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9 UNITED STATES DISTRICT COURT

10 DISTRICT OF ARIZONA

11 WESTERN UNION FINANCIAL	)	NO.
12 SERVICES, INC. dba WESTERN	)	
13 UNION,	)	<b>COMPLAINT</b>
14	)	
15	)	
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15 Plaintiff Western Union Financial Services, Inc. dba Western Union (“Western  
16 Union”) allege as follows:

17 **INTRODUCTION**

18 1. On September 18, 2006, Western Union was informed that Attorney General  
19 of the State of Arizona Terry Goddard had presented a seizure warrant to the Arizona  
20 Superior Court, and that, if issued, Attorney General Goddard intended to seize certain  
21 Western Union money transfers from 28 states to Mexico, even if such transfers were not  
22 sent from or received in Arizona. Such seizures would violate the Commerce Clause and  
23 the Foreign Commerce Clause of the United States Constitution, the Due Process Clause  
24 and the Equal Protection Clause of the Fourteenth Amendment, and the right to Freedom  
25 of Speech guaranteed by the First Amendment to the United States Constitution, and 42  
26 U.S.C. § 1983. Such seizures threaten to directly regulate, unduly burden and facially  
27 discriminate against money transfers in interstate and foreign commerce.  
28

1 NATURE OF THE ACTION

2 2. Plaintiff Western Union files its Complaint against Defendant Terry Goddard,  
3 the Attorney General of the State of Arizona, and his successors.

4 3. On July 31, 2006, Attorney General Goddard issued a final Geographical  
5 Targeting Order (“GTO”) pursuant to the Arizona Transmitter of Money Act, A.R.S. § 6-  
6 1241J, in which he ordered Western Union to provide information about all transfers greater  
7 than \$300 to or from Sonora, Mexico from or to any location in the world. A copy of the  
8 GTO is attached as Exhibit A. The Attorney General’s explanation for that order is that the  
9 Attorney General alleges that money transmitters must file regulatory reports such as  
10 suspicious activity reports with the Attorney General of Arizona regarding certain Sonora  
11 transactions wherever they may have originated and must have data on all Sonora  
12 transactions to determine compliance.

13 4. On September 18, 2006, Defendant, through his agent Arizona Department of  
14 Public Safety financial crimes investigator Daniel Kelly (“Kelly”), informed Western Union  
15 that Defendant has presented a seizure warrant to the Arizona Superior Court. Western  
16 Union has been informed that if seizure is ordered, Defendant will seek for forfeiture all  
17 person-to-person money transfers, except for “Quick Collect wires,” of \$500 or more that (1)  
18 are sent from 28 different states<sup>1</sup> and attempted to be paid out at 26 specified Western Union  
19 agent locations in Sonora, Mexico, and/or (2) that are sent from one of the 28 states to  
20 Mexico on or after the day seizure is initiated and that while waiting to be picked up have  
21 been subject to the sender’s or receiver’s request for a refund, cancellation, or alteration. All  
22 such seizures will herein after collectively be referred to as the “threatened seizures.”

23  
24  
25 <sup>1</sup> Western Union is informed that those 28 states are California, New York, Florida,  
26 Illinois, Georgia, New Jersey, North Carolina, Virginia, Tennessee, Maryland, Texas,  
27 Nevada, South Carolina, Ohio, Pennsylvania, Washington, Alabama, Indiana, Oregon,  
28 Colorado, Minnesota, Utah, Connecticut, Michigan, Massachusetts, Wisconsin, Kentucky  
and Delaware. Western Union also is informed that Defendant will seek such funds sent  
from Arizona; however, money transfers originating in Arizona are not being contested in  
this action.

1           5.       Such assertion of regulatory authority over all Sonora transactions and  
2 threatened seizures violate the Commerce Clause and the Foreign Commerce Clause of the  
3 United States Constitution, and the Due Process Clause and the Equal Protection Clause of  
4 the Fourteenth Amendment, and the right to Freedom of Speech guaranteed by the First  
5 Amendment to the United States Constitution, and 42 U.S.C. § 1983. Such assertion of  
6 regulatory authority over all Sonora transactions and threatened seizures directly regulate,  
7 and unduly burden interstate and foreign commerce, are an improper attempt by the Arizona  
8 Attorney General to extend his jurisdiction beyond the borders of Arizona, and violate  
9 Western Union's right to Freedom of Speech guaranteed by the First Amendment.

