

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

MICROSOFT CORPORATION, a Washington  
corporation, )

Plaintiff, )

v. )

Civil Action No: 1:19-cv-00716-ABJ

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

Defendants. )

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**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, Plaintiff served Defendants with the Complaint 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. *See* Dkt. No. 11, ¶ 15 and pp. 9-10, and Dkt. No. 18, ¶ 15 and p. 8 (authorizing alternative methods of service, including email and internet publication). Defendants received notice and are aware of these proceedings, and despite receiving notice, have not appeared in this action. The time for Defendants to appear and respond to Plaintiff’s 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 Defendants’ operation of an Internet-based cybercriminal operation known as “Phosphorus.” Defendants are

the persons responsible for operating Internet domains used to propagate and control the cybercrime operation. On March 15, 2019, the Court entered a Temporary Restraining Order (“TRO”) that disabled much of the Defendants’ technical infrastructure used to carry out attacks and to steal information and intellectual property. Dkt. No. 11. The Court subsequently entered an order granting a Preliminary Injunction to ensure that Defendants’ infrastructure cannot cause further harm. Dkt. No. 18. On May 22, 2019, in light of Defendants’ ongoing disregard for this Court’s authority, the Court entered a Supplemental Preliminary Injunction. Dkt. No. 21.

When the Court issued the TRO and Preliminary Injunction, the Court found good cause to permit service of Plaintiff’s Complaint and related materials by alternative means pursuant to Rule 4(f)(3). Dkt. No. 11, ¶ 15 and pp. 9-10; Dkt. No. 18, ¶ 15 and p. 8. 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.* Both have been done in this case.

The Court further granted Plaintiff the ability to pursue discovery in order to seek further contact and identifying information regarding Defendants. Doe discovery is now complete. Dkt. No. 27. Because Defendants used fake contact information and sophisticated technical means to conceal their identities when setting up and using the relevant Internet domains, Defendants’ true identities remain unknown despite extensive discovery efforts. *See* Declaration of Gabriel M. Ramsey (“Ramsey Decl.”) ¶¶ 25-35 (Ex. 1); 8/23/2019 Status Report, Dkt. No. 27.

### **Plaintiffs’ Doe Discovery Efforts**

Over the past six months, Microsoft has served subpoenas on Internet service providers (“ISPs”), domain registrars, hosting companies, and payment providers and carried out follow-up discovery, both through additional subpoenas and through informal engagement with parties

located in countries that do not afford reciprocal civil discovery with the U.S. and with parties who have been determined to be victims of the defendants. Ramsey Decl. ¶¶ 26-27. Based on information obtained during Plaintiff's initial waves of discovery, Plaintiff sent further subpoenas and informal discovery requests to additional ISPs, domain registrars, hosting companies, and payment providers. Ramsey Decl. ¶ 28.

Plaintiff's discovery efforts yielded additional information previously unknown to Plaintiff, as well as various credit card account numbers used to pay for services associated with Defendants' infrastructure. Ramsey Decl. ¶¶ 33. Further investigation revealed that the names, addresses, and credit card information used by Defendants were fake or stolen. *Id.*

Plaintiff identified numerous ISPs involved with Defendants' infrastructure and from those sources has rigorously discovered and examined IP addresses used to create, host and log into that relevant infrastructure. Ramsey Decl. ¶¶ 26-34. However, because of Defendants' use of sophisticated techniques and services designed to conceal their actual IP address and location, and to proxy their communications through third-party computers, it has not been possible to identify Defendants with any greater particularity through these means either. *Id.* ¶¶ 27, 30.

Plaintiff has exhausted its ability to investigate Defendants' true identities using civil discovery tools, despite its best efforts and the exercise of reasonable diligence to determine Defendants' identities. Ramsey Decl. ¶ 34; *see also* 8/23/2019 Status Report.

