

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
POKERSTARS, ET AL.,)
)
Defendants,)
)
ALL RIGHTS, TITLE & INTEREST)
IN THE ASSETS OF)
POKERSTARS, ETC.,)
)
Defendants-In-Rem.)

Civil Action No. 1:11-cv-02564-LBS

MEMORANDUM OF LAW IN SUPPORT OF
MOTION TO STAY IN REM CLAIMS AS TO DOMAIN DEFENDANTS

TABLE OF CONTENTS

I. INTRODUCTION	1
II. STATEMENT OF THE CASE	1
III. ARGUMENT	5
A. PLAINTIFF CANNOT MEET ITS BURDEN TO ESTABLISH THIS COURT'S JURISDICTION	5
B. THE COMMONWEALTH HAS PRIOR EXCLUSIVE JURISDICTION OVER THE DOMAIN NAMES	6
1. When the State Court Asserts Jurisdiction Over The Res Before the Federal Court, The Federal Court Cannot Exercise Jurisdiction	6
2. It Is Not Within The Discretion Of This Court To Exercise Jurisdiction Over The Res If The Franklin Circuit Court Previously Asserted Jurisdiction	8
3. The Franklin Circuit Court's Jurisdiction Attached When The Order of Seizure Was Issued	9
4. It Is Improper For This Court To Examine The Sufficiency Of The Franklin Circuit Court's Control Of The Res	11
5. The U.S.'s Attempted Seizure Does Not Affect Kentucky's Constructive Possession	12
IV. CONCLUSION	13

TABLE OF AUTHORITIES

Cases

<i>Chesley v. Union Carbide Corp.</i> , 927 F.2d 60, 66 (2nd Cir. 1991).	9
<i>Com. ex rel. Brown v. Interactive Media Entertainment and Gaming Ass'n, Inc.</i> , 306 S.W.3d 32 (Ky. 2010).....	3
Commonwealth of Kentucky, ex rel. J. Michael Brown, Secretary Justice and Public Safety Cabinet v. 141 Internet Domain Names.....	1
<i>Commonwealth of Kentucky, ex rel. J. Michael Brown, Secretary Justice and Public Safety Cabinet v. Pocket Kings, Ltd, et al.</i> ,.....	3
<i>Covell v. Heyman</i> , 111 U.S. 176, 184, 4 S. Ct. 355 (1884)	11
<i>Interactive Media Entertainment and Gaming Ass'n v. Wingate</i> , 320 S.W.3d 692 (Ky. 2010) .	3
<i>Jordan v. Verizon Corp.</i> , 391 Fed.Appx. 10 (2nd Cir. 2010)	5
<i>Kline v. Burke Const. Co.</i> , 260 U.S. 226, 43 S.Ct. 79 (1922)	7
<i>Manway Const. Co., Inc. v. Housing Authority of City of Hartford</i> , 711 F.2d 501, 504 (2nd Cir. 1983).....	6
<i>McNutt v. General Motors Acceptance Corp.</i> , 298 U.S. 178, 189, 56 S.Ct. 780, 785 (1936).	6
<i>MLC Fishing, Inc. v. Velez</i> , 667 F.3d 140 (2nd Cir. 2011).....	5
<i>Moran v. Sturges</i> , 154 U.S. 256, 283-284 (1894).....	10
<i>One 1985 Cadillac Seville</i>	9, 13
<i>One 1985 Cadillac Seville</i> , 866 F.2d at 1145-1146	12
<i>One Cadillac Seville</i>	9
<i>Palmer v. Texas</i> , 212 U.S. 118, 129-130 (1909)	9
<i>Penn General</i>	8, 9
<i>Penn General Casualty Co. v. Commonwealth of Pennsylvania ex rel. Schnader</i> , 294 U.S. 189, 55 S.Ct. 386 (1935).....	8
<i>Penn General Casualty Co. v. Commonwealth of Pennsylvania ex rel. Schnader</i> , 294 U.S. 189, 55 S.Ct. 386 (1935),.....	8
<i>Penn General</i> , 294 U.S. at 196.....	11
<i>U.S. v. \$2,542 In U.S. Currency</i> , 754 F.Supp. 378 (D.Vt. 1990)	11
<i>U.S. v. \$490,920 in U.S. Currency</i> , 911 F.Supp. 720 (S.D.N.Y. 1996).....	12
<i>U.S. v. Bank of New York & Trust Co.</i> , 296 U.S. 463, 56 S. Ct. 343 (1936)	7
<i>U.S. v. Bank of New York & Trust Co.</i> , <i>supra</i> , 296 U.S. at 479.	12

