

Exhibit G

PREET BHARARA
United States Attorney for the
Southern District of New York

By: MICHAEL D. LOCKARD
Assistant United States Attorney
(212) 637-2193

10 MAG 354

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - x
UNITED STATES OF AMERICA :

- v. - : TO BE FILED UNDER SEAL

ALL FUNDS ON DEPOSIT AT NATIONAL : AFFIDAVIT IN SUPPORT
BANK OF CALIFORNIA IN ACCOUNT : OF SEIZURE WARRANTS
NUMBER 2547716 HELD IN THE NAME OF : PURSUANT TO 18 U.S.C.
VIABLE PROCESSING SOLUTIONS, AND : §§ 981, 984 & 1955
ALL PROPERTY TRACEABLE THERETO; AND :

ALL FUNDS ON DEPOSIT AT NATIONAL :
BANK OF CALIFORNIA IN ACCOUNT :
NUMBER 2778815 HELD IN THE NAME OF :
VIABLE PROCESSING SOLUTIONS, AND :
ALL PROPERTY TRACEABLE THERETO; :

Defendants-in-rem. :
- - - - - x

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss:
SOUTHERN DISTRICT OF NEW YORK)

DANA CONTE, being duly sworn, deposes and says:

1. I am a Special Agent with the Federal Bureau of
Investigation ("FBI") and have been so employed for approximately
five years. I am assigned to a squad that investigates financial
crimes, which includes financial institution fraud and money
laundering. I am familiar with the facts and circumstances set
forth below from my personal participation in the investigation,
my review of bank records and other documents, and my

conversations with civilian witnesses and other law enforcement officers. Where the actions, statements, and conversations of others are recounted herein, they are recounted in substance and in part, unless otherwise indicated. Because this affidavit is for the limited purpose of establishing probable cause for a seizure warrant, it does not set forth every fact learned in the course of this investigation.

2. This affidavit is submitted in support of the Government's application for the issuance of warrants to seize and forfeit the following:

- a. ALL FUNDS ON DEPOSIT AT NATIONAL BANK OF CALIFORNIA IN ACCOUNT NUMBER 2547716 HELD IN THE NAME OF VIABLE PROCESSING SOLUTIONS, AND ALL PROPERTY TRACEABLE THERETO (the "National Bank of California Viable Account-1"), AND
- b. ALL FUNDS ON DEPOSIT AT NATIONAL BANK OF CALIFORNIA IN ACCOUNT NUMBER 2778815 HELD IN THE NAME OF VIABLE PROCESSING SOLUTIONS, AND ALL PROPERTY TRACEABLE THERETO ("National Bank of California Viable Account-2"),

(the "Defendant Accounts").

3. As set forth below, there is probable cause to believe that the Defendant Accounts contain property involved in actual or attempted money laundering transactions, or property traceable to such property, in violation of 18 U.S.C. § 1956(a). As such, the Defendant Accounts are subject to forfeiture to the United States pursuant to 18 U.S.C. §§ 981(a)(1)(A) and 984.

4. In addition, there is probable cause to believe that the Defendant Accounts contain property that constitute or are derived from proceeds traceable to the operation of an illegal gambling business, in violation of 18 U.S.C. § 1955, and the illegal transmission of gambling information, in violation of 18 U.S.C. § 1084, and property used in the operation of an illegal gambling business and commission of the gambling offense. As such, the Defendant Accounts are subject to forfeiture to the United States pursuant to 18 U.S.C. §§ 981(a)(1)(C), 984, and 1955(d).

BACKGROUND

5. For approximately three years FBI agents have been investigating illegal internet gambling businesses which, although typically based offshore, predominantly serve players based in the United States. These gambling businesses offer "real money" casino games, poker, and sports betting to United States players, in violation of multiple federal criminal statutes including but not limited to 18 U.S.C. § 1084 (making it unlawful to use a wire in connection with placing a bet or wager), § 1955 (making it illegal to operate an illegal gambling business) and §§ 1956 and 1957 (money laundering).

6. Although illegal internet gambling companies keep their computer servers, management and support staff offshore, they must rely on the United States financial system both to

obtain money from gamblers and to pay those gamblers who wish to withdraw funds from the online gambling companies. However, because United States financial institutions generally refuse to handle financial transactions that they know to be related to internet gambling, the offshore internet gambling companies and the payment processors who serve them must, as a matter of course, make false representations to United States financial institutions in order to conduct these transactions.

7. The leading internet gambling companies hire processing companies who have the ability to withdraw funds directly from United States consumers' bank accounts through a process known as the Automated Clearinghouse (or "ACH") system. The ACH system, which is administered by the Federal Reserve, allows for fast and efficient electronic funds transfers to and from individuals' checking accounts through "e-checks" or "electronic checks." Payment processing companies with access to the ACH system can "pull" money from individual consumer bank accounts (i.e. debit the consumer's account) and route it to gambling companies (typically based abroad) and "push" money from the gambling companies into individual checking accounts to pay winnings (i.e. credit the consumer's account). Typically, a gambler simply logs onto the web site of an internet gambling company and chooses "e-check" or some similarly described option and enters his or her United States bank account information to

complete these transactions. The gambling companies rely on these payment processors with access to the ACH system because Visa and Mastercard make it difficult for the United States residents to fund gambling transactions with credit cards.

8. Because United States banks cannot lawfully process ACH payments relating to online gambling, the payment processing companies hired by the offshore internet gambling companies must take steps to deceive financial institutions in order to induce them to allow such ACH processing. For example, external payment processors may create phoney non-gambling internet businesses (complete with web pages, and in many cases corporate formalities) and represent to banks that they are processing on behalf of these businesses, and may employ "descriptors" for the transactions that would be transmitted through the ACH system that identified the transactions as being for various non-gambling web merchants. The "descriptors" would appear as text on the customer's bank statement - and be seen by the customer's bank - and would therefore make the transactions appear to relate to something other than gambling.