10           6.       Defendant's assertion of regulatory authority over all Sonora transactions and  
11 threatened seizures are improper attempts by the Arizona Attorney General to extend his  
12 jurisdiction beyond the borders of Arizona to directly regulate and unduly burden interstate  
13 and foreign commerce. The assertion of regulatory authority over all Sonora transactions  
14 and the threatened seizures will effectively force Western Union and its agents throughout  
15 the United States and Mexico to shut down lawful lines of business, prevent timely delivery  
16 of money transmissions as required by the laws of other domestic and foreign states and  
17 Western Union's contracts with its customers, and interfere with Western Union's lawful  
18 business relationships and contracts with its agents, all causing irreparable harm.

19           7.       Western Union seeks declaratory judgment pursuant to 28 U.S.C. §§ 2201-  
20 2202 on the grounds that the assertion of regulatory authority and threatened seizures violate  
21 the Constitution of the United States, and seeks further relief pursuant to 43 U.S.C. § 1983.  
22 Western Union also seeks a permanent injunction barring Defendant from:

23           a.       seizing or attempting to seize money transfer funds in Western  
24 Union's possession, custody, or control, for any transaction that was not sent  
25 from or received in Arizona or that is otherwise outside the scope of  
Defendant's statutory jurisdiction;

26           a.       prohibiting or interfering with Western Union's compliance with its  
27 legal and contractual obligations to deliver transferred funds to the receiver  
identified by the sender of money transfers that are not sent from or received  
in Arizona; and

28           a.       violating the Commerce Clause, Foreign Commerce, the Due Process

1 Clause and the Equal Protection Clause of the Fourteenth Amendment, and  
2 the right to Freedom of Speech under the First Amendment by improper  
regulation of money transfers and associated banking transactions taking  
place in interstate and foreign commerce.

3 8. Western Union has no adequate remedy at law.

4 9. An actual controversy exists between the parties concerning their respective  
5 rights and duties. Defendant's assertion of regulatory authority and request to the Arizona  
6 Superior Court for issue of the seizure warrant makes this controversy definite and concrete,  
7 touching on the parties' adverse legal interests, and amenable to specific relief through a  
8 declaratory judgment.

9 10. The relief requested in this action is sought against Defendant, as well as  
10 against each of Defendant's officers, employees, agents, and all persons acting in  
11 cooperation with Defendant, under his supervision, at his direction, or under his control.

12 **PARTIES**

13 11. Plaintiff Western Union is a corporation organized under the laws of the State  
14 of Colorado with its principal place of business in Englewood, Colorado. Western Union is  
15 a financial services company whose primary business involves transmitting money sent by  
16 one person to another person through interstate and/or foreign commerce via interstate or  
17 international wire. Under various statutes and regulations, it is described as a financial  
18 institution, money services business, and money transmitter. In Arizona, Western Union is  
19 licensed to conduct business as a money transmitter under the State's Transmitters of Money  
20 Act, A.R.S. §§ 6-1201 *et seq.*

21 12. Defendant Terry Goddard is the Attorney General of the State of Arizona and  
22 is a defendant in his official capacity. Defendant Goddard and his successors are referred to  
23 herein as the "Attorney General."

24 **JURISDICTION AND VENUE**

25 13. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331, 2201, and 2202.

26 14. Venue is proper in the District of Arizona pursuant to 28 U.S.C. § 1391  
27 because it is where Defendant resides.

1 **FACTUAL ALLEGATIONS**

2 **A. Western Union’s Business**

3 15. Western Union is a financial services company. Western Union’s primary  
4 business involves transmitting money sent by one person to another person through interstate  
5 and/or foreign commerce by use of intrastate or international wire. While it began as a  
6 telegraph company, today, Western Union is a global leader in money transfer services,  
7 helping consumers and businesses send money and bill payments quickly, conveniently, and  
8 reliably.

9 16. The typical Western Union customer uses its money transfer services for a  
10 wide variety of legitimate purposes, including, among other things, living expenses,  
11 automobile repairs, travel, medical treatment, educational expenses, and special occasion  
12 gifts.

13 17. Western Union’s success is founded on and maintained by its ability to  
14 quickly, conveniently, and reliably help its customers transfer money. Western Union’s  
15 brand has become synonymous with speed, reliability, convenience, and trust in sending  
16 money. Western Union’s brand value, reputation, and goodwill suffer significant damages if  
17 Western Union does not deliver money transfers within the contracted time.

