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UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

In re:)
) **CHAPTER 7**
)
KENT & HEIDI POWELL,) **BANKRUPTCY NO. 12-11140**
)
) **RESPONSE DECLARATION**
 Debtors.) **OF HEIDI POWELL**
)

I, Heidi Powell, hereby declare under penalty of perjury under the laws of the State of Washington, as follows:

I am Heidi Powell a named debtor, along with my husband Kent Powell in the bankruptcy case 12-11140 I am the rightful owner of the domain name <http://www.heidipowell.com>

I submit this declaration in support of debtor’s response in opposition to trustee’s motion dated 5-15-2017 to assume our executory contract and to sell my domain name and related contract rights with Godaddy to someone with my same name, Heidi Powell from Arizona.

My Domain Name and related contract rights with Godaddy cannot be sold or transferred to another person. Selling or transferring them would violate several terms of our agreement with Godaddy, cause a breach of agreement that would adversely affect us and violate privacy rights. Terms and privacy rights that would be violated are located on both the “Universal Terms of

**RESPONSE DECLARATION
OF HEIDI POWELL -1-**

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1 Service Agreement” <https://www.godaddy.com/legal-agreements.aspx?otab=2> and the “Godaddy
2 Domain Name Registration Agreement”

3 https://ie.godaddy.com/agreements/showdoc.aspx?pageid=REG_SA
4

5 **Universal Terms of Service Agreement**

6 **Under #5 – 3**

7
8 5. GENERAL RULES OF CONDUCT

9 1.

10 2.

11 3. You will not use this Site or the Services in a manner (as determined by
12 GoDaddy in its sole and absolute discretion) that:

- 13 ○ Violates the privacy or publicity rights of another User or any
14 other person or entity, or breaches any duty of confidentiality
15 that you owe to another User or any other person or entity;

16 The Godaddy website cannot be used by anyone violating the privacy rights of another person or
17 breaches any duty of confidentiality owed to another user. Selling my personal contract with
18 Godaddy, which is inextricably intertwined with my domain name and inextricably intertwined
19 with my email address, which is a vehicle for my confidential, electronic communications would
20 be a violation of my privacy rights and the privacy rights of the people I communicate with.
21 Another person cannot legally, without my permission act on my behalf to receive, read, reply or
22 send private communications to and from parties that I have ongoing, unending email
23 conversations with and have had for close to twelve years. This other person has my same name
24 but she is not me. It would be a violation of my privacy rights and the privacy rights of people I
25 communicate with to sell her (or anyone) my contract rights, giving her the ability to view and
26 reply to my private communications and the ability to learn confidential information contained in
27 these emails. My Godaddy contract rights are inextricably intertwined with my email address
28 heidi@heidipowell.com and all email communications that come through the domain
heidipowell.com. All email communications that come through the heidipowell.com domain are

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1 private and specific to me. I am not a business. Business law should not apply here. I am a person
2 and the domain and email represent me the person “Heidi Powell”. No other person can assume
3 those communications without posing as me, assuming my identity and infringing on my privacy
4 rights. Just because Arizona Heidi Powell has the same name as I do does not make it legal for her
5 to assume access to my private communications.

6
7 **Violation of Terms under “Godaddy Domain Name Registration Agreement”**

8 https://ie.godaddy.com/agreements/showdoc.aspx?pageid=REG_SA

9
10 **8. YOUR OBLIGATIONS; SUSPENSION OF SERVICES; BREACH OF AGREEMENT**

11 You represent and warrant to the best of your knowledge that, neither the
12 registration of the domain nor the manner it is directly or indirectly used, infringes
13 the legal rights of any third party.

14 The act of taking away and selling my contract rights, which is inextricably
15 intertwined with my domain name and inextricably intertwined with my email
16 address and it’s confidential, electronic communications would lead the purchasing
17 party to directly infringe on my legal privacy rights. A sale would give the
18 purchasing party direct access to my private email address which in turn receives
19 email communications and replies to existing conversations that are intended for
20 me and me alone. Selling my contract rights to my email communications is
21 something like selling the rights to my Social Security Number. My domain is
22 inextricably intertwined with my email communications and is my online identity.
23 My email address is tied to account logins as a personal identifier. I have had email
24 communications for close to twelve years coming to and from the
25 @heidipowell.com domain. I average around twenty emails that come in daily.
26 Not counting replies back and forth that equals over 84,500 private email
27 communications that are in circulation that are being added to daily. Taking away
28 my ability to respond to incoming emails and selling those rights to someone that
is not me is a giant violation of my privacy rights and would constitute a breach of
the Godaddy terms by anyone assuming my role as the receiver, reader and replier
of those private communications between me and other private parties.

The domain cannot be transferred in accordance with our Godaddy contract, which includes
“Ownership Protection”.

**RESPONSE DECLARATION
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1 **11. DOMAIN ADD-ONS**

2
3 **Ownership Protection.** The ownership protection service generally allow You
4 to: (i) protect against losing a domain name; (ii) disallow the transfer of a domain
5 name while this Service is active on that name; and (iii) receive an annual domain
6 name report detailing the status of all domain names protected under this
7 Service. Subject to applicable rules, domain names can be transferred from
8 registrar to registrar and from registrant to registrant. However, the Service protects
9 against and prevent both kinds of transfers. Once You have elected to purchase the
10 Service for any and all domain names, the automatic renewal function will be
11 activated for each domain name and those names will not be transferable until the
12 renewal of the Service. Accordingly, You acknowledge and agree You have
carefully considered the implications accompanying the purchase of the Service
and understand the restrictions the Service will place upon Your ability to transfer
any domain names for which You have purchased the Service. You further
acknowledge and agree any domain name for which You have purchased the
Service will not be transferable for any reason until the next regularly occurring
renewal of such domain name, provided.