RELATED VIABLE MARKETING CORP. SEIZURE WARRANTS

9. On October 26, 2009, the Government sought a seizure warrant for the following property on the grounds that those funds (like the contents of the Defendant Accounts) consist of property involved in actual or attempted money laundering

transactions, or property traceable to such property, and consist of property that constitutes or is derived from proceeds traceable to the operation of an illegal gambling business, and the illegal transmission of gambling information, and property used in the operation of an illegal gambling business and commission of the gambling offense:

- a. ALL FUNDS ON DEPOSIT AT FIFTH THIRD BANK IN ACCOUNT NUMBERS 7431859508, HELD IN THE NAME OF VIABLE MARKETING CORP., AND ALL PROPERTY TRACEABLE THERETO;
- b. ALL FUNDS ON DEPOSIT AT FIFTH THIRD BANK IN ACCOUNT NUMBERS 7432618069, HELD IN THE NAME OF VIABLE MARKETING CORP., AND ALL PROPERTY TRACEABLE THERETO;
- c. ALL FUNDS ON DEPOSIT AT BANK OF AMERICA, IN ACCOUNT NUMBERS 229006067857, HELD IN THE NAME OF VIABLE MARKETING CORP., AND ALL PROPERTY TRACEABLE THERETO; and
- d. ALL FUNDS ON DEPOSIT AT BANK OF AMERICA, IN ACCOUNT NUMBERS 003678667131, HELD IN THE NAME OF EZO, LLC, AND ALL PROPERTY TRACEABLE THERETO;

(Collectively, the "Seized Accounts").

10. In support of the application for a seizure warrant for the Seized Accounts, the Government submitted the Affidavit of FBI Special Agent Rebecca E. Vassilakos (the "Vassilakos Affidavit"), which is attached hereto as Exhibit 1 and incorporated by reference herein. On the basis of the Vassilakos Affidavit, the Honorable Frank Maas, United States Magistrate Judge, Southern District of New York, issued seizure

warrants for the Seized Accounts, which are attached hereto as Exhibit 2. Judge Maas ordered that the Vassilakos Affidavit must remain under seal until further order of the Court.

11. As discussed more fully in the Vassilakos Affidavit, the Seized Accounts, like the Defendant Accounts that are the subject of this affidavit, were opened by Chad Elie or he was a signatory on the accounts, and there is probable cause to believe that the accounts contained property involved in actual or attempted money laundering transactions, or property traceable to such property; property that constituted or was derived from proceeds traceable to the operation of an illegal gambling business and the transmission of gambling information; and property used in the operation of an illegal gambling business and commission of the gambling offense.

RELATED CURTIS POPE COMPLAINT

12. On or about December 14, 2009, a criminal complaint against Curtis Pope was filed under seal in the Southern District of New York, charging Pope with conspiracy to commit money laundering in violation of Title 18, United States Code, Section 1956(h), conspiracy to commit bank fraud in violation of Title 18, United States Code, Section 1349, and conspiracy to run an illegal gambling business and to accept a financial instrument for unlawful internet gambling, in violation of Title 18, United States Code, Section 371. The complaint in

United States v. Curtis Pope, 09 Mag. 2697 (S.D.N.Y.) (the Pope Complaint"), attached hereto as Exhibit 3, was based on the sworn deposition of Special Agent Rebecca Vassilakos of the FBI. Based on the Pope Complaint the Honorable James C. Francis, IV, United States Magistrate Judge, Southern District of New York, issued a warrant for Pope's arrest.

13. As set forth in the Pope Complaint, beginning in 2008, Curtis Pope assisted a company based in Australia (the "Australian Gambling Processor") with the processing of hundreds of millions of dollars of gambling ACH transactions through United States banks. According to a former senior payment processing executive for one of the leading internet poker companies and a senior processing employee at an ACH payment processor that processed more than one hundred million dollars of gambling transactions through the ACH system in 2008 and 2009, the Australian Gambling Processor provided ACH payment processing for multiple online gambling websites in 2008, including the two leading online poker website serving the United States market.

14. On or about July 1, 2008, an associate of POPE's submitted an application to ECHO, an ACH processor, for ECHO to perform payment processing on behalf of a company called "Viable Processing Solutions" ("Viable"). According to the application materials, Viable was in the business of processing payday loans.

ECHO began processing ACH transactions for Viable on or about

September 16, 2008, and processed more than \$16 million in transactions over approximately five weeks through the National Bank of California. POPE was one of the contacts with the ECHO. Some of the transactions were from bank accounts located in the Southern District of New York.

15. On or about September 23, 2008, a manager from National Bank of California (the "NBC Account Manager") emailed two individuals at ECHO, noting a return of a \$100 ACH deposit made into a Viable bank account with the descriptor "increasedfunds.com." When the NBC Account Manager called the telephone number identified for "increasedfunds.com" he was referred to a customer support representative in Australia who stated that he worked for the Australian Gambling Processor. An individual from ECHO relayed these concerns to Curtis Pope, who initially responded in an email that this was simply the customer service center for Viable. In another email of that same day, drafted by one of Curtis Pope's associates ("Pope's Associate") and copied to Pope, Pope's Associate apologized for the "confusion" and claimed that the transactions actually were not for payday loans but were for "debit card loads for general e-commerce."

16. This explanation, however, did not satisfy the NBC Account Manager, who on October 7, 2008 emailed Pope's Associate that ECHO's security was looking at the account and they were

concerned by the fact that they had "at least 5 different descriptors . . . along with different 800 numbers" and that "everything is not OK" and that they are "required by NACHA and Visa/MC to validate the ownership of the transactions we are processing." Pope's Partner then forwarded the email to Pope and to the owner of the Australian Gambling processor with the comment "Folks: We need to stop doing business with ECHO quickly. It is a bomb waiting to go off." Pope's Associate forwarded the email chain relating to this issue to POPE again on February 17, 2009 commenting "[w]e were able to talk ourselves out of this one, but this is when it became apparent we were dealing with a time bomb."

17. Based on the above, ECHO ceased processing for the Viable account in October 2008 and the National Bank of California ultimately froze the account.