18 18. Western Union offers services through a global network of more than 270,000  
19 agent locations in all 50 states and the District of Columbia, and in more than 195 foreign  
20 countries. It does business through local authorized agents, most of which conduct other  
21 retail business at the same location. Western Union agents include large, publicly-owned  
22 networks—such as post offices in many countries including France, Germany, China, India  
23 and New Zealand—as well as private chains such as DHL, large national retailers such as  
24 Elektra in Mexico, and banks in such countries as Germany and Japan.

25 19. In addition to offering money orders, and payment services for things such as  
26 home and car loans, utilities, insurance, and child support, Western Union’s basic service is  
27 providing consumer-to-consumer cash transfers, or “will call” money transfer service.  
28 Essentially, the money transfer service involves the receipt of money from a Western Union

1 customer with directions to transmit that money electronically to a designated recipient in the  
2 form of cash or check, or through a transaction at an ATM type machine in some locations.

3         20. Western Union’s legal duties and obligations have several sources. First,  
4 money transfer senders and receivers are entitled to certain rights, and certain obligations  
5 under the law of the jurisdiction in which the customer sends or receives money. Western  
6 Union must honor those rights and obligations. In addition to these background legal rules,  
7 all money transfers are governed by contractual terms and conditions agreed to by Western  
8 Union and its customers, *see, e.g.*, Terms & Conditions for internet transactions attached  
9 Exhibit B, and the settlement transactions are governed by independent contracts between  
10 Western Union and its agents.

11         21. Western Union offers three different money transfer services to its customers:  
12 Will Call (global, but known as “Dinero in Minutos” in Mexico); Next Day (in Mexico), and  
13 Direct to Bank (global). These services allow Western Union’s customers to send money by  
14 phone or from an agent location. Western Union’s customers who send money using its Will  
15 Call service or its Direct to Bank services also have the option of sending money online.

16                 **B. Money Transfers Constitute Interstate and Foreign Commerce**

17         22. Transactions may be initiated at a Western Union agent location, by  
18 telephone, or over the internet and can be picked up at any Western Union location  
19 throughout the world on a “will call” basis. Every domestic money transfer to a send and  
20 receive location within the United States constitutes interstate commerce, carried through the  
21 interstate wires. Every money transfer that is sent from or received in a foreign nation, such  
22 as Mexico, constitutes both interstate and foreign commerce because each transfer uses the  
23 interstate wires as well as the international wires. Each money transfer generates additional,  
24 related interstate and foreign commerce transactions in connection with collection and  
25 reimbursement of agent funds and payment of agent commissions.

26                 a.         **Money Transfer “Send” Transaction**

27         23. In a typical transaction conducted using Western Union’s online service  
28 option, a consumer who wishes to send money logs onto [www.westernunion.com](http://www.westernunion.com), which

1 connects the customer to Western Union servers located in State A, State B, or, in the case of  
2 an international customers, Ireland; inputs information into an online “Send Money” form;  
3 and pays for the transaction, usually using a credit card, along with the service fee, to  
4 Western Union.<sup>2</sup> From the Western Union server, the information is sent to Western Union  
5 data processing system and then to the mainframe computer located at Western Union’s data  
6 processing center, located in State C (the “mainframe”), where it is processed further, and  
7 stored.

8         24. In a typical transaction conducted using Western Union’s transfer by phone  
9 service option, a consumer who wishes to send money calls Western Union’s 1-800-CALL-  
10 CASH, provides a Western Union customer service representative (a “CSR”) located in  
11 Texas, Missouri, West Virginia, or beginning at the end of this month, in Mexico City, with  
12 the information to complete an electronic “Send Money” form, and pays for the transaction,  
13 using a credit card, along with the service fee, to Western Union.

14         25. If, however, the sender is calling from an agent location from a special direct-  
15 connect telephone, the call is routed to a CSR at a call center in Costa Rica, Texas (usually  
16 special language calls) or the Dominican Republic, and the sender pays the local agent in  
17 cash for the transfer. Nevertheless, under either scenario, the CSR enters the details of the  
18 transaction into a computer terminal linked to a Western Union data processing system  
19 where it is sent to the mainframe located in State C, where it is processed further, and stored.

