

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

MICROSOFT CORPORATION, a
Washington corporation,

Plaintiff,

v.

JOHN DOES 1-2, CONTROLLING
A COMPUTER NETWORK AND
THEREBY INJURING PLAINTIFF
AND ITS CUSTOMERS,

Defendants.

Civil Action No: 1:22-cv-607-AJT-WEF

MICROSOFT’S REQUEST FOR ENTRY OF DEFAULT

Pursuant to Federal Rule of Civil Procedure 55(a), Plaintiff Microsoft Corporation (“Microsoft” or “Plaintiff”) requests the Clerk of the Court enter default against Defendants John Does 1-2. As detailed below, Plaintiff served Defendants with the Complaint, summons and related material through Court-ordered methods pursuant to Fed. R. Civ. P. 4(f)(3) that were reasonably calculated to provide Defendants with notice of the proceedings. Dkts. 16 at p. 10 and Dkt. 24 at p. 3 (TRO and Preliminary Injunction authorizing alternative methods of service, including particularly e-mail and Internet publication). Defendants received notice and are very likely aware of these proceedings, and despite receiving notice have not appeared in this action. The time for Defendants to appear and response to Plaintiffs Complaint has now expired. Upon the Court’s entry of default pursuant to this request, Plaintiff intends, thereafter, to file a motion for default judgment and permanent injunction pursuant to Fed. R. Civ. P. 55(b)(2).

I. STATEMENT OF FACTS

This action arises out of violations of federal and state law caused by John Does

Defendants' Internet-based spearphishing operation referred to as "Bohrium." Through the Bohrium operation, Defendants are engaged in using fictitious social media profiles to obtain personal information of the victims. This in turn is used to steal credentials and break into the Microsoft accounts and computer networks of Microsoft's customers and steal highly sensitive information. To manage and direct Bohrium, Defendants have established and operate a network of websites, domains, and computers on the Internet, which they use to target their victims, compromise their online accounts, infect their computing devices, compromise the security of their networks, and steal sensitive information from them. Defendants are the persons responsible for operating Internet domains used to propagate and control the Bohrium operation. Dkt. 1. On May 27, 2022, the Court entered a TRO that disabled much of the Defendants' technical infrastructure used to carry out attacks to steal information and intellectual property. Dkt. 16. On June 10, 2022, the Court entered a Preliminary Injunction to ensure that Defendants' infrastructure cannot cause further harm. Dkt. 24.

When the Court issued the TRO and Preliminary Injunction, the Court found good cause to permit service of Plaintiffs Complaint and related materials by alternative means pursuant to Rule 4(f)(3). Dkts. 16 at p. 10 and 24 at p. 3. The Court has directed that, under the circumstances, appropriate means of service sufficient to satisfy Due Process includes e-mails to the e-mail accounts associated with Defendants and publication on a publicly available Internet website. *Id.*

II. Service of Process on Defendants

The Court authorized service by e-mail and publication on May 27, 2022. Dkt. 16 at p. 10. On June 2, 2022, Plaintiff served e-mail addresses associated with Defendants' Internet domains. Declaration of Gabriel M. Ramsey in Support of Plaintiffs' Request for Entry of

Default (“Ramsey Decl.”) ¶¶ 9-19. Plaintiffs also served Defendants by publication beginning on June 2, 2022 at the website www.noticeofpleadings.com/bohrium. *Id.* ¶¶ 9-11. Plaintiffs used an e-mail tracking service to monitor whether service e-mails were received and read. *Id.* ¶ 17. The service of process e-mails were opened and viewed by the Defendants. *Id.* The time for Defendants to answer or respond to the complaint expired 21 days after service of the summons—on June 23, 2022 (21 days after e-mail service). *Id.* ¶ 4. To the best of Plaintiffs information and belief, no Defendant is a minor or incompetent person, or unable to respond due to the absence caused by military service. *Id.*

III. LEGAL AUTHORITY

“When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party’s default.” Fed. R. Civ. P. 55(a). Plaintiff has served the Complaint, summons, and all orders and pleadings on Defendants using the methods ordered by the Court under Rule 4(f)(3), including service by email and mail publication. These methods of service satisfy Due Process and were reasonably calculated to notify the Defendants of this action, particularly given the nature of Defendants’ conduct. *See e.g., FMAC Loan Receivables v. Dagra*, 228 F.R.D. 531, 535-36 (E.D. Va. 2005) (authorizing service via nontraditional means under Rule 4(f)(3); *AllscriptsMisys, LLC v. Am. Dig. Networks, LLC*, 2010 U.S. Dist. LEXIS 4450, at *3 (D. Md. 2010) (allowing notice of TRO via telephone, electronic means, or by mail or delivery service); *Rio Props., Inc. v. Rio Int'l Interlink*, 284 F.3d 1007, 1014-15 (9th Cir. 2002) (involving Internet-based misconduct; “[Defendant] had neither an office nor a door; it had only a computer terminal. If any method of communication is reasonably calculated to provide [Defendant] with notice, surely it is email”).