18. As described in the Pope Complaint, since that time, ECHO has conducted a preliminary analysis showing a significant overlap between bank accounts debited by Viable through ACH transactions and bank accounts used by NETeller's e-wallet customers. NETeller PLC was an on-line "e-wallet" that was primarily used by United States gamblers to transfer funds to and from internet gambling websites. In January 2007, NETeller PLC's founders were arrested and millions of dollars of NETeller PLC funds were seized.

19. After National Bank of California froze the Viable bank account, the bank received a letter from an attorney (the "Attorney") who stated that he represented the Australian Gambling Processor and that the Australian Gambling Processor was entitled, by assignment, to collect Viable funds held by National Bank of California.

20. On or about April 2, 2009, at approximately 3:18p.m. POPE forwarded a chain of emails reflecting the National Bank of California's decision to stop processing and seize funds. POPE wrote to a senior executive at one of the leading online poker websites serving the United States market: "As I said before anything I can do to help assist you getting your money back all you have to do is ask!"

THE DEFENDANT ACCOUNTS

21. I have reviewed records relating to the Defendant Accounts at National Bank of California and have spoken with another Special Agent with the FBI who in turn has spoken with employees of National Bank of California concerning the Defendant Accounts, including the NBC Account Manager, and I have reviewed reports of those discussions. From that review of records and reports and those discussions, I learned in substance and in part the following:

- a. The Defendant Accounts were opened on or about August 21, 2008. The signers on the

accounts were Chad Elie, Scott Clark,¹ and Jeff Nelson.

- b. National Bank of California required Viable to have a \$500,000 reserve bank account in addition to the processing account.
- c. National Bank of California Viable Account-1 is the merchant settlement account and National Bank of California Viable Account-2 is the reserve account.
- d. As of December 7, 2009, the balance of National Bank of California Viable Account-1 was approximately \$387,000 and the balance of National Bank of California Viable Account-2 was approximately \$506,000.

STATUTORY AUTHORITY

22. The statutory provisions pursuant to which the contents of the Defendant Accounts are subject to seizure and forfeiture are described below.

¹ Nelson and Clark were later removed as signatories and Jeremy Johnson was added. Scott Clark is John Scott Clark, who was charged in a sealed Complaint, 09 Mag. 1488 (S.D.N.Y.), on or about June 24, 2009, with conspiracy to commit money laundering pursuant to 18 U.S.C. § 1956(h), conspiracy to commit bank fraud pursuant to 18 U.S.C. § 1349, and conspiracy to commit illegal gambling offenses pursuant to 18 U.S.C. §§ 371 and 1955 and 31 U.S.C. §§ 5363 and 5366. That Complaint is described in Vassilakos Affidavit and attached thereto.

23. Title 18, United States Code, Section 981(a)(1)(A) subjects to forfeiture "[a]ny property, real or personal, involved in a transaction or attempted transaction in violation of . . . section 1956 . . . of this title, or any property traceable to such property."

24. Title 18, United States Code, Section 1956 provides, in pertinent part, that:

(a)(2) Whoever transports, transmits, or transfers, or attempts to transport, transmit, or transfer a monetary instrument or funds from a place in the United States to or through a place outside the United States or to a place in the United States from or through a place outside the United States--

(A) with the intent to promote the carrying on of specified unlawful activity

shall be guilty of a crime.

25. Title 18, United States Code, Section 1956(c)(7)(A) provides that the term "specified unlawful activity" includes "any act or activity constituting an offense listed in section 1961(1) of this title". Included among the enumerated offenses in 18 U.S.C. § 1961(1) is 18 U.S.C. § 1955, which prohibits the operating of illegal gambling businesses, 18 U.S.C. § 1084, and racketeering activity, which includes any act or threat involving gambling, which is chargeable under State law and punishable by imprisonment for more than one year.

26. Furthermore, 18 U.S.C. § 981(a)(1)(C) subjects to forfeiture:

Any property, real or personal, which constitutes or is derived from proceeds traceable to . . . any offense constituting 'specific unlawful activity' (as defined in section 1956(c)(7) of this title), or a conspiracy to commit such offense.

27. Again, as noted in paragraph 25, supra, 18 U.S.C. § 1956(c)(7)(A) provides that the term "specified unlawful activity" includes "any act or activity constituting an offense listed in section 1961(1) of this title," and § 1961(1) includes 18 U.S.C. §§ 1955 and 1084 among the enumerated offenses.

28. In addition, 18 U.S.C. § 1955 has its own forfeiture provision. Specifically, § 1955(d) provides that "[a]ny property, including money, used in violation of the provisions of this section may be seized and forfeited to the United States."

29. Furthermore, 18 U.S.C. § 984 provides, in relevant part, that:

(a) (1) In any forfeiture action in rem in which the subject property is . . . funds deposited in an account in a financial institution . . .

(A) it shall not be necessary for the Government to identify the specific property involved in the offense that is the basis for the forfeiture; and

(B) it shall not be a defense that the property involved in such an offense has

been removed and replaced by identical property.

(2) Except as provided in subsection (b), any identical property found in the same place or account as the property involved in the offense that is the basis for the forfeiture shall be subject to forfeiture under this section.

(b) No action pursuant to this section to forfeit property not traceable directly to the offense that is the basis for the forfeiture may be commenced more than 1 year from the date of the offense.

30. Section 981(b)(1) of Title 18, United States Code, provides that any property subject to forfeiture to the United States under 18 U.S.C. § 981(a) may be seized by the Attorney General. Section 981(b)(2) provides that such a seizure may be made "pursuant to a warrant obtained in the same manner as provided for a search warrant under the Federal Rules of Criminal Procedure."

31. In addition, Section 981(b)(3) provides that, notwithstanding the provisions of Federal Rule of Criminal Procedure 41(a), a seizure warrant may be issued pursuant to Section 981(b) by a judicial officer in any district in which a forfeiture action against the property may be filed under Title 28, United States Code, Section 1355(b). Under Section 1355(b)(1)(A), a forfeiture action or proceeding may be brought in the district in which any of the acts or omissions giving rise to the forfeiture occurred.

