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9
10 **UNITED STATES DISTRICT COURT**
11 **DISTRICT OF NEVADA**

12 SECURITIES AND EXCHANGE
13 COMMISSION,

14 Plaintiff,

15 vs.

16 GOLD-QUEST INTERNATIONAL,
17 DAVID GREENE a/k/a LORD DAVID
GREENE a/k/a DAVID GREEN, JOHN
18 JENKINS and MICHAEL MCGEE,

19 Defendants.

Case No. 08-CV-00566-KJD-LRL

**NOTICE OF MOTION AND
MOTION BY PLAINTIFF
SECURITIES AND EXCHANGE
COMMISSION FOR ORDER TO
SHOW CAUSE RE: CIVIL
CONTEMPT AGAINST NON-PARTY
MICHAEL HOWARD REED**

20 Date: July 9, 2009
21 Time: 9:00 a.m.
22 Place: U.S. District Court
23 Courtroom 6-D
24 333 Las Vegas Blvd. South
25 Las Vegas, NV 89101
26

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE THAT on July 9, 2009, at 9:00 a.m., or as soon
3 thereafter as counsel may be heard in the above-entitled court, located at 333 Las
4 Vegas Blvd. South, Las Vegas, NV 89101, in the courtroom of the Honorable Kent
5 J. Dawson, Plaintiff United States Securities and Exchange Commission
6 (“Commission”) will and hereby does move the Court an order to show cause why
7 non-party Michael Howard Reed (“Reed”) should not be held in civil contempt of
8 the Court’s Orders.

9 This motion for an order to show cause is made on the grounds that Reed has
10 violated the following orders of the Court:

- 11 • The Temporary Restraining Order and Orders: (1) Freezing Assets; (2)
12 Appointing a Temporary Receiver; (3) Repatriating Assets; (4)
13 Requiring Accountings; (5) Prohibiting the Destruction of Documents;
14 (6) Granting Expedited Discovery; and Order to Show Cause re
15 Preliminary Injunction and Appointment of a Permanent Receiver
16 issued on May 6, 2008 (Docket No. 23);
- 17 • The Amended Preliminary Injunction and Orders: (1) Freezing Assets;
18 (2) Appointing a Permanent Receiver; (3) Repatriating Assets; (4)
19 Requiring Accountings; (5) Prohibiting the Destruction of Documents;
20 and (6) Granting Expedited Discovery issued on May 16, 2008
21 (Docket No. 51); and
- 22 • Order Compelling Michael Howard Reed To Comply With Deposition
23 Subpoena (Docket No. 236).

24 Among other things, the Court’s Orders prohibit the defendants, and any agents or
25 representatives of them, from taking any action on behalf of Gold-Quest
26 International, Inc. (“Gold-Quest”) without the consent of the receiver or the Court,

1 and from disseminating any electronic mail messages to Gold-Quest investors or
2 speaking with Gold-Quest investors via telephone. The Court's Order Compelling
3 Michael Howard Reed To Comply With Deposition Subpoena required that Reed
4 comply with the subpoena issued by the Commission and appear for his deposition.

5 As set forth in the Memorandum Of Points And Authorities In Support Of
6 Motion By Plaintiff Securities And Exchange Commission For Order To Show
7 Cause Re: Civil Contempt Against Non-Party Michael Howard Reed, the
8 Commission has presented evidence that Reed, who represents himself as the
9 Attorney General of the Little Shell Nation Indian tribe, in concert with defendant
10 John Jenkins ("Jenkins"), formulated a scheme whereby Gold-Quest investors were
11 told that the Little Shell Nation Indian tribe would repay them in the full amount of
12 their Gold-Quest investment, plus an additional ten percent. In order to receive the
13 purported repayment, investors would have to apply for a debit card and pay a \$40
14 fee. Reed violated the Court's Orders by establishing websites to communicate with
15 Gold-Quest investors, and by hiring persons to answer telephone calls and respond
16 to emails from Gold-Quest investors that were generated by the website and emails
17 that promoted the repayment program.

18 Reed has also violated the Court's Order requiring him to comply with the
19 deposition subpoena issued by the Commission. Although Reed belatedly appeared
20 for his deposition, he refused to answer a number of questions based on irrational
21 and nonsensical objections, including his absolute refusal to testify about anything
22 related to the Little Shell Nation, including Little Shell Nation Gold-Quest
23 International – a defendant in this action. As Reed is aware, this Court has
24 repeatedly rejected any assertion of sovereign immunity with respect to the Little
25 Shell Nation. (*See* Order dated June 10, 2008 (Docket No. 86) at 1:24-5; Order
26 Granting Motion For Turnover of Proceeds of Receivership Estate (Docket No. 126)

1 at 3:1-2; *see also* Declaration of Wayne Stenehjem (Docket No. 9.)) Reed should
2 therefore be held in contempt for refusing to answer relevant questions without any
3 basis.

