

**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
THEREBY INJURING PLAINTIFF
AND ITS CUSTOMERS,

Defendants.

MICROSOFT'S REQUEST FOR ENTRY OF DEFAULT

Pursuant to Federal Rule of Civil Procedure 55(a), Plaintiff Microsoft Corp. (“Microsoft”) requests that the Clerk of the Court enter default against Defendants John Does 1-2. As detailed below, Microsoft served Defendants with the Complaint, summons and related materials 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. Dkt. 18 at p. 6, 8; Dkt. 27 at p. 8, 10-11 (authorizing alternative methods of service, including particularly email 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 respond to Microsoft’s Complaint has now expired.

Upon the Court's entry of default pursuant to this request, Microsoft 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 Doe Defendants' operation of an Internet-based cybercriminal operation. Defendants are the persons responsible for operating Internet domain names used to propagate and control the cybercrime operation. On July 16, 2021, the Court entered a TRO that disabled much of the Defendants' technical infrastructure used to carry out attacks and to steal information and intellectual property. Dkt. 18. The Court subsequently entered a Preliminary Injunction to ensure that Defendants' infrastructure cannot cause further harm. Dkt. 27.

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). Dkt. 18 at p. 6, 8; Dkt. 27 at p. 8, 10-11. The Court has directed that, under the circumstances, appropriate means of service sufficient to satisfy Due Process include emails to email accounts associated with Defendants and publication on a publicly available Internet website. *Id.*

The Court further granted Plaintiffs the ability to pursue discovery, in order to obtain further contact and identifying information regarding Defendants. Dkt. 28. Doe discovery is now complete. Because Defendants used fake contact information, anonymous Bitcoin and Perfect Money digital currencies, and sophisticated technical means to conceal their identities, when setting up and using the relevant domains, Defendants' true identities remain unknown. Declaration of Gabriel M. Ramsey ("Ramsey Decl.") ¶¶ 22-29.

Plaintiff's Doe Discovery Efforts

Over the past six months, Plaintiffs issued subpoenas to domain registration and hosting companies, and email providers, waited for responses and analyzed the responses, in an effort to

obtain additional information regarding Defendants' identities. *Id.*

Plaintiffs' discovery efforts yielded various names and addresses. *Id.* Further investigation revealed that the names and addresses used by Defendants were fake. *Id.* Defendants also made numerous payments using anonymous Bitcoin and Perfect Money anonymous digital currencies that are not associated with any particular identity. *Id.*

Plaintiffs have exhausted their ability to investigate Defendants' true identities using civil discovery tools, despite their best efforts and the exercise of reasonable diligence to determine Defendants' identities. *Id.*

Service of Process on Defendants

The Court authorized service by email and publication on July 16, 2021 and July 30, 2021. Dkt. 18 at p. 6, 8; Dkt. 27 at p. 8, 10-11. On July 22, 2021, November 27, 2021, December 15, 2021 and January 23, 2022, Microsoft served email addresses associated with Defendants' domains and associated infrastructure. Ramsey Decl. ¶¶ 12-19. Plaintiffs also served Defendants by publication beginning on July 19, 2021 at the website <http://noticeofpleadings.com/trickbot>. *Id.* ¶¶ 7-11.

The time for Defendants to answer or respond to the complaint expired 21 days after service of the Complaint and court-approved notice language—on August 12, 2021 (21 days after email service). *Id.* Defendants have not contacted Microsoft, nor its counsel about this case. *Id.* at ¶¶ 2-4, 19. To the best of Microsoft's information and belief, no Defendant is a minor or incompetent person, or unable to respond due to absence caused by military service. *Id.* at ¶ 4.

II. 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). Microsoft has served the Complaint and all orders and pleadings on Defendants using the methods ordered by the Court under Rule 4(f)(3), including service by email and 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, 534 (E.D. Va. 2005) (acknowledging that courts have readily used Rule 4(f)(3) to authorize international service through non-traditional means, including email); *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...");¹ *BP Prods. N. Am., Inc. v. Dagra*, 236 F.R.D. 270, 271-273 (E.D. Va. 2005) (approving notice by publication in two Pakistani newspapers circulated in the defendant's last-known location); *Microsoft Corp. v. John Does 1-27*, Case No. 1:10-cv-156 (E.D. Va. 2010) at Dkt. 38, p. 4 (authorizing service by email and publication in similar action) (Brinkema, J.).

As explained above, Microsoft successfully sent numerous service emails to the email addresses associated with the Defendants and their domains and associated infrastructure used to carry out cybercrime, unauthorized intrusion and theft of funds and sensitive information. Ramsey Decl. ¶¶ 12-19. Given that Defendants' preferred mode of communication regarding the domains was via electronic means, given the direct association between the email addresses and

¹ *Rio Properties* has been followed in the Fourth Circuit. *See FMAC Loan Receivables*, 228 F.R.D. at 534 (E.D. Va. 2005) (following *Rio*); *BP Prods. N. Am, Inc.*, 232 F.R.D. at 264 (E.D. Va. 2005) (same); *Williams v. Adver. Sex L.L.C.*, 231 F.R.D. 483, 486 (N.D. W. Va. 2005) ("The Fourth Circuit Court of Appeals has not addressed this issue. Therefore, in the absence of any controlling authority in this circuit, the Court adopts the reasoning of the Ninth Circuit in *Rio Properties, Inc.*").

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 orders. *Id.* While Defendants' specific physical addresses are unknown, the evidence indicates that Defendants carry out business through the email addresses. Ramsey Decl. ¶¶ 3, 13. Moreover, it is likely that Defendants are aware of the notice website, which has been publicly available since July 19, 2021 and was included in the emails to the Defendants. Ramsey Decl. ¶¶ 5-18. 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 Microsoft has initiated this lawsuit. Ramsey Decl., ¶¶ 5-6.

Therefore, pursuant to Fed. R. Civ. P. 55(a), entry of default against the non-responsive Defendants is appropriate here. *See 3M Co. v. Christian Invs. LLC*, 2012 U.S. Dist. LEXIS 64104, *4 (E.D. Va. 2012) (default entered against non-responsive international defendant served pursuant to Rule 4(f)).

III. CONCLUSION

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

Dated: February 23, 2022

Respectfully submitted,

/s/ David J. Ervin

David J. Ervin (VA Bar No. 34719)
Julia Milewski (VA Bar No. 82426)
Matthew Welling (*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
jmilewski@crowell.com
mwelling@crowell.com

Gabriel M. Ramsey (*pro hac vice*)
Kayvan M. Ghaffari (*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
kghaffari@crowell.com

Attorneys for Plaintiff Microsoft Corporation

CERTIFICATE OF SERVICE

I hereby certify that on February 23, 2022, 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

sam@enertrak.co
vpickrell@lindsayprecast.co
thamric@lindsayprecast.co
dwolosiansky@lindsayprecast.co
asaxon@martellotech.co
felorado79@gmail.com
angernrpraving@gmail.com
marksincomb26@gmail.com
clint1566@gmail.com
resultlogg44@gmail.com
zohoferdz1@gmail.com
mbakudgorilla@yahoo.com

/s/ David J. Ervin

David J. 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.