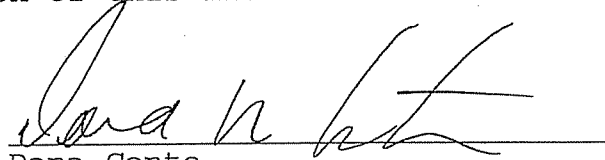
32. Were this affidavit to be made public at this time, it would interfere with an ongoing criminal investigation into certain individuals engaged in the criminal business of online gambling and money laundering. Making the affidavit public also would interfere with the ability of law enforcement officers to locate and seize the proceeds of criminal online gambling businesses.

33. Should the court issue a seizure warrant on the basis of this affidavit, making that warrant publicly available before it is executed could interfere with the ability of law enforcement officers to seize the Defendant Accounts before they are dissipated.

CONCLUSION

34. For the foregoing reasons, I submit that there is probable cause to believe that the Defendant Accounts contain (a) monies involved in a money laundering transaction or attempted money laundering transaction, in violation of 18 U.S.C. § 1956(a)(2)(A); and (b) the proceeds of illegal internet gambling and property involved in illegal internet gambling, in violation of 18 U.S.C. § 1955. Accordingly, the Defendant Accounts are subject to forfeiture to the United States of America pursuant to 18 U.S.C. §§ 981(a)(1)(A) and (C) and 1955, and I respectfully request that the Court issue a seizure warrant for the Defendant Accounts, as described in paragraph 2, supra.

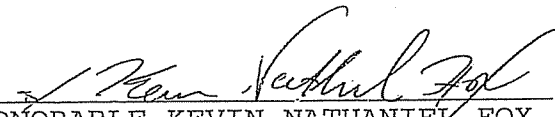
35. I also respectfully request that this Affidavit be sealed until further order of the Court and any warrant issued based on this Affidavit be sealed until it is executed, so as not to jeopardize the investigation of this matter.



Dana Conte
Special Agent
Federal Bureau of Investigation

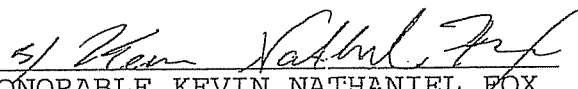
Sworn to before me this
day of February, 2010

19 FEB 2010


HONORABLE KEVIN NATHANIEL FOX
UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF NEW YORK

This Affidavit must remain under seal until further Order of the Court and the accompanying Seizure Warrant must remain under seal until it is executed.

SO ORDERED


HONORABLE KEVIN NATHANIEL FOX
UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF NEW YORK

19 FEB 2010

OMITTED

Exhibit 3

A. G. - N

Approved:

ARLO DEVLIN-BROWN / JONATHAN B. NEW
Assistant United States Attorneys

Before:

HONORABLE
United States Magistrate Judge
Southern District of New York

09 MAG 2697

UNITED STATES OF AMERICA

-v-

CURTIS POPE,

Defendant.

SEALED
COMPLAINT

Violation of

18 U.S.C. §§ 371,
1349, 1956(h)

COUNTY OF OFFENSE:
NEW YORK

x

SOUTHERN DISTRICT OF NEW YORK, ss.:

Rebecca E. Vassilakos, being duly sworn, deposes and says that she is a Special Agent with the Federal Bureau of Investigation and charges as follows:

COUNT ONE

1. From at least in or about February 2008 through at least in or about April 2009, in the Southern District of New York and elsewhere, CURTIS POPE, the defendant, and others known and unknown, unlawfully, wilfully and knowingly did combine, conspire, confederate and agree together and with each other to violate Title 18, United States Code, Section 1956.

2. It was a part and an object of said conspiracy that CURTIS POPE, the defendant, and others known and unknown, would and did transport, transmit, transfer and attempt to transport, transmit, and transfer a monetary instrument and funds from a place in the United States to or through a place outside the United States and to a place in the United States from or through a place outside the United States with intent to promote the carrying on of a specified unlawful activity, to wit, the operation of an illegal gambling business, in violation of Title 18, United States Code, Section 1956(a)(2)(A).

(18 U.S.C. § 1956(h))

COUNT TWO

3. From at least in or about February 2008 through at least in or about October 2008, in the Southern District of New

York and elsewhere, CURTIS POPE, the defendant, and others known and unknown, unlawfully, willfully, and knowingly did combine, conspire, confederate, and agree together and with each other to commit an offense under Chapter 63 of Title 18, United States Code, to wit, a violation of Title 18, United States Code, Section 1344.

4. It was a part and an object of the conspiracy that CURTIS POPE, the defendant, and others known and unknown, unlawfully, willfully, and knowingly would and did execute and attempt to execute a scheme and artifice to defraud a financial institution, the deposits of which were then insured by the Federal Deposit Insurance Corporation, to wit, Comerica Bank and the National Bank of California, and to obtain the moneys, funds, credits, assets, securities, and other property owned by and under the custody and control of, such financial institution, by means of false and fraudulent pretenses, representations and promises, in violation of Title 18, United States Code, Section 1344.

(18 U.S.C. § 1349).

COUNT THREE

5. From in or about February 2008 through at least in or about April 2009, in the Southern District of New York, and elsewhere CURTIS POPE, the defendant, and others known and unknown, unlawfully, willfully, and knowingly did combine, conspire, confederate, and agree together and with each other to commit an offense against the United States, to wit, violations of Title 18, United States Code, Section 1955 and Title 31, United States Code, Sections 5363 and 5366.

6. It was a part and an object of the conspiracy that CURTIS POPE, the defendant, and others known and unknown, unlawfully, willfully, and knowingly would and did conduct, finance, manage, supervise, direct, and own all and part of an illegal gambling business, namely a business that engaged in and facilitated online poker, in violation of New York State Penal Law Sections 225.00 and 225.05, and which business involved five and more persons who conducted, financed, managed, supervised, directed, and owned all and part of such business, and which business had been and remained in substantially continuous operation for a period in excess of thirty days and had gross revenues of \$2,000 in a single day, in violation of Title 18, United States Code, Section 1955.