20         26. When a Western Union customer uses a credit card to pay funds to Western  
21 Union, a Western Union data processing system will communicate with non-Western Union  
22

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23         <sup>2</sup> For security reasons, due to the nature of the information stored at its three data  
24 processing centers, Western Union keeps the locations of such centers secret and  
25 confidential. They are not, however, located in Arizona. Accordingly, Western Union will  
26 refer to a particular state where such a center is located as, for example, “State A.” Thus, if a  
27 data processing center is located in Hawaii and another is located in Wyoming, Hawaii may  
28 throughout the Complaint be referred to as “State A” and Wyoming may throughout the  
Complaint be referred to as “State B.” If the Court believes that it is necessary to know the  
actual location of a Western Union data processing center, Western Union will provide the  
Court with that information in camera to keep that information confidential. Unless  
otherwise noted, individual Western Union data processing centers, whether it is located in  
State A, B, or C, will be referred to as a “Data Processing Center.”

1 merchant service and non-Western Union risk scoring processing centers in Maryland,  
2 Colorado, and Texas.

3         27. In a typical transaction conducted using a Western Union agent, a consumer  
4 who wishes to send money enters a Western Union agent location, fills out a “Send Money”  
5 form [*see, e.g.*, U.S. Send Money form attached as Exhibit C], provides any required  
6 supporting documentation, and delivers the money, in cash along with the service fee, to the  
7 agent. The Western Union agent enters the details of the transaction into a computer  
8 terminal linked to a Western Union data processing system. The information flows from the  
9 agent location to the mainframe at Western Union’s data processing center located in State  
10 C, where it is processed further, and stored.

11         28. Western Union assigns each money transfer a unique “Money Transfer  
12 Control Number,” which is provided to the sender for him or her to communicate to the  
13 recipient.

14         29. After a Western Union agent receives funds from the sender, the agent will  
15 deposit the cash in trust for Western Union into its bank account. A Western Union  
16 processing center in State C will then cause a separate back-office system located in State C  
17 to create an Automated Clearing House (“ACH”) file to debit the agent bank account for the  
18 funds collected from the sender. Western Union then sends the ACH debit file to its  
19 Originating Depository Financial Institution (“ODFI”) for processing. The ODFI processes  
20 the ACH debit file and, the next business day, Western Union account is credited.

21         30. A few large “chain” agents, such as a chain of supermarkets, send the funds  
22 deposited into their accounts in trust for Western Union via Federal Reserve wire to Western  
23 Union’s operating account rather than have Western Union ACH their bank account.

24                 **b. The Money Transfer “Payout” Transaction**

25         31. After the information from the “Send Form” is entered into a Western Union  
26 data processing system and reaches Western Union’s data processing center in State C, the  
27 processing centers mainframe will reflect that the funds are available for payout.

28



1           32.     Once the transaction has been successfully created by the system, Western  
2 Union maintains money transfer funds, until such time as the transaction is paid, as required  
3 by the laws applicable to the state in which the money transfer originated, that is, in accounts  
4 backed by permissible investments stated by various U.S. governmental agencies such as the  
5 Department of the Treasury.

6           33.     Western Union money transfers usually can be retrieved within 10 to 15  
7 minutes after the transaction is initiated. “Dinero en Minutos” money transfers to Mexico  
8 are usually available for pick up by the receiver within minutes, on a “will-call” basis, at any  
9 Western Union Dinero en Minutos agent location in Mexico.

10          34.     However, until such time as the funds are paid out, Western Union’s  
11 customer, that is the sender of funds, may, upon written request, cancel the money transfer  
12 and receive a refund of the principal amount. Some states, such as California, have laws that  
13 govern Western Union’s customer’s right to refund.

14          35.     To receive funds, a recipient enters a Western Union agent location,  
15 completes the “Receive Money” form and presents it, along with identification and the  
16 Money Transfer Control Number, to the agent. The agent confirms the documentation, and  
17 takes whatever security actions are required (such as copying the recipient’s identification).  
18 Then, using a point of sale computer that links to Western Union’s mainframe in State C, the  
19 agent locates the money transfer on the mainframe, initiates the actual payment process by  
20 selecting the transaction from the mainframe.

