

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

MICROSOFT CORPORATION, a	)	
Washington corporation,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No: 1:19-cv-01582 (LO/JFA)
	)	
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, 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. 19 at p. 10 (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 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 John Doe Defendants' operation of an Internet-based cybercriminal operation known as "Thallium." Defendants are the persons responsible for operating Internet domains used to propagate and control the cybercrime operation. On December 18, 2019, 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. 19. The Court subsequently entered a Preliminary Injunction to ensure that Defendants' infrastructure cannot cause further harm. Dkt. 28.

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. 19 at p. 10. 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 publically available Internet website. *Id.*

The Court further granted Plaintiff the ability to pursue discovery, in order to obtain further contact and identifying information regarding Defendants. Dkt. 33. Doe discovery is now complete. Because Defendants used fake contact information, anonymous Bitcoin and prepaid credit cards and false identities, and sophisticated technical means to conceal their identities, when setting up and using the relevant Internet domains, Defendants' true identities remain unknown. Declaration of Gabriel M. Ramsey ("Ramsey Decl.") ¶¶ 25-31.

### **Plaintiff's Doe Discovery Efforts**

Over the past six months, Plaintiff issued six subpoenas to six domain registrars and hosting companies ("collectively ISPs"), waited for responses and analyzed the responses, in an effort to obtain additional information regarding Defendants' identities. Ramsey Decl. ¶ 25.

Based on information obtained during Plaintiff's initial discovery, Plaintiff sent further subpoenas and informal discovery requests to additional ISPs. Ramsey Decl. ¶¶ 25-31.

Plaintiff's discovery efforts yielded various names, addresses and credit card numbers. *Id.* ¶¶ 26, 28. Further investigation revealed that the names, addresses, and credit card information used by Defendants were fake or stolen. *Id.* Defendants also made numerous payments using anonymous Bitcoin payments that are not associated with any particular identity. *Id.* ¶ 26.

Plaintiff identified several hosting companies involved with Defendants' infrastructure and from discovery to those sources learned and examined IP addresses used to create, host and log into that relevant infrastructure. *Id.* ¶¶ 27-30. 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.* ¶¶ 29-31.

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. *Id.* ¶ 31.

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

The Court authorized service by email and publication on December 18, 2019. Dkt. 19 at p. 10. On December 24, 2019, Plaintiff served email addresses associated with Defendants' Internet domains. Ramsey Decl. ¶¶ 12-22. Plaintiff also served Defendants by publication on December 23, 2019 at the website <http://noticeofpleadings.com/thallium>. *Id.* ¶¶ 7-11. Plaintiff used an email tracking service to monitor whether service emails were received and read. *Id.* ¶ 22. The service of process emails were repeatedly 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 January 14, 2020 (21 days after email service). *Id.* ¶ 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 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...”);<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); *Microsoft Corp. v.*

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<sup>1</sup> *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. ....*”).

*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, Plaintiff successfully sent numerous service emails to the email 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. ¶¶ 12-22. 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 summons 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. ¶¶ 14-16. Moreover, it is likely that Defendants are aware of the notice website, which has been publically available since December 23, 2019 and was included in the emails to the Defendants. Ramsey Decl. ¶¶ 7-11. 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., ¶¶ 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. 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: August 25, 2020

Respectfully submitted,

/s/ Julia R. Milewski

Julia Milewski (VA Bar No. 82426)  
David O'Brien (VA Bar No. 14924)  
CROWELL & MORING LLP  
1001 Pennsylvania Avenue NW  
Washington DC 20004-2595  
Telephone: (202) 624-2500  
Fax: (202) 628-5116  
jmilewski@crowell.com  
dobrien@crowell.com

Gabriel M. Ramsey (*pro hac vice*)  
Kayvan 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

Richard Domingues Boscovich (*pro hac vice*)  
MICROSOFT CORPORATION  
One Microsoft Way  
Redmond, WA 98052-6399  
Telephone: (425) 704-0867  
Fax: (425) 936-7329  
rbosco@microsoft.com

*Attorneys for Plaintiff Microsoft Corp.*

**CERTIFICATE OF SERVICE**

I hereby certify that on August 25, 2020, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system. Copies of the forgoing were also served on the defendants listed below by electronic mail:

**John Does 1-2**

tang\_guanghui@hotmail.com  
bitcoin024@hanmail.net  
bitcoin025@hanmail.net  
satoshiman0088@gmail.com  
noreplygooqlesender@gmail.com  
pigcoin2020@hotmail.com  
rninchurl@daum.net  
tiger199392@daum.net  
inforail.noreply@gmail.com  
jiahuzong@hotmail.com  
wusongha03@gmail.com  
23f30d8e5ab4439fb15be24a7de1ffb8.protect@whoisguard.com  
okonoki\_masao@yahoo.co.jp  
hello-0978@daum.net

*/s/ Julia R. Milewski*

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Julia Milewski (VA Bar No. 82426)  
CROWELL & MORING LLP  
1001 Pennsylvania Avenue NW  
Washington DC 20004-2595  
Telephone: (202) 624-2500  
Fax: (202) 628-5116  
jmilewski@crowell.com

*Attorneys for Plaintiff Microsoft Corp.*