7. It was further a part and an object of the conspiracy that CURTIS POPE, the defendant, and others known and unknown, unlawfully, willfully, and knowingly would, with persons engaged in the business of betting and wagering, knowingly accept, in connection with the participation of another person in

unlawful internet gambling, to wit, gambling in violation of New York Penal Law Sections 225.00 and 225.05, an electronic fund transfer and the proceeds of an electronic fund transfer from and on behalf of such other person, in violation of Title 31 United States Code, Sections 5363 and 5366.

OVERT ACTS

8. In furtherance of the conspiracy and to effect the illegal objects thereof, the following overt act, among others, was committed in the Southern District of New York:

a. In or about May 2008, POPE and other co-conspirators not named as defendants herein represented to an Automated Clearing House ("ACH") processor that they would be processing ACH payday lending transactions when in fact they intended to process internet gambling transactions, including in the Southern District of New York.

b. On multiple occasions in 2009 a cooperating witness received payout checks from two of the above three internet gambling companies at an address in the Southern District of New York.

(18 U.S.C. § 371).

The basis for deponent's knowledge and for the foregoing charges are, in part, as follows:

9. I am a Special Agent with the Federal Bureau of Investigation ("FBI") and have been so employed for two years. I am assigned to a squad that investigates organized crime, including "white collar" organized crime involving financial crime and money laundering. For approximately the past three years, the FBI has been conducting an industry-wide investigation into illegal internet gambling businesses. In connection with this investigation, I and other agents have interviewed dozens of witnesses, including senior employees of internet gambling businesses and of payment processing companies that serve these businesses. I and other agents have also reviewed documents provided by the above sources, as well as other documents, such as bank records reflecting financial transactions relating to internet gambling.

10. I am familiar with the facts and circumstances set forth below from my personal participation in the investigation, my review of bank records and other documents, and my conversations with civilian witnesses and other law enforcement officers, including the sources referenced in paragraph nine, above. Where the actions, statements, and conversations of others are recounted herein, they are recounted in substance and in part, unless otherwise indicated. Where the

affidavit contains items in quotation marks, those quotations are based on notes and draft transcripts and may not be completely verbatim. Because this affidavit is for the limited purpose of establishing probable cause an arrest warrant, it does not set forth every fact learned in the course of this investigation.

Background

11. I know from my involvement in this investigation that, beginning the late 1990s, various businesses - most of which were located outside of the United States - began offering various forms of "real money" online gambling over the internet to customers in the United States and around the world. The vast majority of users of these gambling websites were gamblers located in the United States. These websites offered a variety of games to bet on, ranging from sporting events to poker to casino games. These websites continued to operate notwithstanding warnings from the Department of Justice ("DOJ") that the operation of an internet gambling business violated multiple federal criminal laws, including but not limited to 18 U.S.C. §§ 1084, 1952 and 1955, and in spite of the federal prosecution of off-shore gambling businesses since at least in or about 1998, as in the case of *United States v. Cohen*, 260 F.3d 68 (2d Cir. 2001).

12. In October 2006, the Unlawful Internet Gambling Enforcement Act ("UIGEA"), 31 U.S.C. § 5361, et seq., was signed into law. The UIGEA makes it a crime for persons "engaged in the business of betting or wagering" to "knowingly accept" credit cards, electronic fund transfers, checks and other financial instruments in connection with unlawful internet gambling. 31 U.S.C. §§ 5363, 5366. Also in 2006 - both before and after the enactment of the UIGEA, and in reliance on federal statutes in effect prior to the passage of the UIGEA - DOJ brought several enforcement actions relating to internet gambling, including the arrest of the founder of BETONSPORTS, in July 2006, and the arrests in January 2007 of the founders of NETeller PLC, a on-line "e-wallet" that was primarily used by United States gamblers to transfer funds to and from internet gambling websites, including websites offering gambling on poker games exclusively.

13. Following the enactment of the UIGEA and the DOJ enforcement actions described above, several large industry leading publicly traded corporations that offered online gambling to United States residents stopped doing business in the United States. However, other privately held online gambling companies - which were either already offshore, or relocated offshore following the passage of the UIGEA - continued to market their games in the United States and to accept payments from United States customers.

"E-Check" Payment Processing For Offshore Internet Gambling Companies

14. Although illegal internet gambling companies keep their computer servers, management and support staff offshore, they must rely on the United States financial system both to obtain money from gamblers and to pay those gamblers who wish to withdraw funds from the online gambling companies. However, because United States financial institutions generally refuse to handle financial transactions that they know to be related to internet gambling, the offshore internet gambling companies and the payment processors who serve them must, as a matter of course, make false representations to United States financial institutions in order to conduct these transactions.

15. I know from the investigation, including from interviews with payment processing executives and the review of their documents, that the leading internet gambling companies hire processing companies who have the ability to withdraw funds directly from United States consumers' bank accounts through a process known as the Automated Clearinghouse (or "ACH") system. The ACH system, which is administered by the Federal Reserve, allows for fast and efficient electronic funds transfers to and from individuals' checking accounts through "e-checks" or "electronic checks." Payment processing companies with access to the ACH system can "pull" money from individual consumer bank accounts (i.e. debit the consumer's account) and route it to gambling companies (typically based abroad) and "push" money from the gambling companies into individual checking accounts to pay winnings (i.e. credit the consumer's account). Typically, a gambler simply logs onto the web site of an internet gambling company and chooses "e-check" or some similarly described option and enters his or her United States bank account information to complete these transactions. The gambling companies rely on these payment processors with access to the ACH system because Visa and Mastercard make it difficult for the United States residents to fund gambling transactions with credit cards.¹

¹ I know from conversations between another FBI agent and employees of Mastercard and Visa, as well as through other sources, that Mastercard and Visa require that internet gambling companies, through the banks serving them, apply a specific transaction code to credit card charges to fund the gambling accounts - "7995" - so that the member banks who issue the credit cards to United States customers know that the transaction is online gambling-related and can determine whether or not the bank will allow their cardholders to use their credit cards for internet gambling transactions. Virtually all United States issuing banks block their credit card holders from using their credit cards for "7995" coded gambling transactions. From speaking to several former employees of internet gambling companies I know that while there are ways to