<i>U.S. v. One 1985 Cadillac Seville</i> , 866 F.2d 1142, 1145 (9th Cir. 1989).....	8
<i>United Food & Commercial Workers Union, Local 919, AFL-CIO v. CenterMark Properties Meriden</i> , 30 F.3d 298 (2nd Cir. 1994)	6
<i>United States of America v. Pokerstars, et al., All rights, Title & Interest in the Assets of Pokerstars, etc</i>	4
<i>v. 13</i>	
<i>York Hunter Const., Inc. v. Avalon Properties, Inc.</i> , 104 F.Supp.2d 211 (S.D.N.Y. 2000).....	12

Comes the Commonwealth of Kentucky, *ex rel.*, J. Michael Brown, Secretary Justice and Public Safety Cabinet (the “Commonwealth”), by and through counsel, and for its Memorandum in Support of its Motion To Stay In Rem Claims As To Domain Defendants, states as follows:

I. INTRODUCTION

By virtue of the Franklin Circuit Court’s prior assertion of jurisdiction, its prior forfeiture action and its prior seizure of and interest in the domain names, this Court is precluded from exercising subject matter jurisdiction over the internet domain names pokerstars.com, fulltiltpoker.com, absolutepoker.com and ultimatebet.com. Pursuant to the venerable doctrine of prior exclusive jurisdiction, this Court has no discretion but to decline to exercise jurisdiction and stay the *in rem* claims against those domain names in this action, and remand the domains names to the Franklin Circuit Court for determination and disposition.

II. STATEMENT OF THE CASE

The Commonwealth of Kentucky, *ex rel.* J. Michael Brown, Secretary Justice and Public Safety Cabinet, brought an *in rem* civil forfeiture action in the Franklin Circuit Court on or about August 28, 2008, styled *Commonwealth of Kentucky, ex rel. J. Michael Brown, Secretary Justice and Public Safety Cabinet v. 141 Internet Domain Names*, 08-CI-1409 (hereinafter “Kentucky Forfeiture Action”), against certain domain names used in

illegal gambling in Kentucky in violation of Kentucky law.¹ Included among those domain names were four domains subsequently “seized” by the United States in this action: pokerstars.com; fulltiltpoker.com; ultimatebet.com; and absolutepoker.com (collectively, “the Kentucky Domains”). On the filing of its *in rem* action, the Commonwealth issued and served process in the form of an Order of Seizure issued by the Franklin Circuit Court. See Order of Seizure Of Domain Names dated September 18, 2008, attached as Exhibit 2. The Commonwealth served that Order on the Registrars of the domains on September 19, 2008 by letter served through a variety of means approved by the Court in its Order. See Letters to Registrars, attached as Exhibits 4-7. In response to the Order of Seizure, multiple registrars locked domains from transfer and took other actions, including delivering physical Registrar Certificates to the Commonwealth explicitly for the purpose of placing domains under the control of the Court pending the outcome of the forfeiture proceeding. For example, on October 6, 2008 the Commonwealth deposited the Registrar Certificates from GoDaddy.com representing its domain names - including ultimatebet.com - by Notice of Filing to the Franklin Circuit Court, where it remains today.²

The Franklin Circuit Court has clearly asserted its jurisdiction over the domain names, and Kentucky just as clearly has constructive possession of the Kentucky Domains. See Findings Of Fact And Conclusions Of Law, ¶¶ 24, 35; Opinion and Order dated October 16, 2008, attached as Exhibit 9, pp. 12, 28. In furtherance of that Court’s

¹Copies of the Second Amended Complaint, the Order of Seizure and the Court’s Findings Of Fact And Conclusions Of Law in Kentucky *in rem* action are attached hereto as Exhibits 1, 2 and 3.

