

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

MICROSOFT CORPORATION, a
Washington corporation, FS-ISAC,
INC., a Delaware Corporation,
HEALTH-ISAC, INC., a Florida
corporation,

Plaintiffs,

v.

DENIS MALIKOV, and
JOHN DOES 1-7,

Defendants.

Civil Action No: 1:22-cv-1328-MHC

FILED UNDER SEAL

**PLAINTIFF’S MOTION FOR ISSUANCE OF SUMMONS AND
AUTHORIZATION TO SERVE PROCESS ON DEFENDANTS BY
ELECTRONIC MEANS PURSUANT TO FED. R. CIV. P. 4(f)(3)**

Plaintiffs Microsoft Corporation (“Microsoft”), FS-ISAC Inc. (“FS-ISAC”),
and HEALTH-ISAC Inc. (“HEALTH-ISAC”), by and through undersigned
counsel, hereby moves this Court for an order directing the issuance of summons
without physical addresses on them and authorizing service of process on
Defendants by electronic means pursuant to Rule 4(f)(3) of the Federal Rules of
Civil Procedure.

In support of this Motion, Plaintiffs submits the accompanying
Memorandum of Law and the Declaration of Gabriel M. Ramsey In Support of

Microsoft's Application for an Ex Parte Temporary Retraining Order and Order to Show Cause Re Preliminary Injunction, filed on April 4, 2022. A proposed Order is also submitted with this Motion.

Dated: April 5, 2022

Respectfully submitted,

/s/ Joshua D. Curry

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CERTIFICATE OF COMPLIANCE

Pursuant to L.R. 7.1(D), N.D. Ga., counsel for Plaintiffs hereby certifies that this Application has been prepared with one of the font and point selections approved by the Court in L.R. 5.1, N.D. Ga.

Dated: April 5, 2022

Respectfully submitted,

/s/ Joshua D. Curry

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MEMORANDUM OF LAW IN SUPPORT OF
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ELECTRONIC MEANS PURSUANT TO FED. R. CIV. P. 4(f)(3)**

I. INTRODUCTION

Plaintiffs MICROSOFT CORPORATION, FS-ISAC, INC., and HEALTH-ISAC, INC., (“Plaintiffs”) seek an order directing issuance of summons to Defendants Denis Malikov and John Does 1 through 7 (“Defendants”) without physical addresses listed on them and authorization to serve the Summonses, Complaint, Motions, Orders, and all other pleadings and papers on Defendants by electronic means pursuant to Rule 4(f)(3) of the Federal Rules of Civil Procedure. Such an order is necessary because Defendants have hidden their physical

addresses and operate anonymously on the internet to proliferate and operate malware and ransomware called “ZLoader,” as more fully described in Plaintiffs’ Complaint and Motion for an Emergency Ex Parte Temporary Restraining Order (“TRO”) and a Preliminary Injunction, both filed on April 4, 2021. The Clerk of Court also has indicated the summons “will not be issued because there is no physical address for the defendants.” *See* Case No. 1:22-mi-99999 at Dkt. 1035 (clerk’s notation).

Plaintiffs have identified email addresses and other domain-name contact information that Defendants use with ZLoader, which will be more than sufficient to ensure Defendants receive fair and proper notice of this lawsuit and court filings. It has not been possible, however, to determine precise physical addresses for Defendants, even though Plaintiffs have made significant good faith efforts to do so. (*See* 4/4/2022 Declaration of Gabriel M. Ramsey in Support of Microsoft’s Application for an Ex Parte Temporary Restraining Order And Order to Show Cause Re Preliminary Injunction (“Ramsey Declaration”) ¶¶ 7-9). In any event, the email addresses associated with Defendants and the ZLoader domains are believed to be the most accurate and reliable contact information for Defendants. *Id.* Accordingly, Plaintiffs should be permitted to obtain summons and affect service on Defendants by electronic means under Fed. R. Civ. P. 4(f)(3).