13 The domain cannot be transferred in accordance with our Godaddy contract, which includes
14 “Ownership Protection” until 2021 at which time the service can be automatically renewed.
15 Ownership protection does not allow our domain name contract to be transferred for any reason.
16 Any attempted transfer would lead to a breach of our Godaddy agreement.
17

18 **BREACH OF AGREEMENT**

19 **You agree that your failure to comply completely with the terms and**
20 **conditions of this Agreement** and any GoDaddy rule or policy may be considered
21 by GoDaddy to be a material breach of this Agreement and GoDaddy may provide
22 you with notice of such breach either in writing or electronically (i.e. email). In the
23 event you do not provide GoDaddy with material evidence that you have not
24 breached your obligations to GoDaddy within ten (10) business days, GoDaddy
25 may terminate its relationship with you and take any remedial action available to
26 GoDaddy under the applicable laws. Such remedial action may be implemented
27 without notice to you and may include, but is not limited to, cancelling the
28 registration of any of your domain names and discontinuing any services provided
by GoDaddy to you. No fees will be refunded to you should your Services be
cancelled or terminated because of a breach.

**RESPONSE DECLARATION
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1 A breach of our agreement would adversely affect us. In the event of a breach of our
2 Godaddy contract, Godaddy would have the right to cancel all our domain names and take away
3 other email services they provide to us. Losing all our domain names and services they provide
4 to us would cause an undue hardship effecting Kent's job, daily communications with his
5 employer, clients, business accounts, account logins that use email addresses tied to domains and
6 personal daily life communications. It would cause an undue hardship effecting my website
7 building business's website, email communications with clients, business accounts and account
8 logins that use email addresses tied to domains.
9

10 The heidipowell.com domain was purchased solely to be used as an email address and was
11 never intended to be used as a website. It has never been for sale and I would never willfully sell
12 it. The domain is a part of and intertwined with my life and ability to communicate. I actively
13 receive emails on a daily basis through this domain and in fact will be emailing this declaration to
14 our attorney via heidi@heidipowell.com All communication regarding this issue funnels through
15 this email address. I am very concerned about the possibility of losing it and how that would
16 adversely affect many aspects of my life, most importantly my privacy and ability to communicate
17 with my world. I believe that our contract with Godaddy is a "Personal Service Agreement"
18 because of the nature the domain is used. I have researched "executory contracts" and learned that
19 an executory contract that is a "personal service agreement" cannot be taken or assumed in a
20 bankruptcy and are not part of an estate.
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24 Last August, a month after Arizona Heidi filed her frivolous cybersquatting lawsuit against
25 us, I received an email to heidi@heidipowell.com from my elderly, 98 year old uncle who resides
26 in Virginia. The email he sent to me was to notify me that my aunt had passed away. It was at the
27 moment I opened that email that I realized how big of a privacy issue the act of taking away my
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1 name would be. Had the other Heidi been successful at taking away my name I would not have
2 known of my aunt's death. She would have received the private email my uncle intended for me,
3 something that only I could have responded to. Because of the sensitive nature of the email
4 message it would have been a violation of my privacy as well as his. Future emails that are intended
5 for me cannot be acted upon by someone other than me.
6

7 Being uncertain of the outcome here I have requested some contacts to email me at my
8 business address instead of @heidipowell.com. In doing so something interesting and very
9 alarming has happened. Emails are coming into each account randomly from the same parties. An
10 email from an organization given the other address just came in a couple of days ago. Whatcom
11 County Sheriff's Department, Division of Emergency Management sent me a private
12 communication regarding my participation with CERT in the Canada/US Resiliency Experiment
13 V (Cause V). Emails regarding emergency management planning are not confidential but could
14 be crucial in an emergency if they don't arrive to the person the communication is being sent to.
15 Had this other person been sold my domain they would have received this communication that was
16 meant for me. After receiving it they would have had the opportunity to open it and read it and that
17 would be wrong and a violation of privacy. After close to twelve years of using the address it is
18 tied to me, intertwined with me. When a person moves they can put in a change of address and
19 their mail goes to their new house. There is no way to put in a change of address for an email
20 address. It is not possible to stop people from sending email intended for me to
21 heidi@heidipowell.com If you approve a sale of my domain to this other person it will cause my
22 ability to receive and answer communications that are rightfully directed at and intended for me to
23 cease. If that happens Arizona Heidi would be receiving and acting upon future emails meant for
24 me. Another person cannot act as me. That would be a form of identity theft, a violation of my
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**RESPONSE DECLARATION
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1 rights, a violation of the rights of the senders/repliers. No one can act in/on my behalf without my
2 permission and is the number one most important reason why my domain contract with Godaddy
3 cannot be sold to another person.

4
5 For all the above reasons, I respectfully request of you to deny the trustee's motion to sell
6 my contract rights to the heidipowell.com domain.

7 **DATED** this 7th day of June, 2017 at Bellingham, Washington.

8
9 /s/ Heidi Powell
10 **Heidi Powell**

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**RESPONSE DECLARATION
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