4 The Commission staff conferred with Reed in an attempt to resolve the issue
5 at his deposition without Court action. Because Reed claims that the Commission
6 and the Court do not have jurisdiction over him, the parties have been unable to
7 resolve the dispute.

8 This motion is based upon this Notice of Motion and Motion, the
9 Memorandum of Points and Authorities filed herewith, the Declarations of David
10 J. Van Havermaat, Larry E. Cook, Allen Schantol, Chad Ackerson and Michael P.
11 McGee filed herewith, the pleadings and papers on file herein, and upon such other
12 evidence and argument as the Court may permit.

13
14 DATED: June 1, 2009

Respectfully submitted,

15 /s/ David J. Van Havermaat
16 David J. Van Havermaat
17 Karol L. K. Pollock
18 Teri M. Melson
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15 GOLD-QUEST INTERNATIONAL,
16 DAVID GREENE a/k/a LORD DAVID
GREENE a/k/a DAVID GREEN, JOHN
17 JENKINS and MICHAEL MCGEE,

18 Defendants.

Case No. 2:08-cv-00566-KJD-LRL

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION BY PLAINTIFF
SECURITIES AND EXCHANGE
COMMISSION FOR ORDER TO
SHOW CAUSE RE: CIVIL
CONTEMPT AGAINST NON-
PARTY MICHAEL HOWARD
REED**

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1 **I. INTRODUCTION**

2 Plaintiff United States Securities and Exchange Commission (the
3 “Commission”) submits this memorandum in support of its motion for an order to
4 show cause why non-party Michael Howard Reed (“Reed”) should not be held in
5 civil contempt of the Court’s Orders. Among other things, the Court’s Orders
6 prohibit the defendants, and any agents or representatives of them, from taking any
7 action on behalf of Gold-Quest International, Inc. (“Gold-Quest”) without the
8 consent of the receiver or the Court, and from disseminating any electronic mail
9 messages to Gold-Quest investors or speaking with Gold-Quest investors via
10 telephone. The Court also ordered Reed to comply with the subpoena issued by the
11 Commission and appear for deposition.

12 As the Commission previously informed the Court, Reed, who represents
13 himself as the Attorney General of the Little Shell Nation Indian tribe, in concert
14 with defendant John Jenkins (“Jenkins”), formulated a scheme whereby Gold-Quest
15 investors were told that the Little Shell Nation would repay them in the full amount
16 of their investment, plus an additional ten percent. In order to receive the purported
17 repayment, investors would have to apply for a debit card and pay a \$40 fee. Reed
18 violated the Orders by establishing websites to communicate with Gold-Quest
19 investors, and by hiring persons to answer telephone calls and respond to emails
20 from Gold-Quest investors that were generated by the website and emails that
21 promoted the repayment program. Reed also failed to attend his deposition on at
22 least two occasions.

23 As a result, the Commission filed a motion asking the Court to issue an order
24 to show cause why Reed should not be held in contempt and to issue an order
25 compelling Reed to comply with the deposition subpoena issued by the
26 Commission. The Commission subsequently asked the Court to withdraw only its

1 request for an order to show cause why Reed should not be held in contempt and
2 reserved the right to re-file that portion of the motion at a later date. At the January
3 20, 2009 hearing, the Court granted the Commission's motion and issued an order
4 compelling Reed to comply with the Commission's deposition subpoena. The Court
5 held that it would not rule on the Commission's request to withdraw its motion for
6 an order to show cause why Reed should not be held in contempt until "after it is
7 determined how Mr. Reed intends to respond to the Court's order." Following the
8 February 13, 2009 deposition of Reed, the Commission renews its motion for an
9 order to show cause why Reed should not be held in contempt. The Commission's
10 motion is based upon Reed's prior repayment scheme as well as Reed's conduct
11 during his court ordered deposition.

12 Although Reed belatedly appeared for his deposition, he refused to answer a
13 number of relevant questions – including any questions regarding defendant Little
14 Shell Nation Gold-Quest International – based upon his claim that the Little Shell
15 Nation is entitled to sovereign immunity. Reed also claimed that the Court lacks
16 jurisdiction over him. As Reed is well aware, the Court has rejected this very
17 argument on several occasions and has expressly ruled that no "little shell Nation"
18 exists that has been recognized by the United States Government." (*See* Order
19 dated June 10, 2008 (Docket No. 86) at 1:24-5; Order Granting Motion For
20 Turnover of Proceeds of Receivership Estate (Docket No. 126) at 3:1-2; *see also*
21 Declaration of Wayne Stenehjem (Docket No. 9.)) Reed should therefore be held
22 in contempt for organizing a scheme to defraud investors and for failing to answer
23 fundamental questions during his deposition in this matter.