### **Service of Process on Defendants**

The Court authorized service by email and publication on March 15, 2019. Dkt. No. 11, ¶ 15 and pp. 9-10; *see also* Dkt. No. 18, ¶ 15 and p. 8. On March 27, April 13 and June 10, 2019, Plaintiff served email addresses associated with Defendants' Internet domains. Ramsey Decl. ¶¶ 12-23. Plaintiff also served Defendants by publication beginning on March 27, 2019 at

the website <http://noticeofpleadings.com/phosphorus>. Ramsey Decl. ¶¶ 9-11. Plaintiff used an email tracking service to monitor whether service emails were received and read. *Id.* ¶ 23. The service of process emails were repeatedly opened and viewed by Defendants between March 27 and September 3, 2019. *Id.*

The time for Defendants to answer or respond to the complaint expired on April 17, 2019 (21 days after email service, effected on March 27, 2019). Ramsey Decl. ¶ 4. Defendants have not contacted Microsoft or counsel about this case. *Id.* ¶ 3. To the best of Plaintiff's information and belief, no Defendant is a minor or incompetent person, or unable to respond due to absence caused by military service. *Id.* ¶ 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). Plaintiff 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 Defendants of this action, particularly given the nature of Defendants' conduct. *See, e.g., Bazarian Int'l Financial Associates, L.L.C. v. Desarrollos Aerohotelco, C.A.*, 168 F. Supp. 3d 1, 13-14 (D.D.C. 2016) (acknowledging that courts have readily used Rule 4(f)(3) to authorize international service through non-traditional means); *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...”);<sup>1</sup> *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); Order at 4, *Microsoft Corp. v. John Does 1-27*, Case No. 1:10-cv-156 (E.D. Va. 2010), Dkt. No. 38 (Brinkema, J.) (authorizing service by email and publication in similar action).

As explained above, Plaintiff successfully sent numerous service emails to the email addresses associated with Defendants and their domains used to carry out cybercrime, unauthorized intrusion, hacking and theft of sensitive information and intellectual property. Ramsey Decl., ¶¶ 12-23. Given that Defendants’ preferred mode of communication regarding the domains was via electronic means, given the direct association between the email addresses and the domains, and given that the pleadings were successfully sent to scores of such addresses, it is appropriate to find that the Complaint and other filings were served on Defendants pursuant to this Court’s order. *Id.* While Defendants’ specific physical addresses are unknown, the evidence indicates that Defendants carry out business through the email addresses. Ramsey Decl., ¶¶ 13-15. Moreover, it is likely that Defendants are aware of the notice website, which has been publically available since March 27, 2019 and was included in all of the emails sent to Defendants. Ramsey Decl., ¶¶ 9-11. 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.

There is also direct evidence that Defendants are aware of the orders in this case and have taken actions to evade the orders. Particularly, after the Court ordered that Defendants’ domains be disabled, severing communications between Defendants and victims, Defendants

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<sup>1</sup> *Rio Properties* has been followed in the D.C. Circuit. See *U.S. ex rel. Barko v. Halliburton*, 952 F. Supp. 2d 108, 117 (D.D.C. 2013) (following *Rio*).

subsequently continued to register and activate new domains for use in the same infrastructure, suggesting awareness of loss of control. Ramsey Decl., ¶ 6. It is clear that Defendants have attempted and will continue to attempt to reconstitute their infrastructure as it is taken down, in violation of the Court's prior injunctions and with knowledge of this action and the Court's orders. For this reason, it is critical to have an expedited process for enforcing these injunctions. Upon entry of default, given Defendants' awareness of the injunction and proceedings, and continued violation of prior orders, Microsoft intends to request a permanent injunction that will include such an expedited process, including appointment of a Court Monitor to oversee the process.

Therefore, pursuant to Fed. R. Civ. P. 55(a), entry of default against the non-responsive Defendants is appropriate here. *See Global Distressed Alpha Fund I LP v. Red Sea Flour Mills Co. Ltd.*, 725 F. Supp. 2d. 198 (D.D.C. 2010) (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. 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: September 13, 2019

Respectfully submitted,

*/s/ Gabriel M. Ramsey*

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