² The Notice of Filing and the attached Registrar Certificate are attached hereto as Exhibit 8.

assertion of jurisdiction, it and the Commonwealth have pursued, *inter alia*, the following actions:

- Commenced in 2008 and continues to maintain the Kentucky Forfeiture Action;
- Commenced in 2010 and continues to maintain Kentucky In Personam Action, which it amended as recently as May 30, 2012 as it continues to identify additional culpable parties;³
- Defended multiple original actions in the Kentucky Court of Appeals seeking writs of prohibition, including two appeals of those actions to the Kentucky Supreme Court (*See Com. ex rel. Brown v. Interactive Media Entertainment and Gaming Ass'n, Inc.*, 306 S.W.3d 32 (Ky. 2010) (“iMEGA I”) and *Interactive Media Entertainment and Gaming Ass'n v. Wingate*, 320 S.W.3d 692 (Ky. 2010) (“iMEGA II”), attached as Exhibits 10 and 11;
- Has perfected its seizure with a Final Order of Forfeiture as to the domains it seized, and has defended that Order against collateral attack. *See Order Of Forfeiture Of Domain Defendants*, March 8, 2012, attached as Exhibit 12;
- Continues to defend two interlocutory appeals of the denial of intervention for the sham illegal gambling “trade associations”; and
- Continues to defend a separate direct appeal of the Final Order Of Forfeiture by those sham associations.

That action has been litigated for almost four years in the courts of the Commonwealth, and thus far has been the subject of two opinions by the Kentucky Supreme Court on issues including standing - the anonymous and absconding domain owners declining to appear in favor of sham internet gambling “trade associations”. As of this writing, the Franklin Circuit Court has issued final orders of forfeiture as to approximately 135 of the 141 domain names originally seized. The Franklin Circuit

³ The Commonwealth also maintains an *in personam* civil action against related defendants in the Franklin Circuit Court styled *Commonwealth of Kentucky, ex rel. J. Michael Brown, Secretary Justice and Public Safety Cabinet v. Pocket Kings, Ltd, et al.*, 10-CI-0505 (hereafter “Kentucky In Personam Action”).

Court, by virtue of its prior seizure of the Kentucky Domains service of the Order of Seizure, has prior exclusive jurisdiction over the Kentucky Domains.

Two years and nine months into the Kentucky court's continuing exercise of jurisdiction over the *res*, the Kentucky Domains were nonetheless "re-seized" by the United States on or about April 15, 2011 pursuant to an Arrest Warrant In Rem issued in connection with this judicial civil forfeiture proceeding, styled *United States of America v. Pokerstars, et al., All rights, Title & Interest in the Assets of Pokerstars, etc.*, United States District Court, Southern District of New York, Civil Action No. 1:11-cv-02564-LBS. This is notwithstanding the fact that Kentucky's Order of Seizure remains in effect, and Kentucky has continued to defend its prior seizure multiple trips through three levels of its courts, as well defend it in U.S. District Court in both the District of Maryland and this Court.

The Commonwealth in its Answer filed in this action specifically denied "that the domain names and the proceeds thereof are subject to forfeiture pursuant to federal statutes by reason of the Commonwealth's prior assertion of jurisdiction, its prior forfeiture action, [and] its prior seizure of and interest in the property...." The Commonwealth has, out of respect for this Court, refrained from asking the Court for a final order of forfeiture as to the four Kentucky Domains that are the subject of this motion, until such time as this Court has addressed the issue. The Franklin Circuit Court's deadline for owners to appear and make a claim, however, has expired and the Commonwealth anticipates the court will forfeit the domains upon motion.