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1 **II. FACTS**

2 **A. The Court's Orders Prohibit The Defendants And Their Agents**
3 **And Representatives From Taking Any Actions In The Name Of**
4 **Or On Behalf Of Gold-Quest**

5 The Court entered the Temporary Restraining Order in this action on May 6,
6 2008 (Docket No. 23). Section IX of the Temporary Restraining Order prohibited
7 any officer, agent, servant, employee, or attorney of any of the defendants from
8 taking or purporting to take any actions in the name of or on behalf of Gold-Quest
9 or any of its subsidiaries or affiliates without the written consent of the Receiver or
10 Order of the Court. Because the defendants continued to send mass emails to and
11 communicate by telephone with investors even after being served with the
12 Temporary Restraining Order, the Preliminary Injunction issued on May 14
13 (Docket No. 46) included additional language specifically prohibiting any officer,
14 agent, servant, employee, or attorney of any of the defendants from disseminating
15 any electronic mail messages to Gold-Quest investors or speaking with Gold-Quest
16 investors via telephone.

17 On May 16, the Court entered an Amended Preliminary Injunction (Docket
18 No. 51). The Amended Preliminary Injunction was entered because the defendants
19 had been falsely representing to investors that the Preliminary Injunction issued on
20 May 14 did not apply after they purportedly renamed "Gold-Quest International"
21 as "Little Shell Nation Gold-Quest International." The Amended Preliminary
22 Injunction expressly stated that it applied to "Little Shell Nation Gold-Quest
23 International" and any other name under which the defendant entity purported to
24 conduct business. It contains the same prohibitions regarding communications
25 with investors as did the initial Preliminary Injunction.

26 ///

1 **Reed Was Served With The Court's Orders Prohibiting The**
2 **Defendants And Their Agents And Representatives From Taking**
3 **Any Actions In The Name Of Or On Behalf Of Gold-Quest**

4 Reed was served with all of the relevant orders in this action. On May 7,
5 2008 the day after the Temporary Restraining Order was issued, attorneys for the
6 Commission contacted Reed by telephone. (Supplemental Declaration of Teri M.
7 Melson (Supp. Melson Decl.) filed on May 13, 2008, ¶ 10) (Docket No. 40). At
8 that time, Reed represented that he was authorized to accept service on behalf of
9 each of the individual defendants. (*Id.*) The Commission attorneys sent several
10 documents, including the Temporary Restraining Order, to Reed via facsimile the
11 following day. (*Id.*, ¶ 19). On May 9, the Commission attorneys spoke with Reed,
12 who confirmed that he had received the faxed documents. (*Id.*, ¶ 20). Reed
13 requested that future documents be sent to him via a yahoo.com email address.
14 (*Id.*) The Commission attorneys sent all of the papers that had been filed by the
15 Commission to the email address that Reed provided. (*Id.*)

16 Reed and Jenkins were present at the May 14 hearing on the Preliminary
17 Injunction, although they arrived late. In the hallway of the courthouse following
18 the hearing, Reed and Jenkins were provided with a copy of the Preliminary
19 Injunction. (Declaration of David J. Van Havermaat ("Van Havermaat Decl."), ¶ 3).

20 In addition, on May 16 Reed was served with a copy of the Amended
21 Preliminary Injunction through the email address that he had provided to the
22 Commission attorneys. (*Id.*, ¶ 4, Exh. A). During a telephone call with the
23 Commission attorneys on May 19, Reed confirmed that he had received the May 16
24 email that contained the Amended Preliminary Injunction. (*Id.*, ¶ 5). In fact, Reed

25 ///

26 ///

1 replied to the May 16 email on May 19.¹ (*Id.*, ¶ 5, Exh. B). Moreover, Reed has
2 represented that he is aware of the contents of the Court’s Orders. Specifically, Reed
3 recently told defendant Michael McGee (“McGee”) that the Preliminary Injunction
4 would not prohibit McGee from hosting a website that Reed could use to provide
5 information to investors. (Declaration of Michael McGee filed on December 18, 2008
6 (“McGee Decl.”) (Docket No. 224), ¶ 4).

7 **C. Reed Violated The Court’s Orders By Hiring Third Parties To**
8 **Communicate With Gold-Quest Investors In Connection With A**
9 **Fraudulent Repayment Scheme**

10 Despite the Court’s clear Orders that prohibit the defendants and their agents
11 and representatives from taking any action in the name of or on behalf of Gold-
12 Quest, and from communicating with Gold-Quest investors, Reed, together with
13 Jenkins, set up a scheme in which investors were told that they would receive a full
14 refund of their investment plus an additional ten percent.

