

**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: 1:16-cv-00993 (GBL/TCB)

**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. 23 at p. 8 (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 "Strontium." Defendants are the persons responsible for operating Internet domains used to propagate and control the cybercrime operation. On August 5, 2016, 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. 23. The Court subsequently entered a Preliminary Injunction to ensure that Defendants' infrastructure cannot cause further harm. Dkt. 33.

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. 23 at 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 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. Doe discovery is now complete. Dkt. 35. 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.") ¶¶ 25-35.

### **Plaintiffs' Doe Discovery Efforts**

Over the past nine months, Plaintiff has issued 52 subpoenas to 42 U.S.-based domain registrars, hosting companies, email providers, domain certificate authorities, payment processors other Internet service providers ("collectively ISPs"), and made successful informal requests to 46 such entities outside of the U.S., in an effort to obtain additional information regarding Defendants' identities. Ramsey Decl. ¶ 28. Based on information obtained during Plaintiff's initial waves of discovery, Plaintiff sent further subpoenas and informal discovery requests to additional ISPs. Ramsey Decl. ¶¶ 30-35.

Plaintiff's discovery efforts yielded several names and addresses that were previously unknown to Plaintiff, as well as various credit card account numbers used to pay for services associated with the Defendants' infrastructure. Ramsey Decl. ¶¶ 30, 34. 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.* ¶ 34.

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. ¶¶ 28-35. 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.* ¶¶ 31-32.

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. ¶ 36.

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

The Court authorized service by email and publication on August 5, 2016. Dkt. 23 at p. 8. On August 6, 2016, Plaintiff served email addresses associated with Defendants' Internet domains. Ramsey Decl. ¶¶ 13-24. Plaintiff also served Defendants by publication on August 6, 2016 at the website <http://noticeofpleadings.com/strontium>. Ramsey Decl. ¶¶ 8-12. Plaintiff used an email tracking service to monitor whether service emails were received and read. *Id.* ¶ 24. 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 August 29, 2016 (21 days after email service). 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, 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 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. John Does 1-27*, Case No. 1:10-cv-156 (E.D. Va. 2010, Brinkema J.) at Dkt. 38, p. 4 (authorizing service by email and publication in similar action).

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., ¶¶ 13-24. 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

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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. ....*”).

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 August 6, 2016 and was included in the emails to the Defendants. Ramsey Decl., ¶¶ 8-12. 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., ¶¶ 6-7.

There is also direct evidence that Defendants are aware of the actions in this case and have taken actions to evade the orders, and is aware that Microsoft is the source of the action. First, after the Court ordered that Defendants' domains be disabled, severing communications between Defendants and at least 122 victim institutions, Defendants subsequently continued to register and activate new domains for use in the same infrastructure, suggesting awareness of loss of control. Ramsey Decl., ¶ 7. Second, later in this case, after Defendants' initial domains were disabled pursuant to the Court's injunctions, Defendants registered a new domain for use in the infrastructure using the same (falsified) information that Microsoft uses when it takes control of domains in cybercrime actions such as this, or to otherwise register legitimate domains. *Id.* ¶ 27. This indicates that Defendants were aware that Microsoft is the source of prior disruption to their domains and the source of activity in this action.

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: June 13, 2017

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on June 13, 2017, 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:

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