16. Because United States banks cannot lawfully process ACH payments relating to online gambling, the payment processing companies hired by the offshore internet gambling companies must take steps to deceive financial institutions in order to induce them to allow such ACH processing. For example, other FBI agents (who relayed the information to me) have spoken to two senior employees ("Processing Employee 1" and "Processing Employee Two") of an ACH payment processor ("E-Check Processor 1") that in 2008 and 2009 processed more than one hundred million dollars of gambling transactions through the ACH system, and reviewed documents from this company. Processing Employee 1 and Processing Employee 2 explained that E-Check Processor 1 used various techniques to make it appear that the ACH gambling transactions were not gambling-related at all. For example, E-Check Processor 1 employed "descriptors" for the transactions that would be transmitted through the ACH system that identified the transactions as being for various non-gambling web merchants. The "descriptors" would appear as text on the customer's bank statement - and be seen by the customer's bank - and would therefore make the transactions appear to relate to something other than gambling. According to Processing Employee 1 and Processing Employee 2 individuals associated with the internet gambling companies and affiliated payment processors would create phony websites matching the descriptors so that if anyone checked it would appear that the descriptor and transaction were associated with a legitimate non-gambling business.

17. I and other agents have corroborated the fact that e-check processing for gambling companies typically uses the deceptive methods described above by speaking to various gamblers who have used e-checks to fund their internet gambling accounts. For example, another FBI agent has spoken to several gamblers about their e-check deposits in 2009 into accounts controlled by the two leading online poker website serving the United States market ("Poker Company 1" and "Poker Company 2"), and reviewed computer records and bank statements provided by these gamblers. The statements of these gamblers together with their records establish that ACH transactions initiated by Poker Company 1 and Poker Company 2 use non-poker related descriptors making the transactions appear to be for various forms of web shopping, and that the descriptors are linked to web sites that purport to be legitimate stores selling a wide variety of items, such as golf

defeat 7995 coding (such as by processing the credit card transactions under the cover of dummy corporations that are not on their face associated with gambling, and applying a non-gambling code to the transactions), the institution of 7995 coding has caused gambling companies to search increasingly for other payment methods, including ACH.

clubs and jewelry. Several of the gamblers attempted to order merchandise from some of these phony web stores without success and e-mails to the web stores discussing ordering difficulties were met with responses from customer service employees stating that they worked not for the web store but for an internet poker company.

CURTIS POPE'S INVOLVEMENT IN PROCESSING ACH TRANSACTIONS FOR THE ONLINE GAMBLING INDUSTRY

18. I know for the reasons set forth below that CURTIS POPE, the defendant, has played a substantial role in processing hundreds of millions of dollars of internet gambling ACH transactions - virtually all of which were disguised as some other type of transaction - for, among others, Poker Company 1 and Poker Company 2 in 2008 and 2009.

19. First, I know that beginning in 2008 CURTIS POPE assisted a company based in Australia (the "Australian Gambling Processor") with the processing of hundreds of millions of dollars of gambling ACH transactions through United States banks. Other FBI agents have spoken to a former senior payment processing executive for one of the leading internet poker companies ("Gambling Executive 1").² I know from conversations between FBI agents and Gambling Executive 1 and Processing Employee 1 that the Australian Gambling Processor provided ACH payment processing for multiple online gambling websites in 2008, including Poker Company 1 and Poker Company 2. For the reasons set forth below, I know that CURTIS POPE, the defendant, has established ACH processing accounts for the Australian Gambling Processor and is otherwise associated with that company. Specifically:

a. From speaking to a representative of a Bay Cities Bank and reviewing Bay Cities Bank records, I know that from February 2008 through July 2008, a company associated with POPE and a partner ("Pope's Partner") processed more than \$700,000,000 of ACH transactions through Bay Cities Bank under a variety of names but which Bay Cities Bank ultimately determined were transactions on behalf of the Australian Gambling Processor and directed Pope's Partner to terminate.

b. POPE and Pope's partner also operated a corporation named Quasar Corporate Services Inc., d/b/a Trendsact ("Quasar" or "Trendsact") which has provided assistance to the Australian

² Gambling Executive 1's information has proven to be reliable and has been corroborated by other sources.

Gambling Processor in its United States operations.³ For example, according to a representative of a property management company, and as corroborated by multiple e-mails to and from POPE, POPE leased home in Las Vegas as a "corporate rental" and then provided the space to the owner of the Australian Gambling Processor. Additionally, I have reviewed records and e-mails showing that an employee of Quasar obtained visas for the Australian Gambling Processor's employees and purchased computer equipment and furniture. I have also reviewed multiple e-mails and attachments between POPE and others reflecting that Quasar was managing approximately \$27 to \$28 million of assets on behalf of the Australian Gambling Processor.

20. I know from multiple sources - including from emails (some which of which are described below), conversations between other agents and Processing Employee 1, and from a lawsuit filed by Poker Company 2 in Australia - that by approximately March 2009 the Australian Gambling Processor had a falling out with Poker Company 1 and Poker Company 2 when the Australian Gambling Processor allegedly refused to transmit tens of millions of dollars it owed to internet gambling companies.⁴ I know from my review of e-mails between CURTIS POPE, the defendant, and senior executives from Poker Company 1 and Poker Company 2 that POPE then begin processing gambling transactions directly for Poker Company 1 and Poker Company 2. For example:

- a. On or about April 23, 2009 a senior executive from

³ POPE is one of the owner's of Quasar. According to an unsigned copy of a shareholder agreement I have reviewed, POPE is a 50% owner of Quasar Corporate Services Inc. ("Quasar"), with Pope's Partner owning the other 50%. POPE is also a singer on multiple Quasar corporate bank accounts. Additionally, according to a senior bank official that was exploring a business relationship with Quasar, POPE described himself as one of Quasar's owners.

⁴ As the relationship between the Australian Gambling Processor and Poker Company 1 and Poker Company 2 began to disintegrate in early 2009, POPE and his associates expressed concerns in e-mails about the position this had left them in. For example, on or about February 19, 2009 POPE sent an e-mail to an associate stating "[Pope's Partner] and I have tremendous exposure on the processing side. As you very well know, we are not making enough money to offset the risk." On or about March 12, 2009 the titular CEO of Quasar sent an e-mail to the owner of the Australian Gambling Company, copying POPE, stating that while he had agreed to be the CEO, "[a]t no time would I tie myself via employment to an organization which is/could be under federal scrutiny for illegal activity. Especially since I ACTUALLY reside in the US! (We all know what I am talking about here.)"