15 In late October 2008, Reed contacted Allen Schantol (“Schantol”), a former
16 Gold-Quest employee, purportedly to assist Reed and Jenkins in helping to repay
17 Gold-Quest investors. (Declaration of Allen Schantol filed on December 18, 2008
18 (“Schantol Decl.”) (Docket No. 226), ¶ 3). Reed told Schantol that funds were “in
19 place” in a trust account to pay back investors; Reed had told another person
20 employed to process the debit cards that Little Shell Nation had “trillions of dollars”
21 in assets. (Schantol Decl., ¶ 3; Declaration of Chad Ackerson filed on December
22 18, 2008 (“Ackerson Decl.”) (Docket No. 222), ¶ 3). Contrary to Reed’s

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25 ¹ Reed attached to the May 19 email a purported contract between Gold-Quest
26 and Little Shell Nation. Pursuant to the contract, Gold-Quest attached “Little
Shell” to its name and was to pay Little Shell Nation \$240,000 over a two-year
period. In return, Little Shell Nation agreed, among other things, to provide legal
support to Gold-Quest. (Van Havermaat Decl., Exh. B.)

1 representations, Little Shell Nation did not have in place funds to repay Gold-Quest
2 investors. (Ackerson Decl., ¶ 8).

3 Reed asked Schantol to set up a telephone number and email address to be used
4 to assist investors requesting repayment, to update investors' address information, and
5 for related inquiries. (Schantol Decl., ¶ 3). Reed told Schantol that Schantol would
6 be paid \$1000 per week for setting up the telephone lines and answering investor calls
7 and emails. (*Id.*) After the initial discussions with Reed, Schantol dealt primarily
8 with Jenkins regarding the investor calls and emails. (*Id.*, ¶¶ 4, 7, 9).

9 Also in October 2008, Reed contacted McGee and asked him to assist in
10 setting up a website on behalf of the Little Shell Nation, www.lsgqi.com. (McGee
11 Decl., ¶ 2). McGee assisted Reed in learning how to upload files to the website.
12 (*Id.*) McGee asked Reed about the Amended Preliminary Injunction and whether it
13 would be permissible for his company to host the www.lsgqi.com website. (*Id.*, ¶
14 4). Reed assured McGee that it would not violate the Court's Orders because Reed
15 would be adding the content to the website himself and McGee would not be
16 involved in creating the website content. (*Id.*) McGee understood that Reed was
17 preparing the content of the website. (*Id.*)

18 Prior to the week of November 10, 2008, the Receiver began receiving
19 inquiries from Gold-Quest investors regarding the purported promise by Little
20 Shell Nation to refund to investors the money they had lost as a result of investing
21 in Gold-Quest. (Declaration of Larry E. Cook filed on December 18, 2008
22 (Docket No. 223) ("Cook Decl."), ¶ 4). Investors had been informed via email that
23 in order to receive a refund they would have to apply for a credit card from a third
24 party, USA Global Co-Op, and would have to pay a \$40 fee. (*Id.*) Upon learning
25 of this purported offer by Little Shell Nation, the Receiver promptly notified
26 counsel for the Commission. (*Id.*)

1 During the week of November 10, counsel for the Commission were
2 forwarded emails that had been sent to Gold-Quest investors, which announced the
3 purported repayment program. (Van Havermaat Decl., ¶ 6). The Commission
4 counsel also learned of the website, www.lsgqi.com, which set forth the details of
5 the purported program. (*Id.*)

6 The www.lsgqi.com website represented that “[t]he monies necessary to pay
7 back the principal to all Little Shell G-QI members has been positioned and Little
8 Shell Nation is now prepared to return your initial investment plus 10%.” (*Id.*, ¶ 7,
9 Exh. C). The website informed Gold-Quest investors that they would be required
10 to apply for a debit card by completing an application that could be found at
11 another website, and that an “administrative fee” of \$40 would be charged to sign
12 up for the debit card. (*Id.*) Investors purportedly would receive a credit equal to
13 110% of their initial Gold-Quest investment, and the \$40 fee purportedly would be
14 added to the total. (*Id.*) The cards purportedly were to be funded in 30 to 45 days.
15 (*Id.*) The website provided three telephone numbers that investors could use to
16 obtain further information regarding the purported repayment program. (*Id.*) The
17 “FAQ” section of the website represented that the money for the repayment
18 program had come from funds of the Little Shell Nation that had been placed in a
19 trust account with USA Global Trust. (*Id.*)

20 Upon learning of the contact telephone numbers provided on the website,
21 counsel for the Commission called each of the numbers to inform the participants
22 that the representations on the website and in the telephone calls with Gold-Quest
23 investors constituted likely violations of the Court’s Orders. (Van Havermaat
24 Decl., ¶ 8). On November 13, one of the numbers was answered by Schantol. (*Id.*)
25 Schantol described his and Reed’s involvement in the program and represented to
26 the Commission counsel that he would not communicate with any more Gold-

1 Quest investors. Over the next several days, counsel for the Commission left
2 several messages for Reed and others associated with the Little Shell Nation,
3 informing them of the Commission's concerns that the website and
4 communications with Gold-Quest investors violated the Court's Orders. (*Id.*)

