance of an order directing Western Union and the Monitor to show cause why they should not comply in full with the CIDs;
- b. For a prompt determination of this matter and an order requiring Western Union and the Monitor to fully comply with the CIDs within ten (10) days of such order;
- c. For such other relief as the Court deems just and proper.

Respectfully submitted,

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Regional Director

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Dated: April 15, 2013

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