II. LEGAL STANDARDS

Pursuant to Fed. R. Civ. P. 4(h), corporations may be served outside the United States in any manner prescribed by Rule 4(f) for serving an individual, except personal service. Rule 4(f), in turn, provides that an individual outside the United States may be served in one of the following ways:

(1) by any internationally agreed means of service that is reasonably calculated to give notice, such as those authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents;

(2) if there is no internationally agreed means, or if an international agreement allows but does not specify other means, by a method that is reasonably calculated to give notice:

(A) as prescribed by the foreign country's law for service in that country in an action in its courts of general jurisdiction;

(B) as the foreign authority directs in response to a letter rogatory or letter of request; or

(C) unless prohibited by the foreign country's law, by:
[...] (ii) using any form of mail that the clerk addresses and sends to the individual and that requires a signed receipt; or

(3) by other means not prohibited by international agreement, as the court orders.

Fed. R. Civ. P. 4(f). A plaintiff is not required to serve a person or corporation outside of the United States pursuant to the provisions of the Hague Service Convention “where the address of the person to be served with the document is not

known.” See Hague Convention on Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters, Nov. 15, 1965, Art. 1, 20 U.S.T. 361, T.I.A.S. No. 6638, 658 U.N.T.S. 163.

Rule 4(f)(3) permits alternative methods of service so long as those methods are consistent with due process, are not prohibited by international agreement, and are approved by the Court. *Brookshire Bros., Ltd. v. Chiquita Brands Int’l*, Case No. 05-CIV-21962, 2007 WL 1577771, at *2 (S.D. Fla. May 31, 2007) (denying motion to quash where the Court previously granted motion to serve by alternative means); *Rio Props. Inc., v. Rio Int’l Interlink*, 284 F.3d 1007, 1014 (9th Cir. 2002) (affirming trial court’s authorization of service pursuant to Rule 4(f)(3) without first exhausting all other options). Due process requires that persons whose property interests are at risk due to government action receive notice and an opportunity to be heard. *Thomas v. United States*, 681 Fed. Appx. 787, 790 (11th Cir. 2017). The notice must be “reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Id.* (citing *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)). The decision to allow service by alternate means will be reviewed for an abuse of discretion. *Prewitt Enterprises, Inc. v.*

Organization of Petroleum Exporting Countries, 353 F.3d 916, 922 (11th Cir. 2003).

III. ARGUMENT AND CITATION OF AUTHORITY

A. PLAINTIFFS ARE NOT REQUIRED TO SERVE DEFENDANTS THROUGH THE HAGUE SERVICE CONVENTION BECAUSE DEFENDANTS' ADDRESSES ARE UNKNOWN

Plaintiffs reasonably believe that Defendant Malikov is located in Simperofol, Crimea.¹ The location of Doe Defendants 1-7 is unknown. (Ramsey Declaration ¶ 7; *see also* 4/4/2022 Declaration of Christopher Coy in Support of Microsoft's Application for an Ex Parte Temporary Restraining Order And Order to Show Cause Re Preliminary Injunction ("Coy Declaration") ¶ 4.) However, Plaintiffs do not know the actual physical address of any Defendant, despite making diligent efforts to locate these addresses. (Ramsey Declaration ¶ 9.) As proliferators and operators of ransomware and malware, Defendants prefer to stay anonymous to avoid being held accountable for their malfeasance. Defendants do not disclose their legal name, complete physical address, or other physical contact information if they can avoid doing so. (Ramsey Declaration ¶¶ 8-9.) When

¹ Although Russia is a signatory to the Hague Service Convention, service of process between the United States and Russia pursuant the Hague Service Convention has been suspended since July 2003. *See* <https://travel.state.gov/content/travel/en/legal/Judicial-Assistance-Country-Information/RussianFederation.html> (service of process section). Thus, as to Defendant Malikov, the Hague Service Convention does not apply.