21          36.     In the United States, most transfers are paid out in check, although some are  
22 paid in cash. If the transfer is paid out in check, the agent issues a Western Union money  
23 transfer check drawn on Western Union’s bank account in Colorado payable to the recipient.  
24 Typically, the recipient generally signs the check over to the agent, creating a third party  
25 check, and the agent pays the recipient cash. The agent then deposits the third party check in  
26 its bank account for reimbursement of the funds paid-out to the recipient. However, outside  
27 of the United States, almost all money transfers are paid out in case. Western Union settles  
28 with these agents daily via Federal Reserve wire transfer. Thus, in Sonora, Mexico, the

1 receive agent locates the transaction from the mainframe, pays the recipient in cash using the  
2 agent's own funds, and then reconciles with Western Union on a daily basis.

3 37. Every Western Union money transfer constitutes interstate and foreign  
4 commerce in various ways through the:

5 (i) Use of telephone lines to initiate money transfers by calling Western Union  
6 directly;

7 (ii) Use of telephone lines, and interstate and foreign wires to transmit data and  
8 funds electronically from the state where the transfer originates to a Western  
9 Union data processing system to Western Union's data processing center  
10 located in State C, and ultimately to Mexico; and/or

11 (iii) Use of telephone lines, and interstate and foreign wires to transmit data and  
12 funds to reimburse and settle transactions with Western Union agents, to pay  
13 their commissions for sending or receiving and advancing payment for  
14 Western Union money transfers.

15 **C. Compensation of Western Union Agents Involves Interstate and Foreign  
16 Commerce**

17 38. Western Union's relationship with its agents is governed by a contract.

18 39. Pursuant to the terms of their contracts, Western Unions pays a commission to  
19 the receive agent for each money transfer it pays out. The process of reimbursing the agent  
20 for processing the payout to the receiver is referred to as "settlement." Compensation of  
21 Western Union agents for their services in processing money transfers also involves  
22 interstate and/or foreign commerce. Pursuant to the terms of Western Union's contractual  
23 agreements with its agents, Western Union settles with each agent at the end of each  
24 settlement period. For domestic transactions, commissions are paid monthly by check or  
25 ACH. For international transactions, commissions are settled on a "net" basis and agents are  
26 paid daily via Federal Reserve wire transfers.

27 **D. The Threatened Seizures**

28 40. Defendant, through his agent Kelly, has informed Western Union that, if the  
seizure warrant is signed, Defendant will seek for forfeiture person-to-person money  
transfers of \$500 or more that are (1) attempted to be paid out at 26 specified Western Union  
agent locations in Sonora, Mexico, and that were sent from one of 28 different states,; or (2)  
that are sent from one of the 28 states to Mexico on or after the day the seizure is initiated,

1 and that while waiting to be picked up have been subject to the sender's or receiver's request  
2 for a refund, cancellation, or alteration. These transactions will never have been sent to,  
3 routed through, or received in Arizona.

4 41. Defendant, through his agent Kelly, has informed Western Union that he will  
5 continue to seize money transfers for four weeks. In the past, Defendant has sought "back-  
6 to-back" seizures that resulted in seizures continuing for a total of eight consecutive weeks.

7 42. In the past, Defendant has seized money transfers sent to or received in  
8 Arizona. That is, Defendant seized funds that were being received in Arizona, and have  
9 never seized funds from money transfers that were exclusively sent from or received in other  
10 states or countries (not Arizona).

11 43. Defendant's previous seizures seized (1) funds sent to "targeted names," that  
12 is, funds sent to a particular receiver Arizona, (2) funds sent to particular agent locations in  
13 Arizona, or (3) funds that were being sent to Arizona from specific states, which Defendant  
14 typically refers to as corridor states.

15 44. When law enforcement seizes funds being sent using Western Union, the  
16 system Western Union has put in place to respond to such seizures (the "Western Union  
17 system") will identify such funds when the money transfer transaction is initiated. That is,  
18 the funds are "seized" when they are sent, not when they are being picked up.

19 45. Unlike money transfers sent to an individual state in the United States, the  
20 Western Union system does not have the ability to discriminate between individual states  
21 or provinces in a foreign country. This means that Western Union does not have the ability  
22 to restrict the seizure of funds being sent to foreign countries to individual states or  
23 provinces within that country. Consequently, if Defendant seeks funds sent to Sonora,  
24 Mexico, but not specify a particular Western Union agent location in Sonora, the Western  
25 Union system will seize all funds sent to Mexico, even if those funds are being sent to a  
26 Mexican state other than Sonora.