The Franklin Circuit Court clearly exercised jurisdiction over the Kentucky Domains in its 2008 in rem action, and clearly continues to this very day to exercise that in rem jurisdiction. The Commonwealth has no intention of abandoning its action, and has now forfeited all but a handful of the domains and is proceeding to disposition of same. This Court must decline to exercise its jurisdiction and remand the domain names to the Franklin Circuit Court.

III. ARGUMENT

A. PLAINTIFF CANNOT MEET ITS BURDEN TO ESTABLISH THIS COURT'S JURISDICTION

The burden is on the United States to show that this Court may properly exercise jurisdiction over the Kentucky Domains. "The burden of demonstrating subject-matter jurisdiction lies with the party asserting it..." *MLC Fishing, Inc. v. Velez*, 667 F.3d 140 (2nd Cir. 2011). A plaintiff asserting subject matter jurisdiction has the burden of proving its existence by a preponderance of the evidence. *Jordan v. Verizon Corp.*, 391 Fed.Appx. 10 (2nd Cir. 2010).

Rule G of the Supplemental Rules Of Federal Procedure For Admiralty and Maritime Claims does not, as has been suggested by Plaintiff, relieve Plaintiff of its burden by requiring that determinations of standing be made before consideration of other motions. Subject matter jurisdiction are to be raised at any time, even on appeal, and by the Court on its own motion. "It is common ground that in our federal system of limited jurisdiction any party or the court *sua sponte*, at any stage of the proceedings, may raise the question of whether the court has subject matter jurisdiction; and, if it

does not, dismissal is mandatory.” *Manway Const. Co., Inc. v. Housing Authority of City of Hartford*, 711 F.2d 501, 504 (2nd Cir. 1983). “[T]he party asserting jurisdiction bears the burden of proving that the case is properly in federal court and *that party may not be relieved of [its] burden by any formal procedure.*” *United Food & Commercial Workers Union, Local 919, AFL-CIO v. CenterMark Properties Meriden*, 30 F.3d 298 (2nd Cir. 1994)(emphasis added), *citing* *McNutt v. General Motors Acceptance Corp.*, 298 U.S. 178, 189, 56 S.Ct. 780, 785 (1936).

This Court must consider whether Plaintiff has met its burden of proving this Court’s subject matter jurisdiction. If it finds, as the Commonwealth believes it must, that the Franklin Circuit Court had previously asserted jurisdiction over the Kentucky Domains, it must stay this action as to those domains until the Franklin Circuit Court action is resolved.

B. THE COMMONWEALTH HAS PRIOR EXCLUSIVE JURISDICTION OVER THE DOMAIN NAMES

1. When the State Court Asserts Jurisdiction Over The Res Before the Federal Court, The Federal Court Cannot Exercise Jurisdiction

The Commonwealth has prior exclusive jurisdiction over the four domain names, and this Court has no discretion but to dismiss the action and remit the domains to the account of the Commonwealth.

[A]n abundance of federal decisional law, including an impressive array of Supreme Court decisions, makes it clear that in all cases involving a specific piece of property, real or personal (including various forms of intangible property), the federal court's jurisdiction is qualified by the ancient and oft-repeated rule—often called the doctrine of prior exclusive jurisdiction—that when a state or federal court of competent jurisdiction has obtained possession, custody, or control of particular property, that

authority and power over the property may not be disturbed by any other court.

13F Charles Alan Wright, Arthur R. Miller, et al., *Federal Practice and Procedure* § 3631 (3d ed.) (Jul 15, 2011). “Although the prior-exclusive-jurisdiction rule is based at least in part on considerations of judicial comity, it very often is referred to as a jurisdictional limitation...” *Id.*

That the United States subsequently seized the domains and for a brief time asserted control does not change the fact that the Franklin Circuit Court first asserted jurisdiction over the domains, nor does the fact that it is the United States itself that did the seizing. “The United States, as a plaintiff, must follow the general rule that the court first acquiring jurisdiction of a res acquires exclusive jurisdiction to control of the res.” *U.S. v. Bank of New York & Trust Co.*, 296 U.S. 463, 56 S. Ct. 343 (1936).