5 On November 15, Reed contacted McGee and told him of the messages that
6 he had received from counsel for the Commission. (McGee Decl., ¶ 6). Reed
7 asked McGee to forward the traffic from the www.lsgqi.com website to a new
8 website at www.littleshellnation.info, which McGee's company hosted. (*Id.*)
9 McGee understood that Reed was preparing the content of that website. (*Id.*) The
10 new website was identical to the prior one, except that the name "Little Shell G-
11 QI" (which stands for "Gold-Quest International") was replaced with "Little Shell
12 X-XX." The remainder of the content was unchanged, and it was clear that the
13 "new" website referred to the Gold-Quest program.² (Van Havermaat Decl., ¶ 9,
14 Exh. D). Upon discovering the new website, counsel for the Commission left
15 additional messages with Reed and others stating the new website was still being
16 operated in violation of the Court's Orders. (*Id.*, ¶ 10).

17 The Commission subsequently learned that the company owned by defendant
18 McGee was responsible for hosting both websites. On November 18, Commission
19 attorneys contacted McGee, who described his involvement with Reed and the
20 repayment program. McGee stated that, on November 17, Reed contacted him and
21 informed him that he had been contacted by Commission attorneys, and that the
22 website "needed to be shut down." (McGee Decl., ¶ 7) McGee subsequently shut
23 down the website and deleted the content from the server. (*Id.*)

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26 ² For example, the "FAQ" section of the revised website contained references
to "the 87 ½ % profit" and the "May 6th seizure of Little Shell X-XX by the
receiver for the SEC." (Van Havermaat Decl., ¶ 9, Exh. D).

1 **D. Reed Also Violated The Court's Order Compelling Him To**
2 **Comply With The Deposition Subpoena Issued By The**
3 **Commission**

4 On two occasions Reed failed to appear for his deposition, despite being
5 served with subpoenas requiring his testimony in this matter. (Van Havermaat
6 Decl., ¶¶ 11-19). As a result, the Commission filed its Motion By Plaintiff
7 Securities and Exchange Commission (1) For Order to Show Cause Re: Civil
8 Contempt Against Non-Party Michael Howard Reed and (2) For Order Compelling
9 Compliance With Deposition Subpoena. Reed failed to file any opposition to the
10 Commission's motion. *See* Notice of Non-Receipt of Opposition to Motion (1) For
11 Order to Show Cause Re: Civil Contempt Against Non-Party Michael Howard
12 Reed and (2) For Order Compelling Compliance With Deposition Subpoena
13 (Docket No. 232). Reed also refused to attend the hearing, instead leaving a
14 voicemail message in which he claimed to be out of the country. (Van Havermaat
15 Decl., ¶ 21; Ex. G).

16 On January 20, 2009, the Court granted the Commission's motion for an order
17 compelling Reed to comply with the deposition subpoena issued by the Commission.
18 The Court further ordered that it would "exercise its contempt powers if Mr. Reed
19 fails to appear for the scheduled deposition or fails to make arrangements to be
20 deposed prior to the February 27, 2009 date." (Van Havermaat Decl., ¶ 22; Ex. H).
21 Although the Commission requested that the Court withdraw its motion to show
22 cause why Reed should not be held in civil contempt, the Court ruled that it would
23 not make a determination regarding the Commission's request "until after it is
24 determined how Mr. Reed intends to respond to the Court's order." (*Id.*).

25 Following Reed's conduct at his deposition, the Commission requests that
26 the Court find Reed in contempt both for devising the repayment scheme to further

1 defraud Gold-Quest investors and for failing to provide full and complete
2 testimony at his deposition. The Commission staff advised Reed that his
3 deposition had been ordered by the Court and the parties agreed upon February 13,
4 2009 as the date of Reed's deposition. Although Reed belatedly appeared and
5 testified about defendant David Greene's extensive involvement in setting up
6 Gold-Quest, Greene's use of Gold-Quest investor funds, and Greene's concession
7 that he lost millions of dollars of investor funds through an investment in the
8 Topaz Group, Reed announced that "[a]nything that says, 'Little Shell Gold-Quest
9 International' is off limits." Deposition of Michael Howard Reed ("Reed Depo.")
10 at 25:24-25 (Van Havermaat Decl., ¶ 23; Ex. I); *see also* Reed Depo. at 242:9-12
11 (Van Havermaat Decl., ¶ 23; Ex. I). Reed stated that he would not answer any
12 questions about Little Shell Gold-Quest International unless the Commission could
13 provide him with "a letter of authorization from Congress that will sit there and
14 where you can drill as a[n] entity against a native sovereign nation." Reed Depo.
15 at 26:10-13 (Van Havermaat Decl., ¶ 23; Ex. I).