27 46. Unlike funds seized pursuant to a warrant that seeks seizure of all transfers  
28 into a country, the funds that are seized because they are sent to a specified agent location

1 are seized at the time of pick-up, not when the money transfer is initiated. This is because  
2 a person seeking to pick-up money sent to him or her using Western Union is not obligated  
3 to pick up the funds at any particular Western Union agent location. In fact, in some  
4 cases, the person can pick up the funds at any Western Union agent location anywhere in  
5 the world. The effect of this is that if Defendant seeks funds sent to Sonora, Mexico that  
6 are picked up at a particular agent location, those funds are not seized until the payout  
7 process has begun and the funds are for all intents and purposes located outside the United  
8 States in Sonora, Mexico.

9 47. The threatened seizures of money transfers to Mexico that have been subject  
10 to a request for a refund, cancellation, or alteration will directly regulate interstate  
11 commerce. All requests to alter a Western Union money transfer must be done by calling  
12 Western Union's customer service center ("CSC") in Missouri, and all requests to cancel or  
13 for a refund must be written. Thus, if, for example, a Western Union customer in California  
14 needs to correct the misspelling of the name of a designated recipient located anywhere in  
15 Mexico because a Western Union agent accidentally entered the recipient's name incorrectly  
16 into the computer, the customer must call the CDC in Missouri to effect the change. By  
17 regulating such transactions, the Attorney General would be directly regulating interstate  
18 commerce.

19 48. The threatened seizure exposes Western Union to potential liability because  
20 under certain state laws Western Union has a liability to its customer in an amount equal to  
21 the forfeited funds. In fact, if Western Union fails to pay out funds to the designated  
22 recipient in violation of its contractual obligations with its customer, Western Union could be  
23 subject to potential regulatory sanctions under some state laws. Similarly, if Western Union  
24 fails to refund a customer's funds, Western Union could be violating some state laws that  
25 require Western Union to honor customer refund requests.

26 49. In the past, after the Attorney General has seized funds from Western Union,  
27 the senders and/or receivers of those funds are required to go through interrogation by  
28 Arizona law enforcement officers (or to provide information to Western Union who is

1 ordered to then provide it to Arizona law enforcement). The Attorney General is thus  
2 projecting his authority beyond Arizona for his overly broad seizure of wholly legitimate  
3 money transfers by requiring citizens of foreign states and nations who have never had any  
4 contact with Arizona to be interrogated by Arizona law enforcement before releasing the  
5 seized funds.

6 50. Finally, consistent with Defendant's past practices, Western Union expects  
7 Defendant will seize the money transfers to Mexico pursuant to A.R.S. §§ 13-2314 and 13-  
8 4201 *et seq.* A.R.S. § 13-4202, however, explicitly limits Defendant's jurisdiction in  
9 forfeiture actions to "property . . . within [the State] at the time of the filing of the action or if  
10 the courts of [the State] have in personam jurisdiction of an owner or interest holder in the  
11 property."

#### 12 **E. Money Transfers to Mexico**

13 51. According to The World Bank, Mexico ranks among the top money transfer  
14 recipients in the world.<sup>3</sup>

15 52. According to The World Bank, in comparison with other recipient countries,  
16 which typically receive considerable money transfers from several countries, Mexico has a  
17 unique "bilateral relationship" with the United States, from which the vast majority of its  
18 money transfers, or remittances, originate.

19 53. According to The World Bank, the increasing size of the Mexican population  
20 living in the United States has resulted in the rapid increase in the number of potential money  
21 transfers, and the growth of money transfers to Mexico is driven primarily by the large  
22 number of Mexican workers living in the United States. "The typical remitter is a hard-  
23 working immigrant, documented or undocumented, who wants to improve the life of his or  
24 her family and community of origin by providing additional income." In fact, The World

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25 \_\_\_\_\_  
26 <sup>3</sup> Unless otherwise noted, paragraphs 52-59 of the Complaint are based on the case  
27 study published by The World Bank: Raul Hernandez-Coss, *The U.S.-Mexico Remittance  
28 Corridor, Lessons on Shifting from Informal to Formal Transfer Systems* (World Bank  
Working Paper No. 47, 2005), a copy of which is attached at Exhibit D. According Working  
Paper No. 47, Mr. Hernandez-Coss is Financial Sector Specialist in the Financial Market  
Integrity Unit of The World Bank.