As explained above, Plaintiff successfully sent service e-mails to the e-mail addresses associated with the Defendants and their domains used to carry out cybercrime, unauthorized intrusion, hacking and theft of sensitive information and intellectual property. Ramsey Decl. ¶¶ 5, 21. Given that Defendants' preferred mode of communication regarding the domains was via electronic means, given the direct association between the e-mail addresses and the domains, and given that the pleadings were successfully sent to such addresses, it is appropriate to find that the Complaint and summons were served on Defendants pursuant to this Court's order. *Id.* ¶¶ 5, 6, 14, 20-22. While Defendants' specific physical addresses are unknown, the evidence indicates that Defendants carry out business through the e-mail addresses. *Id.* ¶¶ 24-25. Moreover, it is likely that Defendants are aware of the notice website, which has been publicly available since June 2, 2022 and was included in the e-mails to the Defendants. *Id.* ¶ 11. Defendants are undoubtedly aware that they have lost control of much of their harmful infrastructure, pursuant to the Court's injunctions, and any cursory investigation would reveal that Plaintiff has initiated this lawsuit. Ramsey Decl. ¶ 6.

Therefore, pursuant to Fed. R. Civ. P. 55(a), entry of default against the nonresponsive Defendants is appropriate here. *See 3M Co. v. Christian Invs. LLC*, 2011 WL 3678144, at *4 (E.D. Va. Aug. 19, 2011) (default entered against non-responsive international defendant served pursuant to Rule 4(f)).

IV. CONCLUSION

For all the foregoing reasons, entry of default against the John Doe Defendants 1-2 is appropriate. Plaintiff respectfully requests entry of default pursuant to Rule 55(a) so that Plaintiff can proceed with a motion for default judgment and permanent injunction.

Dated: May 2, 2023

Respectfully submitted,

/s/ David Ervin

David Ervin (VA Bar. No. 34719)
Garylene Javier (*pro hac vice*)
CROWELL & MORING LLP
1001 Pennsylvania Avenue NW
Washington DC 20004-2595
Telephone: (202) 624-2500
Fax: (202) 628-5116
dervin@crowell.com
gjavier@crowell.com

Gabriel M. Ramsey (*pro hac vice*)
Anna Z. Saber (*pro hac vice*)
CROWELL & MORING LLP
3 Embarcadero Center, 26th Floor
San Francisco, CA 94111
Telephone: (415) 986-2800
Fax: (415) 986-2827
gramsey@crowell.com
asaber@crowell.com

Attorneys for Plaintiff Microsoft Corp.

CERTIFICATE OF SERVICE

I hereby certify that on May 2, 2023, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system. Copies of the foregoing were also served on the defendants listed below by electronic mail:

John Does 1-2 c/o

shashankvashist8@gmail.com
proxy@whoisprotectservice.com
a1608ba6e3474ec39c199d7393d6197c.protect@withheldforprivacy.com
c9cd38cd98544330b9d1ee01d2274c51.protect@withheldforprivacy.com
pw-a60513b92fbdf8a76f7992b8aeae8bd@privacyguardian.org
jatin.hariani2@gmail.com
2718c72e76ca4c9fbef4b8519e55fa82.protect@withheldforprivacy.com
sitesanalyzer.com-registrant@directnicwhoiscompliance.com
a37d251531904cd69d7b8a18f3a3e933.protect@withheldforprivacy.com
jatin.hariani2019@protonmail.com
pw-444878576c12808ba2d6242daa9219ed@privacyguardian.org
1bc09a1d8a5240558bf84382c0e5725f.protect@withheldforprivacy.com
pw-4d4e978a1b05a4d5140ea4fb59f6f46a@privacyguardian.org

/s/ David Ervin

David Ervin (VA Bar No. 34719)
CROWELL & MORING LLP
1001 Pennsylvania Avenue NW
Washington DC 20004-2595
Telephone: (202) 624-2500
Fax: (202) 628-5116
dervin@crowell.com

Attorneys for Plaintiff Microsoft Corp.