Poker Company 1 (the "Poker Company 1 Senior Executive") e-mailed POPE that "in accordance to our promise, we started processing with you with a volume of \$20k/day and will gradually increase as we progress. Tomorrow we will likely increase to \$50k if all goes well." POPE responded at approximately 4:36 p.m, copying the e-mail to, among others, a senior executive from Poker Company 2 (the "Poker Company 2 Senior Executive."). POPE wrote that "[t]he volume is great news and the future increase is even better news!" POPE also encouraged Poker Company 1 Senior Executive to speak to Poker Company 2 Senior Executive about the results of Poker Company 2's "site inspection report, which we feel is unparalleled" and included "tribal entity processing" and "US and Tribal Legal Opinions." POPE sent an additional e-mail on or about April 23, 2009 to Poker Company 1 Senior Executive (copying, again, Poker Company 2 Senior Executive) asking for processing "commitments for 750k to 1 mil per day combined . . . and ramping to 1.5 mil to 2 mil." On or about April 27, 2009 Poker Company 1 Senior Executive e-mailed POPE asking "to meet face to face with you . . . in the Isle of Man, our headquarters."

POPE's Scheme to Defraud E-Check Processor 2 & Comerica Bank

21. "E-Check Processor 2" is a service provider that contracts with merchants to provide them with ACH / e-check processing services. E-Check Processor 2 processes these transactions at accounts in multiple banks, including Comerica Bank, which is insured by the FDIC. E-Check Processor 2's agreement with Comerica Bank, which I have seen, provided that E-Check Processor 2 could only process transactions for certain lawful activities, and specifically excluded online gaming. Since 2007, E-Check Processor 2 has been cooperating with the Government in connection with this online gaming investigation.⁵

20. I have reviewed documents obtained from E-Check Processor 2 and I and other FBI agents have spoken to both the owner of E-Check Processor 2 (the "E-Check Processor 2 Owner") and the Risk Manager for E-Check Processor 2 ("the Risk Manager"), regarding payment processing E-Check Processor 2 engaged in on behalf of POPE, the defendant, Pope's Partner. Based on these conversations with the E-Check Processor 2 Owner, the Risk Manager, and a review of E-Check Processor 2 documents,

⁵ Prior to its cooperation, however, E-Check Processor 2 provided substantial ACH processing for NETeller PLC. Although customers could theoretically use NETeller's e-wallet for non-gambling purposes, NETeller's e-wallet was in fact overwhelmingly used for gambling. In January 2007, millions of dollars of NETeller PLC funds were seized, including approximately forty-six million dollars held in bank accounts by E-Check Processor 2, in connection with the arrest of two NETeller PLC founders.

I am aware that POPE and Pope's Partner sought and obtained an agreement with E-Check Processor 2 to provide ACH processing services for what they claimed were payday loan businesses. Specifically:

a. In approximately May 2008, Pope's Partner caused an application to be submitted to E-Check Processor 2 on behalf of "Draftlink LLC," representing in the application that Draftlink was in the business of processing ACH payments from individuals who wanted to use their bank accounts to repay money owed for payday loans. POPE told the Risk Manager that he was the Chief of Marketing for Draftlink. POPE and Pope's Partner sought E-Check Processor 2's services in obtaining a bank account through which Draftlink would be able to process the "payday loan" repayments and E-Check Processor 2's services in processing the ACH transactions in that bank account through the ACH network.

b. After performing some initial due diligence and reviewing the web site for Draftlink - which, on its face, appeared to be a payday loan website, albeit one not presently functioning - E-Check Processor 2 agreed to process transactions for Draftlink through an account at Comerica Bank. The agreement initially provided that E-Check Processor 2 would hold the first \$6,000,000 of incoming ACH payments from the individuals repaying their alleged loans as a reserve against chargebacks (payments back to the debited consumer account where the account lacked sufficient funds, or where the consumer disputes the charge) and other problems.

21. From conversations with the E-Check Processor 2 Owner, the Risk Manager, and my review of E-Check Processor 2 documents, I learned that in approximately June 2008 E-Check Processor 2 began processing transactions for DraftLink LLC through a Comerica Bank account. This included processing ACH debits from bank accounts located in the Southern District of New York. Shortly after it started processing these transactions, however, E-Check Processor 2 learned that Draftlink was not processing "payday loan" repayments as POPE and Pope's Partner, the defendant, had represented, but was instead processing illegal gambling transactions. E-Check Processor 2 came to this conclusion based on the following information:

a. After approximately one week of processing, the Risk Manager noted that many of the payments from United States customers for DraftLink LLC were in amounts of hundreds of dollars, and, in numerous cases, the same customers would make deposits several days in a row. E-Check Processor 2 had processed payments for other payday lenders before and, in the experience of E-Check Processor 2, true repayments of payday loans were typically for smaller dollar amounts and were made at regular periodic intervals (such as weekly) and not several days in a row.

b. The Risk Manager looked at the web sites for the supposed "payday loan" services that had been provided to E-Check Processor 2 and learned that the sites did not actually enable an individual to obtain or repay a payday loan and, instead, appeared to be inoperative. When E-Check Processor 2 asked representatives of DraftLink LLC, to provide "proof of authorization" for a sampling of the transactions - that is, screen shots or some other proof that the customer had authorized DraftLink LLC to make the debit on a payday loan website, and proof of the purpose of the debit - DraftLink LLC was unwilling to do so.

c. The Risk Manager then checked some of the names of the individuals whose accounts were debited through DraftLink LLC and found that several of these individuals had previously been customers of NETeller PLC - an "e-wallet" used predominantly for gambling. A further, more comprehensive, study by E-Check Processor 2 revealed that approximately 30% to 35% of the U.S. bank accounts making supposed "payday" loan payments to Draftlink LLC through E-Check Processor 2 previously had been used to fund e-wallet accounts with NETeller PLC.