16 When the Commission staff reiterated that the Court had ordered his
17 deposition and that Reed's failure to respond to questions would be the subject of
18 another motion before the Court, Reed questioned "[h]ow can this judge have any
19 authority over anything that the United States doesn't own? They don't have venue
20 and jurisdiction." Reed Depo. at 241: 14-16 (Van Havermaat Decl., ¶ 23; Ex. I).
21 Reed denied that he was appearing for deposition pursuant to the Court's Order,
22 instead proclaiming that "I am not here pursuant to Judge Dawson's Order because
23 the case is void" and "lacks venue and jurisdiction." Reed Depo at 27:21-3 (Van
24 Havermaat Decl., ¶ 23; Ex. I); *see also Id.* at 244:1-2 (Van Havermaat Decl., ¶ 23;
25 Ex. I). Reed also stated that he was not going "to take hind-sighted" or "redirected
26 questions." Reed Depo. at 9:3-4 (Van Havermaat Decl., ¶ 23; Ex. I). And Reed

1 refused to provide his date of birth, claiming that his response would be “hearsay”
2 and “inadmissible.” Reed Depo. at 17:25-18:20 (Van Havermaat Decl., ¶ 23; Ex. I).

3 When the Commission staff introduced as an exhibit the website pages in
4 which Reed had offered Gold-Quest investors the opportunity to receive a refund
5 of their investment, Reed physically removed the exhibit from the court reporter’s
6 stack of exhibits. (Van Havermaat Decl., ¶ 23). When Reed was informed that the
7 website pages had been marked as a deposition exhibit and could not be removed
8 from the record, Reed yelled “No. This is not an exhibit. I’m telling you that.
9 You don’t have venue and jurisdiction. When are you going to learn?” Reed
10 Depo. at 240:17-18 (Van Havermaat Decl., ¶ 23; Ex. I). Although the Commission
11 staff attempted to resolve the issue, Reed repeated that “if I tell you that something
12 that you’re admitting into the court through this deposition and it’s void, it’s void.
13 You’re not going to give it to the clerk – the recorder here and record it as [an]
14 exhibit. Do you understand?” Reed Depo. at 245:4-8 (Van Havermaat Decl., ¶ 23;
15 Ex. I). Reed then left the deposition.

16 The questions Reed refused to answer were highly relevant to this action and
17 Reed had no basis for refusing to respond to the questions posed by the
18 Commission staff. Reed purports to be the attorney general of the Little Shell
19 Nation, which purportedly entered into a contract with Gold-Quest in February
20 2008. Pursuant to the purported contract, Gold-Quest attached “Little Shell” to its
21 name and was to pay Little Shell Nation \$240,000 over a two-year period. In
22 return, Little Shell Nation agreed, among other things, to provide legal support to
23 Gold-Quest. Little Shell Nation also was integral to the recent “repayment”
24 scheme as the source of the purported funds. Defendant Greene also testified in
25 Court that many assets of Gold-Quest subsequently became assets of the Little
26 Shell Nation.

1 Reed did not oppose the Commission's motion to compel his deposition and,
 2 in addition, never requested that the Court impose any limitation on the subject
 3 matter of his deposition. Reed's antics are all the more deserving of a finding of
 4 contempt given that he is aware that the Court has already rejected his claim of
 5 sovereign immunity. (Van Havermaat Decl., ¶ 24; Ex. J). The Commission
 6 therefore requests that the Court issue an order to show cause why Reed should not
 7 be held in contempt of court and fined \$1000.³

8 **III. ARGUMENT**

9 **A. Reed Has Violated This Court's Specific And Definite Orders**

10 In a civil contempt proceeding, the "moving party has the burden of showing
 11 by clear and convincing evidence that the contemnor[s] violated a specific and
 12 definite order of the court." *F.T.C. v. Affordable Media, LLC*, 179 F.3d 1228, 1239
 13 (9th Cir. 1999) (quoting *Stone v. City and County of San Francisco*, 968 F.2d 850,
 14 856 n.9 (9th Cir. 1992)); *see also In re Crystal Palace Gambling Hall, Inc.*, 817
 15 F.2d 1361, 1365 (9th Cir. 1987) ("If a person disobeys a specific and definite court
 16 order, he may properly be adjudged in contempt.") (citing *Shuffler v. Heritage*
 17 *Bank*, 720 F.2d 1141, 1146 (9th Cir. 1983)). The burden is then on the contemnor
 18 to demonstrate why he has been unable to comply with the Order. *See Affordable*
 19 *Media*, 179 F.3d at 1239 (citing *Stone*, 968 F.2d at 856 n.9).

