

**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

PLAINTIFF’S REQUEST FOR ENTRY OF DEFAULT

Pursuant to Federal Rule of Civil Procedure 55(a), Plaintiffs Microsoft Corporation (“Microsoft”), FS-ISAC, Inc. (“FS-ISAC”), and HEALTH-ISAC, Inc. (“HEALTH-ISAC”) (collectively “Plaintiffs”) request that the Clerk of the Court enter default against Defendants Denis Malikov and John Does 1-7. As detailed below, Plaintiff served Defendants with the Complaint, summons and related material 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. 27 at pp. 13-14 (order authorizing alternative methods of service, including particularly e-mail 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 response to Plaintiffs 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

A. Court's TRO, Preliminary Injunction, and Electronic Service of Process Orders

This action arises out of violations of federal and state law caused by Denis Malikov and John Does Defendants' distribution of malware which Microsoft has identified as "ZLoader." Defendants are the persons responsible for operating Internet domains used to propagate and control the ZLoader malware and related cybercrime operation. On April 8, 2022, the Court entered a TRO that disabled much of the Defendants' technical infrastructure used to carry out attacks to steal information and intellectual property. Dkt. 27. On April 26, 2022 The Court entered a Preliminary Injunction to ensure that Defendants' infrastructure cannot cause further harm. Dkt. 41.

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. 27 at pp. 13-14. The Court has

directed that, under the circumstances, appropriate means of service sufficient to satisfy Due Process includes e-mails to the e-mail accounts associated with Defendants and publication on a publicly available Internet website. *Id.*

B. Service of Process on Defendants

The Court authorized service by e-mail and publication on April 8, 2022. Dkt. 27 at pp. 13-14. On April 14, 2022, Plaintiff served e-mail addresses associated with Defendants’ Internet domains. Declaration of Gabriel M. Ramsey in Support of Plaintiffs’ Request for Entry of Default (“Ramsey Decl.”) ¶¶ 12-17. Plaintiffs also served Defendants by publication on April 14, 2022 at the website www.noticeofpleadings.net/zloader. *Id.* at ¶¶ 9-11. Plaintiffs used an e-mail tracking service to monitor whether service e-mails were received and read. *Id.* at ¶ 18. The service of process e-mails were 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 May 5, 2022 (21 days after e-mail service). *Id.* at ¶ 4. To the best of Plaintiffs information and belief, no Defendant is a minor or incompetent person, or unable to respond due to the absence caused by military service. *Id.*

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 mail 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., In re Int’l Telemedia Associates, Inc.*, 245 B.R. 713, 720-21 (N.D. Ga. 2000) (authorizing service by electronic mail under Rule 4(f)(3)); *Black & Decker Inc. v. King Group Canada*, 2009 WL 10670400, at *3 (N.D. Ga. 2009) (holding that service upon defendants by e-mail is appropriate under Rule 4(f)(3)); *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”).

As explained above, Plaintiff successfully sent service e-mails to the e-mail 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. ¶ 4. Given that Defendants’ preferred mode of communication regarding the domains was via electronic means, given the direct association between the e-mail addresses and 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 order. *Id.* at ¶¶ 5, 6, 14, 20-22. While Defendants’ specific physical addresses are unknown, the evidence indicates that Defendants carry out business through the e-mail addresses. *Id.* at ¶¶ 20-22. Moreover, it is likely that Defendants are aware of the notice website, which has been publicly available since April 14, 2022 and was included in the e-mails to the Defendants. *Id.* at ¶ 19. 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 nonresponsive Defendants is appropriate here. *See S.E. C. v. Johnson*, 436 Fed. Appx. 939, 944-45 (11th Cir. 2011) (enter default against defendant for failing to “appear, answer or otherwise plead to the complaint ... within the time required by law” under Rule 55(a)); *Arango v. Guzman*, 761 F.2d 1527, 1531 (11th Cir. 1985) (default judgment entered when party failed to appear).

III. CONCLUSION

For all the foregoing reasons, entry of default against Denis Malikov and the John Doe Defendants 1-7 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: October 3, 2022

Respectfully submitted,

/s/ Joshua D. Curry

Joshua D. Curry (Georgia Bar No. 117378)
Jonathan D. Goins (Georgia Bar No. 738593)
LEWIS BRISBOIS BISGAARD & SMITH LLP
600 Peachtree Street NE, Suite 4700
Atlanta, GA 30308
Tel: 404.348.8585
Fax: 404.467.8845
josh.curry@lewisbrisbois.com
jonathan.goins@lewisbrisbois.com

Gabriel M. Ramsey (*pro hac vice*)
Anna Z. Saber (*pro hac vice*)
CROWELL & MORING LLP
3 Embarcadero Center, 26th Floor
San Francisco, CA 94111
Tel: (415) 986-2800
Fax: (415) 986-2827
gramsey@crowell.com
asaber@crowell.com

Emily Alban (*pro hac vice*)
Garylène Javier (*pro hac vice*)
CROWELL & MORING LLP
1001 Pennsylvania Avenue NW
Washington DC 20004-2595

Tel: (202) 624-2500
Fax: (202) 628-5116
ealban@crowell.com
gjavier@crowell.com

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

Attorneys for Plaintiff Microsoft Corporation

CERTIFICATE OF COMPLIANCE

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

Dated: October 3, 2022

/s/ Joshua D. Curry

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the date indicated below the foregoing document with any attachments was filed using the Court's CM/ECF System, which caused counsel of record for the parties to be served by electronic mail, as more fully reflected on the notice of electronic filing.

Dated: October 3, 2022

/s/ Joshua D. Curry