The United States Supreme Court has reiterated this rule a multitude of times over the span of a hundred years.

But if a state court is entitled to possession of the property, it is well established by the precedents that the federal court must decline to assert its jurisdiction, and federal proceedings may be enjoined to protect the state court's jurisdiction.

13F Charles Alan Wright, Arthur R. Miller, et al., *Federal Practice and Procedure* § 3631 (3d ed.) (Jul 15, 2011). *See, e.g., Kline v. Burke Const. Co.*, 260 U.S. 226, 43 S.Ct. 79 (1922)(“[W]here the jurisdiction of the state court has first attached, the federal court is precluded from exercising its jurisdiction over the same res to defeat or impair the state court's jurisdiction.”)

Perhaps the most-cited and best-articulated iteration of the prior exclusive jurisdiction rule is found in *Penn General Casualty Co. v. Commonwealth of Pennsylvania ex rel. Schnader*, 294 U.S. 189, 55 S.Ct. 386 (1935), wherein the Court made it clear that the prior exclusive jurisdiction attaches upon filing of the action in the state court:

[T]hat one whose jurisdiction and process are first invoked by the filing of the bill is treated as in constructive possession of the property and as authorized to proceed with the cause.... Jurisdiction thus attaches upon the filing of the bill of complaint in court, at least where process subsequently issues in due course....

294 U.S. at 196 (citations omitted). The Kentucky Forfeiture Action was filed on September 18, 2008, and process issued the very next day. It could not be more clear that the Franklin Circuit Court has prior exclusive jurisdiction over the Kentucky Domains.

2. It Is Not Within The Discretion Of This Court To Exercise Jurisdiction Over The Res If The Franklin Circuit Court Previously Asserted Jurisdiction

In the most-cited modern opinion applying the prior exclusive jurisdiction rule, the Ninth Circuit *on its own motion* raised the prior exclusive jurisdiction issue to remit a U.S. DEA seizure of narcotics funds already seized in Santa Cruz County Superior Court. It made very clear that *Penn General* held that the rule against concurrent *in rem* proceedings is not discretionary, and district court must yield to a prior state proceeding. *U.S. v. One 1985 Cadillac Seville*, 866 F.2d 1142, 1145 (9th Cir. 1989) (“The language of *Penn General* indicates that a federal court *must* yield to a prior state

proceeding”).⁴ The Court declined to exercise its jurisdiction over \$434,097 in cash, despite the fact that the prior state forfeiture proceeding was inactive and the state authority did not seek return of the *res* from the federal court. In Fact, the Court stated that it was irrelevant whether the California authority may even have approved the DEA seizure.

In regard to the Kentucky Domains, the Kentucky Forfeiture Action remains very active, and the Commonwealth most certainly intends that the forfeiture of the *res* be adjudicated in the Franklin Circuit Court. *One 1985 Cadillac Seville* and *Penn General* mandate that this Court respect the Franklin Circuit Court’s right to do exactly that.

3. The Franklin Circuit Court’s Jurisdiction Attached When The Order of Seizure Was Issued

The United States Supreme Court in Palmer v. Texas clarified that the rule has long been that jurisdiction is acquired not by possession, but *by the assertion of jurisdiction through issuance of process*:

We think the law of this court is well established to be that jurisdiction over the property was acquired by the state courts when the receiver was appointed, the judicial process served, and the receiver duly qualified, although the state receiver had not taken actual possession of the property. ... If this rule is not applied, a court of competent jurisdiction, which, by the law of its own procedure, has acquired jurisdiction of property, may find itself, as in this case, after final judgment, maintaining its right over the property, at the conclusion of the litigation deprived of the subject-matter of the suit.