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 22
 23 ³ After the Reed deposition, on May 6, 2009, the Court entered judgment by
 24 default against defendants Greene and Jenkins. (Document No. 248). The
 25 Commission staff is currently in the final stages of settlement negotiations with the
 26 remaining defendant in this action, McGee. As a result, the Commission does not
 believe that its resources are best spent on another deposition session with Reed
 and does not request that the Court order Reed to appear again for deposition.
 Instead, the Commission renews its prior request for a monetary sanction of \$1000
 and submits that this request is further supported by the resources the staff was
 forced to expend as a result of Reed's deposition conduct.

1 The Commission has shown, by clear and convincing evidence, that Reed
2 violated the Court's Orders prohibiting contact with Gold-Quest investors and
3 requiring Reed to comply with the Commission's deposition subpoena. Reed,
4 together with Jenkins, retained third parties to establish telephone numbers and an
5 email address that were designed and used specifically to communicate with Gold-
6 Quest investors. He also paid defendant Michael McGee to host a website
7 designed to provide information to Gold-Quest investors. At his deposition, Reed
8 refused to answer relevant questions without any meritorious basis. These actions
9 violated specific and definite Orders of the Court.

10 **B. Civil Contempt Is The Proper Means Of Enforcing Reed's**
11 **Compliance With This Court's Lawful Orders**

12 This Court has inherent power to enforce compliance with its lawful orders
13 through civil contempt. *Shillitani v. United States*, 384 U.S. 364, 370 (1966); *see*
14 *also* 18 U.S.C. § 401 (1982); *Young v. United States*, 481 U.S. 787, 793 (1987); *In*
15 *re Crystal Palace*, 817 F.2d at 1364; Fed. R. Civ. P. 70. Courts routinely hold non-
16 parties in Commission actions in civil contempt for violating court orders. *See,*
17 *e.g., SEC v. Homa*, 514 F.3d 661 (7th Cir. 2008) (non-parties held in contempt for
18 violating asset freeze provisions of order); *SEC v. Resource Dev't Int'l*, 2008 U.S.
19 App. Lexis 19334 (5th Cir. Sept. 9, 2008) (non-party held in contempt for failing
20 to turn over assets to receiver). Thus, the Court has inherent authority to hold Reed
21 in civil contempt for violating its Orders.⁴

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25 ⁴ In fact, the Court has already found one non-party in this case in civil
26 contempt. On June 24, 2008, the Court found Robert Neilsen Baker in civil
contempt for improperly notarizing documents that were filed with the Court.
(Docket No. 120.) The Court stayed Baker's 30-day sentence on the condition that
he not notarize any further documents to be filed in this action.

1 **C. The Court Should Impose A Sanction Sufficiently Coercive To**
2 **Compel Reed’s Future Compliance With The Court’s Orders Or**
3 **To Compensate The Receiver And The Commission For Costs**
4 **Incurred As A Result Of Reed’s Violations**

5 The Court has broad equitable power to order appropriate relief in civil
6 contempt proceedings. *SEC v. Hickey*, 322 F.3d 1123, 1128 (9th Cir. 2003). Civil
7 contempt sanctions “are employed for two purposes: to coerce the defendant into
8 compliance with the court’s order, and to compensate the complainant for losses
9 sustained.” *Whittaker Corp. v. Execuair Corp.*, 953 F.2d 510, 517 (9th Cir. 1992).
10 The Commission requests that Reed be sanctioned in the amount of \$1000 both as
11 a means of assuring future compliance with the Court’s orders and as partial
12 compensation for the costs associated with terminating the fraudulent debit card
13 program.

14 Reed’s actions have made it clear that he does not intend to obey the specific
15 and definite orders of this Court. Reed was instrumental in hiring third parties to
16 communicate with investors and he was responsible for setting up the website that
17 was used to promote the fraudulent debit card program. During his court ordered
18 deposition, Reed repeatedly asserted that the Court lacked jurisdiction over him. The
19 Court should impose a sanction sufficiently coercive to compel Reed’s future
20 compliance with its orders. A monetary sanction is appropriate to compel future
21 compliance. *See, e.g., McComb v. Jacksonville Paper Co.*, 336 U.S. 187 (1949). Such
22 coercive sanctions need not be matched to any actual expense incurred in enforcing
23 the Court’s order. *See Glover v. Johnson*, 199 F.3d 310, 313 (6th Cir. 1999).