Defendants do provide a physical address, these addresses are nearly always inaccurate and/or incomplete. (*Id.*) Because Plaintiffs are unable to ascertain Defendants' actual physical addresses, Plaintiffs are not required to serve process on Defendants pursuant to the Hague Service Convention. *See U.S. Commodity Futures Trading Comm'n v. Rubio*, No. 12-CV-22129, 2012 WL 3614360, at *2 (S.D. Fla. Aug. 21, 2012) (holding that "the Hague Service Convention is not applicable here because it 'shall not apply where the address of the person to be served with the documents is not known.'"); *Philip Morris USA Inc. v. Veles Ltd.*, No. 06 Civ. 2988, 2007 WL 725412, at *2 (S.D.N.Y. March 12, 2007) (finding the Hague Service Convention inapplicable because physical addresses could not be confirmed as valid).

B. SERVICE OF DEFENDANTS BY ELECTRONIC MEANS COMPORTS WITH DUE PROCESS AND PROVIDES FAIR NOTICE

Federal courts have authorized a variety of electronic service methods where a plaintiff demonstrates the method is likely to notify a defendant of the pendency of the action. The U.S. Bankruptcy Court for the Northern District of Georgia was one of the first federal courts in the country to authorize service of process by electronic mail. *See In re Int'l Telemedia Associates, Inc.*, 245 B.R. 713 (Bankr.

N.D. Ga. 2000). In doing so, the court emphasized the reliability of using the defendant's preferred channels of communication:

If any methods of communication can be reasonably calculated to provide a defendant with real notice, surely those communication channels utilized and preferred by the defendant himself must be among them.... A defendant should not be allowed to evade service by confining himself to modern technological methods of communication not specifically mentioned in the Federal Rules. Rule 4(f)(3) appears to be designed to prevent such gamesmanship by a party.

In re Int'l Telemedia, 245 B.R. at 721. Many courts since the *Telemedia* decision have followed suit and approved of service by electronic means, including email, website publication, and online social media platforms such as Facebook and Twitter. *See, e.g., Rio Props.*, 284 F.3d 1007, 1017 (9th Cir. 2002) (holding “without hesitation” that e-mail service of a foreign online business defendant is constitutional.); *National Association for Stock Car Auto Racing, Inc. v. Does*, 584 F. Supp.2d 824, 826 (W.D.N.C. 2008) (authorizing service by publication on plaintiff's website.); *Popular Enters., LLC v. Webcom Media Group, Inc.*, 225 F.R.D. 560, 562 (E.D. Tenn. 2004) (authorizing service by email); *U.S. v. Mohammad*, 249 F. Supp.3d 450, 454 (D.D.C. 2017) (authorizing service by Facebook message and email); *St. Francis Assisi v. Kuwait Finance House*, 16-CV-3240-LB, 2016 WL 5725002 (N.D. Cal. Sep. 20, 2016) (authorizing service by Twitter).

Defendants are proliferators and operators of malware and ransomware who purposefully communicate and transact business exclusively by electronic means. Defendants conceal their identities and physical contact information and locations in an effort to avoid being served, thereby attempting to avoid liability for their illegal conduct. The only means of communicating with Defendants is by electronic means, such as electronic mail. Therefore, service by electronic means and email under these circumstances is particularly warranted. (*See Ramsey Declaration* ¶¶ 8-9.)

If the Court grants the TRO and after the TRO is executed,² Plaintiffs propose to provide notice of the Summons, Complaint, and TRO to Defendants and to serve Defendants with process and other papers in this case by electronic mail using addresses obtained from the domain registrar record associated with each ZLoader domain. First, Plaintiffs submit that this is a highly reliable method of notifying Defendants of the lawsuit and of serving Defendants with process because Defendants exclusively use these email addresses for conducting their operations. As such, permitting email service on Defendants comports with Due Process. Second, Plaintiffs anticipate that once the ZLoader command and control

² As discussed in Plaintiffs' TRO brief, notice of this action and the TRO cannot be made on Defendants until after the TRO is executed and Defendants ability to access and control the instrumentalities they use to direct the ZLoader operation are severed. *See* Pls' TRO Br. at 5-6.

centers are disabled after the TRO is executed, many Defendants, either directly or through counsel, will initiate contact with the undersigned counsel via email. Service of process and related documents using these email addresses, therefore, is very likely to notify Defendants of this action and proceedings, and as such, it also comports with Due Process. Therefore, service by this method is also very likely to provide Defendants with actual notice of this action and, therefore, also comports with Due Process.