Palmer v. Texas, 212 U.S. 118, 129-130 (1909).

⁴*One Cadillac Seville* is followed by the Second Circuit Court of Appeals. *See Chesley v. Union Carbide Corp.*, 927 F.2d 60, 66 (2nd Cir. 1991).

The concepts of “control” and “possession” in the prior-exclusive-jurisdiction context do not mean physical possession, but rather constructive possession by exercising jurisdiction.

If a court of competent jurisdiction, Federal or state, has taken possession of property, *or by its procedure has obtained jurisdiction over the same*, such property is withdrawn from the jurisdiction of the courts of the other authority as effectually as if the property had been entirely removed to the territory of another sovereignty.

13F Charles Alan Wright, Arthur R. Miller, et al., *Federal Practice and Procedure* § 3631 (3d ed.) (Jul 15, 2011)(emphasis added), *citing Palmer, supra*. The Supreme Court has for over one hundred years held that physical possession of the property is not determinative - it is which court first exercises jurisdiction over the property: “As between two courts of concurrent and co-ordinate jurisdiction, having like jurisdiction over the subject matter in controversy, the court which first obtains jurisdiction is entitled to retain it without interference, and cannot be deprived of this right to do so because it may not have first obtained physical possession of the property in dispute.” *Moran v. Sturges*, 154 U.S. 256, 283-284 (1894).

If this Court continues to exercise jurisdiction over the Kentucky Domains, the scenario feared by the Court in *Palmer* will be realized. The Franklin Circuit Court has litigated this *in rem* forfeiture action for nearly four years, and would have the property snatched away by this Court on the eve of its final forfeiture. The overwhelming weight of precedent is that Kentucky cannot be thus deprived of its prior possession of the property.

4. It Is Improper For This Court To Examine The Sufficiency Of The Franklin Circuit Court's Control Of The Res

It is not whether the Franklin Circuit Court ultimately prevails on its assertion of jurisdiction that compels the federal court to decline to exercise jurisdiction, but the mere fact that the Franklin Circuit Court has asserted its jurisdiction. The *Penn General* Court explained that the rationale behind the rule that jurisdiction attaches on the filing of the complaint, where process subsequently issues, is precisely to avoid such squabbles between courts with concurrent jurisdiction. Actual possession and priority of service of process are not matters for the later court to decide.

Jurisdiction thus attaches upon the filing of the bill of complaint in court, at least where process subsequently issues in due course. [citations omitted] *The confusion and uncertainty are thus avoided which might otherwise result from the attempt to resolve the troublesome question of what constitutes actual possession and to determine priority of service of process in the two suits.*

Penn General, 294 U.S. at 196 (emphasis added). *See also Covell v. Heyman*, 111 U.S. 176, 184, 4 S. Ct. 355 (1884) (“It is the bare fact of that possession under claim and color of that authority, *without respect to the ultimate right, to be asserted otherwise and elsewhere, ...* that furnishes to the officer complete immunity from the process of every other jurisdiction that attempts to dispossess him.”)(emphasis added).

The Supreme Court made it clear, therefore, that it is not for this court to examine the nature and sufficiency of Kentucky's seizure. Kentucky has exercised its jurisdiction and issued process on the *res*. Whether the state court had in rem jurisdiction over the *res* is a matter of state law. *U.S. v. \$2,542 In U.S. Currency*, 754 F.Supp. 378 (D.Vt. 1990). Even setting aside the further fact that Kentucky has litigated

against the *res* aggressively for nearly four years, it is clear not only that Kentucky has exercised jurisdiction and has constructive possession of the Kentucky Domains, but that it is improper for this Court to examine the sufficiency of its efforts.