24 Monetary sanctions also are appropriate to compensate the Receiver and the
25 Commission for costs incurred in investigating the violations of the Court’s orders,
26 responding to inquiries from investors, contacting the persons hired by Reed and

1 Jenkins, informing them that their activities were likely in violation of the Court's
2 Orders, asking that they cease the violative activities, and preparing declarations
3 and moving papers regarding the violations. *See, e.g., McComb*, 336 U.S. at 193-
4 94.⁵ The Commission also incurred expenses as a result of Reed's deposition
5 conduct, including his interjection of lengthy and nonsensical objections and his
6 refusal to answer relevant questions about defendant Little Shell Nation Gold-
7 Quest International. The Receiver and the Commission expended considerable
8 time in the aforementioned activities and a sanction of \$1000 against Reed is
9 eminently reasonable; this amount is low in comparison to the amounts that would
10 have been charged by private attorneys for similar work. *See, e.g., United States v.*
11 *Alcoa, Inc.*, 2007 U.S. Dist. Lexis 14330 (W.D.Tex. Feb. 27, 2007) (holding that
12 monetary sanctions of \$50,000, based on substantial work performed by
13 government attorneys in enforcing Court order, was reasonable). In this case, the
14 Commission requests that any monetary sanction against Reed be deposited with
15 the Receiver for the benefit of injured investors. *See McComb*, 336 U.S. at 194-95
16 (monetary sanctions in civil contempt action involving violations of Fair Labor
17 Standards Act were used for the benefit of injured employees).

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26 ⁵ Governmental agencies, as well as private plaintiffs, are entitled to cost awards in civil contempt actions. *See CFTC v. Premex, Inc.*, 655 F.2d 779, 785-86 (7th Cir. 1981).

1 **IV. CONCLUSION**

2 Because the Commission has shown by clear and convincing evidence that
3 Reed has violated the specific and definite Orders of this Court, the Commission
4 requests that the Court issue an order to show cause why Reed should not be held
5 in contempt on the Court's Orders prohibiting Gold-Quest or its agents or
6 representatives from communicating with Gold-Quest investors and on the Court's
7 Order compelling Reed to comply with the deposition subpoena.

8
9 DATED: June 1, 2009

Respectfully submitted,

10 /s/ David J. Van Havermaat
11 David J. Van Havermaat
12 Karol L. K. Pollock
13 Teri M. Melson
14 Attorneys for Plaintiff
15 Securities and Exchange Commission
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PROOF OF SERVICE

I am over the age of 18 years and not a party to this action. My business address is:

U.S. SECURITIES AND EXCHANGE COMMISSION, 5670 Wilshire Boulevard, 11th Floor, Los Angeles, California 90036-3648 Telephone No. (323) 965-3998; Facsimile No. (323) 965-3908.

On June 1, 2009, I caused to be served the documents entitled **NOTICE OF MOTION AND MOTION BY PLAINTIFF SECURITIES AND EXCHANGE COMMISSION (1) FOR ORDER TO SHOW CAUSE RE: CIVIL CONTEMPT AGAINST NON-PARTY MICHAEL HOWARD REED AND (2) FOR ORDER COMPELLING COMPLIANCE WITH DEPOSITION SUBPOENA; and MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION BY PLAINTIFF SECURITIES AND EXCHANGE COMMISSION FOR ORDER TO SHOW CAUSE RE: CIVIL CONTEMPT AGAINST NON-PARTY MICHAEL HOWARD REED** on all the parties to this action addressed as stated on the attached service list:

OFFICE MAIL: By placing in sealed envelope(s), which I placed for collection and mailing today following ordinary business practices. I am readily familiar with this agency's practice for collection and processing of correspondence for mailing; such correspondence would be deposited with the U.S. Postal Service on the same day in the ordinary course of business.

PERSONAL DEPOSIT IN MAIL: By placing in sealed envelope(s), which I personally deposited with the U.S. Postal Service. Each such envelope was deposited with the U.S. Postal Service at Los Angeles, California, with first class postage thereon fully prepaid.

EXPRESS U.S. MAIL: Each such envelope was deposited in a facility regularly maintained at the U.S. Postal Service for receipt of Express Mail at Los Angeles, California, with Express Mail postage paid.

FEDERAL EXPRESS: By placing in sealed envelope(s) designated by Federal Express with delivery fees paid or provided for, which I deposited in a facility regularly maintained by Federal Express or delivered to a Federal Express courier, at Los Angeles, California.

ELECTRONIC MAIL: By transmitting the document by electronic mail to the electronic mail address as stated on the attached service list.

FAX: By transmitting the document by facsimile transmission. The transmission was reported as complete and without error.

(Federal) I declare that I am a member of the Bar of the State of California and an attorney permitted to appear before this Court and that the foregoing is true and correct.

Date: June 1, 2009

/s/ David J. Van Havermaat
David J. Van Havermaat

1 **SEC v. GOLD QUEST INTERNATIONAL, et al.**
2 **United States District Court – District of Nevada**
3 **Case No. 2:08-CV-00566-LDG-LRL**
4 **LA-3444**

5 **SERVICE LIST**

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11 *Agent authorized to accept service on behalf of Defendants David*
12 *Greene (a/k/a/ Lord David Greene or David Green), John Jenkins,*
13 *Michael McGee and Gold-Quest International*

14 Larry E. Cook (**served by electronic and U.S. mail**)
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18 *Also served electronically through the CM/ECF system.
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22
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