22. On or about July 8, 2008, E-Check Processor 2 stopped processing transactions for Draftlink and informed the FBI that the Draftlink account appeared to be used to fund online gambling transactions. Subsequently, the Risk Manager informed CURTIS POPE, the defendant, and his associates, that E-Check Processor 2 would stop processing for Draftlink and hold onto the funds in Draftlink's account at Comerica Bank (by then, approximately \$3million) while it reviewed the transactions. While neither the Risk Manager nor anyone else at E-Check Processor 2 told POPE or his associates that they were investigating gambling, POPE asked the Risk Manager if the bank suspected the transactions were related to internet gambling.

23. CURTIS POPE, the defendant, and his associates refused to accept E-Check Processor 2's decision to stop processing Draftlink's transactions and to hold onto approximately \$3 million dollars in the Comerica Bank account, and demanded that the Risk Manager repay POPE and Pope's Partner immediately, notwithstanding the fact that under Draftlink's agreement with E-Check Processor 2, E-Check Processor 2 had up to two years' to return the majority of the funds if suspicious transactions were identified in the processing account. The Risk Manager told POPE and his associates that the money could not be returned because the bank had put a hold on the funds while awaiting proof that the transactions were valid.⁶ POPE then

⁶ On or about September 9, 2008, a United States Magistrate Judge issued an order directing that the funds held for Draftlink LLC, which by then had been transferred to Bank of the West, be

called the Risk Manager and stated that he would "fucking kill" her or anyone who was holding their money and further told the Risk Manager that they intended to "show up at your office in Dallas." Risk Manager 1 took this as a threat and was frightened.

24. In September, 2008 another FBI Agent spoke to one of the individuals whose checking account was debited by "Draftlink" through E-Check Processor 2 and s/he stated that the transaction had been to fund his/her internet gambling account at either Poker Company 1 or Poker Company 2.

POPE's Scheme to Defraud ECHO & The National Bank of California

25. In July, 2008 - around the time that CURTIS POPE, the defendant, encountered difficulties processing transactions through E-Check Processor 2 - POPE and Pope's Partner sought to obtain ACH processing services from ECHO, a division of Intuit, for what they claimed were "payday loan" processing.⁷ I have spoken to representatives of ECHO and National Bank of California (which is insured by the FDIC), reviewed documents provided by these sources, and reviewed e-mails between POPE and others about these events. From these sources, I know the following:

a. On or about July 1, 2008, an associate of POPE's submitted an application to ECHO for ECHO to perform payment processing on behalf of a company called "Viable Processing Solutions" ("Viable") which, according to the application materials, was in the business of processing payday loans. ECHO began processing ACH transactions for Viable on or about September 16, 2008, and processed more than \$16 million in transactions over approximately five weeks through the National Bank of California. POPE was one of the contacts with the ECHO. Some of the transactions were from bank accounts located in the Southern District of New York.

b. On or about September 23, 2008, a manager from National Bank of California (the "NBC Account Manager") e-mailed two individuals at ECHO, noting a return of a \$100 ACH deposit made into the Viable bank account with the descriptor "increasedfunds.com." When the NBC Account Manager called the telephone number identified for "increasedfunds.com" he was referred to a customer support representative in Australia who stated that he worked for the Australian Gambling Processor. As

seized as proceeds of illegal gambling.

⁷ On or about March 26, 2007, ECHO entered into a non-prosecution agreement with the United States Attorney's Office for the Southern District of New York concerning ECHO's processing of internet gambling transactions for NETeller PLC.

described in paragraph 19 above, the Australian Gambling Processor is a payment processor serving the internet gambling industry. An individual from ECHO relayed these concerns to POPE, who initially responded in an e-mail that this was simply the customer service center for Viable. In another e-mail of that same day, drafted by one of POPE's associates ("Pope's Associate" and copied to POPE, Pope's Associate apologized for the "confusion" and claimed that the transactions actually were not for payday loans but were for "debit card loads for general e-commerce."

c. This explanation, however, did not satisfy the NBC Account Manager, who on October 7, 2008 e-mailed Pope's Associate that ECHO's security was looking at the account and they were concerned by the fact that they had "at least 5 different descriptors . . . along with different 800 numbers" and that "everything is not OK" and that they are "required by NACHA and Visa/MC to validate the ownership of the transactions we are processing." Pope's Partner then forwarded the e-mail to POPE and to the owner of the Australian Gambling processor with the comment "Folks: We need to stop doing business with ECHO quickly. It is a bomb waiting to go off." Pope's Associate forwarded the e-mail chain relating to this issue to POPE again on February 17, 2009 commenting "[w]e were able to talk ourselves out of this one, but this is when it became apparent we were dealing with a time bomb."

d. Based on the above, ECHO ceased processing for the Viable account in October 2008 and the National Bank of California ultimately froze the account. Since that time, ECHO has conducted a preliminary analysis showing a significant overlap between bank accounts used by NETeller's e-wallet customers and bank accounts debited by Viable through ACH transactions. Also, after National Bank of California froze the Viable bank account, the bank received a letter from an attorney (the "Attorney") who stated that he represented the Australian Gambling Processor and that the Australian Gambling Processor was entitled, by assignment, to collect Viable funds held by National Bank of California.

e. On or about April 2, 2009, at approximately 3:18p.m. POPE forwarded a chain of e-mails reflecting the National Bank of California's decision to stop processing and seize funds. POPE wrote to Poker Company 1 Senior Executive: "As I said before anything I can do to help assist you getting your money back all you have to do is ask!"

WHEREFORE, deponent prays that an arrest warrant be issued for CURTIS POPE, the defendant, and that he be arrested and imprisoned or bailed as the case may be.

Rebecca E. Vassilakos

REBECCA E. VASSILAKOS
SPECIAL AGENT

~~DEC 14 2009~~ FEDERAL BUREAU OF INVESTIGATION

Sworn to before me this
__th day of December 2009

HONORABLE *J. James C. Francis IV*
UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF NEW YORK

JAMES C. FRANCIS IV
UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF NEW YORK