1 Bank reports that nearly one in five Mexican adults receives money from relatives employed  
2 in the United States.

3 54. This growth has been so substantial that, according to The World Bank, from  
4 1998 to 2003, worker remittances became an increasingly important part of Mexico's economy. In  
5 2003, remittances were Mexico's second largest source of external finance, second only to  
6 oil, surpassing foreign direct investment and tourism. For example, in 2003, remittances to  
7 Mexico surpassed \$13 billion, approximately 2.2 percent of Mexico's gross domestic product.

8 55. According to The World Bank, money transfers from the United States to  
9 Mexico (the U.S.-Mexico corridor) is at "an advanced state of shifting from informal [money  
10 transfer systems] to formal [money transfer] systems." The World Bank reports that in  
11 addition to traditional money transmitters like Western Union and Money Gram, banking  
12 institutions, credit unions, debit and credit card companies, microfinance institutions, and  
13 rural financial institutions now compete for market share.

14 56. According to a Bank of America August 17, 2004 news release, its remittance  
15 service to Mexico grew 67 percent in the first six months of 2004. A copy of the news  
16 release is attached as Exhibit E, and available on Bank of America's website  
17 <http://newsroom.bankofamerica.com>. In 2004, according to a Wells Fargo June 10, 2004  
18 News Release, Wells Fargo partnered with HSBC Mexico to create what it considered "the  
19 largest distribution channel among U.S. banks for consumer remittance customers in  
20 Mexico." A copy of the news release is attached as Exhibit F, and available on its website  
21 [www.wellsfargo.com/press](http://www.wellsfargo.com/press).

22 57. Among the reasons cited by the World Bank for the transformation of the  
23 money transfer market from a largely informal industry to one primarily based on electronic  
24 transfers through formal institutions like Western Union includes bilateral initiatives by the  
25 United States and Mexican governments and the monetary authorities of the two countries.

26 58. With respect to the cooperative efforts of the United States and Mexican  
27 governments, according to The World Bank, "Mexico has a broad network of bilateral  
28 agreements with the United States, including Financial Information Exchange Agreement

1 and the Memorandum of Understanding for the Exchange of Information on the Cross-  
2 Border Movement of Currency and Monetary Instruments.” The World Bank describes  
3 another such effort where the U.S. Federal Reserve System is working to expand its  
4 Automated Clearing House to support two-way credit transactions between the United States  
5 and Mexico. According to Federal Reserve Board Chairman, Ben S. Bernanke, “Providing  
6 service to Mexico is also an important step for the U.S.-Mexican Partnership for Prosperity,  
7 and agreement designed to improve financial linkages between the two countries.” See  
8 Transcripts of Chairman Bernanke’s remarks given at Access for Immigrants: Learning  
9 from Diverse Perspectives conference, Federal Reserve Bank of Chicago, Chicago, Illinois  
10 (April 16, 2004) attached as Exhibit G.

11 **CLAIMS FOR RELIEF**  
12 **COUNT I**  
13 **COMMERCE CLAUSE**

14 59. Western Union incorporates by reference its allegations in Paragraphs 1  
15 through 58 as set forth above.

16 60. The assertion of regulatory authority over Sonora transactions and threatened  
17 seizures, as described above, would violate the Commerce Clause of the United States  
18 Constitution because they would place an intolerable burden on interstate commerce by  
19 subjecting interstate money transmissions to the laws of a single State, Arizona.

20 61. For example, the assertion of regulatory authority over Sonora transactions  
21 and threatened seizures would violate the Commerce Clause by directly regulating  
22 commercial activity outside of Arizona by imposing Arizona’s forfeiture laws on money  
23 transfers that take place entirely outside of Arizona, thus subjecting interstate money  
24 transmissions to the laws of a single State, Arizona.

25 62. The assertion of regulatory authority over Sonora transactions and threatened  
26 seizures would further violate the Commerce Clause by discriminating against businesses  
27 engaged in interstate commerce in 28 States, yet leaving the remaining States free to conduct  
28 money transfers to Mexico without interference.





1 intended to facilitate lawful foreign commerce and is therefore inimical to the national  
2 commerce.

3 **COUNT III**  
4 **DUE PROCESS**

5 71. Western Union incorporates by reference its allegations in Paragraphs 1  
6 through 70 as set forth above.

7 72. The assertion of regulatory authority over Senora transactions and threatened  
8 seizures, as described above, would violate the Due Process Clause of the Fourteenth  
9 Amendment to the United States Constitution

10 73. For example, the assertion of regulatory authority over Sonora transactions  
11 and threatened seizures would violate the Due Process Clause of the Fourteenth Amendment  
12 by improperly extending the money transmitter statutes and forfeiture laws of the State of  
13 Arizona beyond state borders and attempt to control commercial activity in other States.