C. SERVICE BY ELECTRONIC MEANS IS NOT PROHIBITED BY INTERNATIONAL AGREEMENT

Where, as here, a plaintiff is not required adhere to the Hague Service Convention, the Court may authorize service “by other means not prohibited by international agreement.” Fed. R. Civ. P. 4(f)(3). Even if the Hague Service Convention could apply (which, again, it does not apply to Russia), Article 10 of the Hague Service Convention specified a number of alternative methods of service, including postal channels, judicial officers, or other competent persons. Russia objected to all of the alternative methods of service in Article 10. However, this objection only prohibits services by those means specifically objected to in Article 10 (i.e., by “postal channels,” “judicial officers,” or other “officials”). “Where a signatory nation has objected to only those means of service listed in Article 10, a court acting under Rule 4(f)(3) remains free to order alternative

means of service that are not specifically referenced in Article 10.” *Gurung v. Malhotra*, 279 F.R.D. 215, 219 (S.D.N.Y. 2011) (authorizing service by email to defendant in India and holding where a “signatory nation has objected to only those means of service listed in Article X, a court acting under Rule 4(f)(3) remains free to order alternative means of service that are not specifically referenced in Article X.”); *F.T.C. v. PCCare247 Inc.*, 12 Civ. 7189, 2013 WL 841037 at *3-*4 (S.D.N.Y. March 7, 2013) (authorizing service by email and Facebook in India where India objected only to means of service listed in Article 10). Because Russia has not objected to service by electronic means, this Court may authorize such alternative service pursuant to Rule 4(f)(3). *See Richemont Int’l SA v. Individuals, P’ships & Unincorporated Ass’ns identified on Schedule A*, No. 20-cv-61367, 2020 U.S. Dist. LEXIS 210762, at *3 (S.D. Fla. July 10, 2020) (authoring service by email where defendants addresses were unknown, but where it was shown that defendants were likely to receive notice by email, for defendants residing in Russia, China, Australia, India, Japan, Korea, Morocco, Sri Lanka, Ukraine, Indonesia, and Singapore).

IV. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court direct the issuance of summons to Defendants Denis Malikov and John Does 1

through 7 without a physical address and authorize Plaintiffs to serve Defendants after the TRO has been executed with the Summonses, Complaint, TRO, and all subsequent pleadings and documents upon each Defendant in this action by electronic means, including using email addresses provided by the Defendants themselves.

Dated: April 5, 2022

Respectfully submitted,

/s/ Joshua D. Curry

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CERTIFICATE OF COMPLIANCE

Pursuant to L.R. 7.1(D), N.D. Ga., counsel for Plaintiffs hereby certifies that this Application has been prepared with one of the font and point selections approved by the Court in L.R. 5.1, N.D. Ga.

Dated: April 5, 2022

Respectfully submitted,

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**[PROPOSED] ORDER GRANTING PLAINTIFFS’ MOTION
FOR ISSUANCE OF SUMMONS AND AUTHORIZATION
TO SERVE PROCESS ON DEFENDANTS BY
ELECTRONIC MEANS PURSUANT TO FED. R. CIV. P. 4(f)(3)**

THIS CAUSE has come before the Court on Plaintiffs’ *Ex Parte* Motion for Authorization to Serve Process on Defendants by Electronic Means Pursuant to FED. R. CIV. P. 4(f)(3) (the “Motion”). The Court, having considered the Motion, the arguments therein, and for good cause shown, finds as follows:

I. APPLICABLE LEGAL STANDARDS

Pursuant to Fed. R. Civ. P. 4(h), corporations may be served outside the United States in any manner prescribed by Rule 4(f) for serving an individual,

except personal service. Rule 4(f), in turn, provides that an individual outside the United States may be served in one of the following ways:

(1) by any internationally agreed means of service that is reasonably calculated to give notice, such as those authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents;

(2) if there is no internationally agreed means, or if an international agreement allows but does not specify other means, by a method that is reasonably calculated to give notice:

(A) as prescribed by the foreign country's law for service in that country in an action in its courts of general jurisdiction;

(B) as the foreign authority directs in response to a letter rogatory or letter of request; or

(C) unless prohibited by the foreign country's law, by:
[...] (ii) using any form of mail that the clerk addresses and sends to the individual and that requires a signed receipt; or

(3) by other means not prohibited by international agreement, as the court orders.