5. The U.S.'s Attempted Seizure Does Not Affect Kentucky's Constructive Possession

The U.S.'s attempt to seize possession of the *res* does not divest Kentucky of its exclusive jurisdiction:

In addition we reject, as did the Seventh Circuit, the argument that the fact of federal possession of the *res* takes jurisdiction from the state court and bestows it upon the district court. Although we are familiar with the maxim, "possession is nine-tenths of the law," we prefer to apply the remaining one-tenth and decline to "substitute a rule of force for the principle of mutual respect embodied in the prior exclusive jurisdiction doctrine."

One 1985 Cadillac Seville, 866 F.2d at 1145-1146 (citations omitted). The fact that the Plaintiff is the United States does not justify a departure from the rule. *U.S. v. Bank of New York & Trust Co.*, *supra*, 296 U.S. at 479.

The prior exclusive jurisdiction rule, and the decisions of the United States Supreme Court and the Ninth Circuit, has been consistently applied in the Southern District of New York. *See, e.g., York Hunter Const., Inc. v. Avalon Properties, Inc.*, 104 F.Supp.2d 211 (S.D.N.Y. 2000). In fact, this very Court has applied the doctrine even where the state agency *requested* the federal forfeiture. In *U.S. v. \$490,920 in U.S. Currency*, 911 F.Supp. 720 (S.D.N.Y. 1996), NYPD seized \$240,920 and \$250,000 in cash of illegal gambling proceeds from two safe deposit boxes. At the request of the D.A.'s Office, the FBI commenced administrative forfeiture proceedings against the Funds. This Court nonetheless held that the funds were within the prior exclusive jurisdiction

of the state court, citing with approval *One 1985 Cadillac Seville*: “Absent ‘some affirmative act of abandonment’ of the property by the state court, the state court retains exclusive jurisdiction over the res...” *U.S. v. \$490,920*, 911 F.Supp. at 727.

In summary, the Franklin Circuit Court first asserted jurisdiction and obtained by service of process the constructive possession of the Kentucky Domains. The fact that the United States seized the same property by assertion of this Court’s jurisdiction does not overcome that, and this Court has no discretion but to transfer the Kentucky Domains to the Franklin Circuit Court.

IV. CONCLUSION

There is no question that the Kentucky court first asserted its jurisdiction and served process on the *in rem* defendant Kentucky Domains. This Court, whether by motion of the Commonwealth or its own, must decline to exercise its jurisdiction. It has no discretion but to stay this proceeding (at to the Kentucky Domains) until such time as the Kentucky Forfeiture Action is resolved. It must therefore order the United States Attorney to deliver the Kentucky Domains to the possession and control of the Commonwealth, and for VeriSign to comply with the Franklin Circuit Court’s Order of Seizure of Domain Names notwithstanding the United States’ Arrest Warrant In Rem.

WHEREFORE, the Commonwealth of Kentucky *ex rel.*, J. Michael Brown, Secretary Justice and Public Safety Cabinet, respectfully requests the following relief:

1. That this Court order the United States Attorney to deliver the Kentucky Domains to the possession and control of the Commonwealth, and for VeriSign to

comply with the Franklin Circuit Court's Order of Seizure of Domain Names notwithstanding the United States' Arrest Warrant In Rem; and

2. Any and all such other relief to which the Commonwealth may be entitled.

Respectfully submitted,

/s/ D. Eric Lycan (pro hac vice)
STEPTOE & JOHNSON, PLLC
1010 Monarch Street, Suite 250
P.O. Box 910810
Lexington, Kentucky 40513
Telephone: (859) 255-7080
Facsimile: (859) 255-6903
eric.lycan@steptoe-johnson.com

*Attorney for Commonwealth of Kentucky ex rel., J.
Michael Brown, Secretary Justice and Public Safety
Cabinet*

To:

Jason H. Cowley
Michael D. Lockard
United States Attorney's Office
One Saint Andrew's Plaza
New York, NY 10007
Tel: (212) 637-1060
Fax: (212) 637-0421
Jason.Cowley@usdoj.gov
Michael.Lockard@usdoj.gov