14 74. The assertion of regulatory authority over Sonora transactions and threatened  
15 seizures would further violate the Due Process Clause by imposing the laws of the State of  
16 Arizona on citizens of other states and foreign nationals who have never had any contact  
17 with the State of Arizona and who can have no reasonable expectation of being subject to  
18 Arizona law.

19 75. The assertion of regulatory authority over Sonora transactions and threatened  
20 seizures would further violate the Due Process Clause by interfering with contracts entered  
21 into and performed entirely outside the State of Arizona.

22 76. The threatened seizures would further violate the Due Process Clause because  
23 they would improperly seize property located outside the State of Arizona thereby violating  
24 the guaranty against deprivation of property without due process of law.

25 **COUNT IV**  
26 **VIOLATION OF THE EQUAL PROTECTION CLAUSE**

27 77. Western Union incorporates by reference its allegations in Paragraphs 1  
28 through 76 as set forth above.



1 Mexico would be delayed due to the State of Arizona's exercise of extraterritorial  
2 jurisdiction over their funds.

3 86. If Western Union were prohibited from informing its customers that their  
4 money transfers to Mexico cannot be refunded, cancelled, or altered, or that their money  
5 transfers would be delayed and might not arrive at all, every affected customer will lose trust  
6 in the credibility, speed, accuracy and reliability of the Western Union name, brand and  
7 reputation.

8 87. Western Union will be prevented from exercising its right to Freedom of  
9 Speech (albeit commercial speech) and losing its customers and goodwill, or face the risk of  
10 prosecution for disclosing the seizure regulation. The overbreadth of the threatened seizure  
11 and the threat of criminal sanctions punishes and chills speech protected by the First  
12 Amendment.

13 **COUNT VI**  
14 **VIOLATION OF 42 U.S.C. § 1983**

15 88. Western Union incorporates by reference its allegations in Paragraphs 1  
16 through 87 as set forth above.

17 89. Defendant, acting in his official capacity as Attorney General, has asserted  
18 authority to regulate money transfers to Sonora, Mexico and have threatened to seize money  
19 transfers, all person-to-person money transfers, except for "Quick Collect wires," of \$500 or  
20 more that are either (1) attempted to be received at 26 specified Western Union agent  
21 locations in Sonora, Mexico, and that were sent from 28 different states; or (2) that  
22 originated from one of the 28 states, that were sent to Mexico on or after the day the seizure  
23 is initiated, and that while waiting to be picked up have been subject to the sender's or  
24 receiver's request for a refund, cancellation, or alteration that are not sent from or received in  
25 Arizona. This conduct constitutes state action under color of law.

26 90. The state action deprives Western Union of rights, privileges and immunities  
27 guaranteed by the United States Constitution.

28 91. The State of Arizona is bound by these rights, privileges and immunities.



1 and the Freedom of Speech guaranteed by the First Amendment to the United States  
2 Constitution, and 42 U.S.C. § 1983.

3 2. Western Union respectfully requests that this Court enter a permanent  
4 injunction barring Defendant from:

- 5 (i) seizing or attempting to seize money transfer funds in Western Union's  
6 possession, custody, or control, for any transaction that was not sent from or  
7 received in Arizona or that is otherwise outside the scope of Defendant's  
8 statutory jurisdiction;
- 9 (ii) prohibiting or interfering with Western Union's compliance with its legal  
10 and contractual obligations to deliver transferred funds to the receiver  
11 identified by the sender of money transfers that are not sent from or received  
12 in Arizona; and
- 13 (iii) violating the Commerce Clause, Foreign Commerce Clause, the Due Process  
14 Clause and the Equal Protection Clause of the Fourteenth Amendment, and  
15 the right to the Freedom of Speech under the First Amendment by improper  
16 regulation of money transfers and associated banking transactions taking  
17 place in interstate and foreign commerce.

18 3. Western Union respectfully requests costs of suit, including reasonable  
19 attorney' fees under 42 U.S.C. §1988, and all further relief to which it may be entitled.

20 DATED this 19th day of September, 2006.

21 STEPTOE & JOHNSON LLP

22 By/s/ FRANCIS J. BURKE, JR. \_\_\_\_\_

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