Fed. R. Civ. P. 4(f).

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Defendants Denis Malikov and John Does 1-7 (“Defendants”) are accused of proliferating and operating “ZLoader,” which is allegedly a malicious financial malware and ransomware software distributed via the internet. Defendant Malikov is believed to be located in Simferopol, Crimea. The location of Doe Defendants 1-7 is unknown. Proliferators and operators of ransomware and malware prefer to

stay anonymous to avoid being held accountable for their malfeasance.

Defendants do not disclose their legal name, physical address, or other physical contact information if they can avoid doing so. When Defendants do provide a physical address, these addresses are nearly always inaccurate and/or incomplete. Defendants purposefully communicate and transact business exclusively by electronic means. Defendants conceal their identities and physical locations in an effort to avoid being served, thereby attempting to avoid liability for their conduct. The only current means of communicating with Defendants is by electronic mail.

Because Defendants' physical addresses are not known or not ascertainable, Plaintiffs are not required to serve Defendants pursuant to the Hague Service Convention. Even if the Hague Service Convention did apply, Russia has suspended all cooperation with the United States under the Hague Service Convention. *See* <https://travel.state.gov/content/travel/en/legal/Judicial-Assistance-Country-Information/RussianFederation.html> (section concerning service of process). Russia also has not specifically objected to service by electronic means in connection with its objection to Article 10 of the Hague Service Convention.

In light of the foregoing and consistent with the findings of numerous other courts, this Court find that service on Defendants by e-mail is reasonably calculated under the circumstances to apprise Defendants of the pendency of this

action, to afford them a fair opportunity to appear and be heard, and otherwise comports with Due Process. *See Richemont Int'l SA v. Individuals, P'ships & Unincorporated Ass'ns identified on Schedule A, No. 20-cv-61367*, 2020 U.S. Dist. LEXIS 210762, at *3 (S.D. Fla. July 10, 2020) (authoring service by email where defendants addresses were unknown, but where it was shown that defendants were likely to receive notice by email, for defendants residing in Russia, China, Australia, India, Japan, Korea, Morocco, Sri Lanka, Ukraine, Indonesia, and Singapore); *see also In re Int'l Telemedia Associates, Inc.*, 245 B.R. 713 (Bankr. N.D. Ga. 2000); *Rio Props. Inc., v. Rio Int'l Interlink*, 284 F.3d 1007, 1014 (9th Cir. 2002); *National Association for Stock Car Auto Racing, Inc. v. Does*, 584 F. Supp.2d 824, 826 (W.D.N.C. 2008); *Popular Enters., LLC v. Webcom Media Group, Inc.*, 225 F.R.D. 560, 562 (E.D. Tenn. 2004).

III. CONCLUSION

Accordingly, Plaintiffs' Motion is here by **GRANTED**, and the Court

ORDERS as follows:

1. The Clerk is directed to issue summons for Denis Malikov and John Does 1-7 with their email addresses listed and without the need for a physical address to be listed on the summons; and
2. Pursuant to Fed. R. Civ. P. 4(f)(3), Plaintiffs are authorized to serve the Summonses, Complaint, Motions, Orders, and all other pleadings and papers on Defendants or their counsel (if any appear) by electronic

means, including by email to addresses known to be associated with Defendants or provided by Defendants themselves.

3. Unless otherwise ordered by the Court, Plaintiffs may affect service and provide notice to Defendants after execution of the Temporary Restraining Order sought by Plaintiffs.

SO ORDERED this _____ day of _____, 2022.

HON. MARK H. COHEN
UNITED STATES DISTRICT JUDGE