

**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.: 1:17-cv-1224

**DECLARATION OF MICHAEL ZWEIBACK IN SUPPORT OF MICROSOFT'S
REQUEST FOR ENTRY OF DEFAULT**

I, Michael Zweiback, declare as follows:

1. I am an attorney admitted to practice in the State of California and the District of Columbia. I am a partner at the law firm of Zweiback, Fiset & Coleman ("ZFC Law"), and was previously a partner at the law firm of Alston & Bird LLP ("Alston"). I was admitted to the Eastern District of Virginia to appear in this matter pro hac vice. I am counsel of record in this matter for plaintiff, Microsoft Corporation ("Microsoft"). I make this declaration to advise the Court as to the steps Microsoft has under taken in support of its obligations to provide Notice of Service. I have personal knowledge of the facts set forth in this declaration and, if called to testify as a witness, could and would testify to the following under oath.

2. John Doe Defendants 1-2 ("Defendants") have been properly served with the Complaint, summons, and all orders, pleadings and submissions in this action pursuant to the

means authorized by the Court in the Temporary Restraining Order (“TRO”) (Dkt. 26) and the Preliminary Injunction Order (Dkt. 36).

3. The 21-day time for Defendants to respond to the complaint under Fed. R. Civ. P. 12 has expired, as Defendants were served via e-mail on November 2, 2017, via publication on or around October 31, 2017, and at numerous points thereafter via e-mail as well. Upon information and belief, the Defendants against whom a notation of default is sought are not infants or incompetent persons. I base this conclusion on the fact that Defendants have engaged in sophisticated acts of computer intrusion and theft of sensitive information from computer networks and have operated and procured sophisticated cybercrime infrastructure. I have also seen no indication that Defendants are absent or have failed to file responsive pleadings due to present military service.

4. I submit that it is most reasonable to conclude that Defendants are aware of this proceeding given the significant impact of the TRO on their operations, in combination with the steps Microsoft took to serve process via e-mail and Internet publication which are discussed in detail below.

5. Following execution of the TRO, traffic from the subject Internet domains that comprised the Defendants’ command and control infrastructure to infected victim operating systems and devices was redirected to Microsoft’s secure servers. I believe that this effectively interrupted Defendants’ attacks by severing communications between the infected operating systems and devices.

Service By Internet Publication

6. Microsoft has served process by Internet publication as authorized by the TRO. The Court has authorized service by Internet publication, as follows: “the Complaint may be served by any means authorized by law, including . . . publishing notice on a publicly available Internet website. . . .” Dkt. 26 at p. 9.

7. I oversaw service of process by publication, including each of the following actions, on behalf of Microsoft.

8. Beginning on or around October 31, 2017, Microsoft published the Complaint, summons, TRO and all associated pleadings, declaration and evidence on the publicly available website www.noticeofpleadings.net/barium. Thereafter, we published all other pleadings, declarations, evidence, orders, and other submissions filed with the Court in this action to date on the publicly available website www.noticeofpleadings.net/barium.

9. The following text was made prominently at the top of the website:

“Plaintiff Microsoft Corporation (“Microsoft”) has sued Defendants John Does 1-2 associated with the Internet domains listed below. Microsoft alleges that Defendants have violated Federal and state law by hosting a cybercriminal operation through these Internet domains, causing unlawful intrusion into Microsoft and Microsoft’s customers’ computers and computing devices; and intellectual property violations to the injury of Microsoft and Microsoft’s customers. Microsoft seeks a preliminary injunction directing the registry associated with these Internet domains to take all steps necessary to disable access to and operation of these Internet domains to ensure that changes or access to the Internet domains cannot be made absent a court order and that all content and material associated with these Internet domains are to be isolated and preserved pending resolution of the dispute. Microsoft seeks a permanent injunction, other equitable relief and damages. Full copies of the pleading documents are available at www.noticeofpleadings.net/barium.

NOTICE TO DEFENDANT: READ THESE PAPERS CAREFULLY! You must “appear” in this case or the other side will win automatically. To “appear” you must file with the court a legal document called a “motion” or “answer.” The “motion” or “answer” must be given to the court clerk or administrator within 21 days of the date of first publication specified herein. It must be in proper form and have proof of service on the Microsoft’s attorneys, Michael Zweiback at Alston & Bird LLP, 333 South Hope Street, 16th Floor, Los Angeles, CA 90071. If you have questions, you should consult with your own attorney immediately.”

10. A link to the foregoing website was included in each service of process e-mail sent to Defendants at the e-mail addresses determined to be associated with the Defendants’ domains used in the Barium operations. Attached hereto as **Exhibit 1** is a true and correct copy of a screenshot of the publicly available website www.noticeofpleadings.net/barium.

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Service By E-mail

11. Microsoft has served process via e-mail as authorized by the TRO. The Court has authorized service by e-mail, as follows: “the Complaint may be served by any means authorized by law, including (1) transmission by e-mail . . . to the contact information provided by Defendants to Defendants’ domain registrars and/or hosting companies. . . .” Dkt. 26 at p. 9.

12. Through Microsoft’s pre-filing investigation, Microsoft gathered contact information, particularly e-mail addresses, associated with the Defendants’ domains. Defendants had provided these e-mail addresses to domain registrars when completing the registration process for the domains used in Defendants’ command and control infrastructure. This contact information was used to serve the Defendants by e-mail.

13. In this case, the e-mail addresses provided by Defendants to the domain registrars are the most accurate and viable contact information and means of notice and service. For example, as set forth in my declaration in support of the TRO Application (Dkt. 7), ICANN domain registration polices require registrants to provide accurate e-mail contact information to registrars, and the registrars use such information to provide notice of complaints and to send other account-related communications about the domain, including communications which result in suspension or cancellation of the domain registration. Furthermore, since Defendants were able to maintain the domains active until the execution of this Court’s TRO, it follows that Defendants monitored the e-mail accounts to main use of the domain registrars’ services.

14. I oversaw the process of sending copies of the Complaint, summons, TRO, and all other pleadings, declarations, evidence, orders, and other submissions in this action, by attaching those documents as PDF files to e-mails sent to the e-mail addresses associated with the domains used by Defendants. The following e-mail addresses used by the Defendants are:

- pw-247357c3cac06031acfd10c17a3de697@privacyguardian.org
- pw-9ac601599ef2efb03e6a219275dec3e3@privacyguardian.org
- pw-877f3c900b076d2d6cc72e9f0ffa9431@privacyguardian.org

- pw-4380d0683962fc036961decf2e2706ee@privacyguardian.org
- pw-4ff25691f5f93d997636615c07785d57@privacyguardian.org
- pw-34323988f7f7712edffc2932609bbfa0@privacyguardian.org

15. In each such e-mail, a link to the website www.noticeofpleadings.net/barium was included, and the pleadings, declarations, evidence, and orders filed in this action have been made available and could be accessed at such website.

16. In particular, on November 2, 2017, I oversaw the service on Defendants by e-mail attaching the Complaint, summons, TRO, and the foregoing link to all other pleadings, documents, and orders in the case. To the best of my knowledge, no Defendant is a minor or incompetent person, or unable to respond due to the absence caused by military service. In these initial e-mails attaching the Complaint and summons, the following text was included:

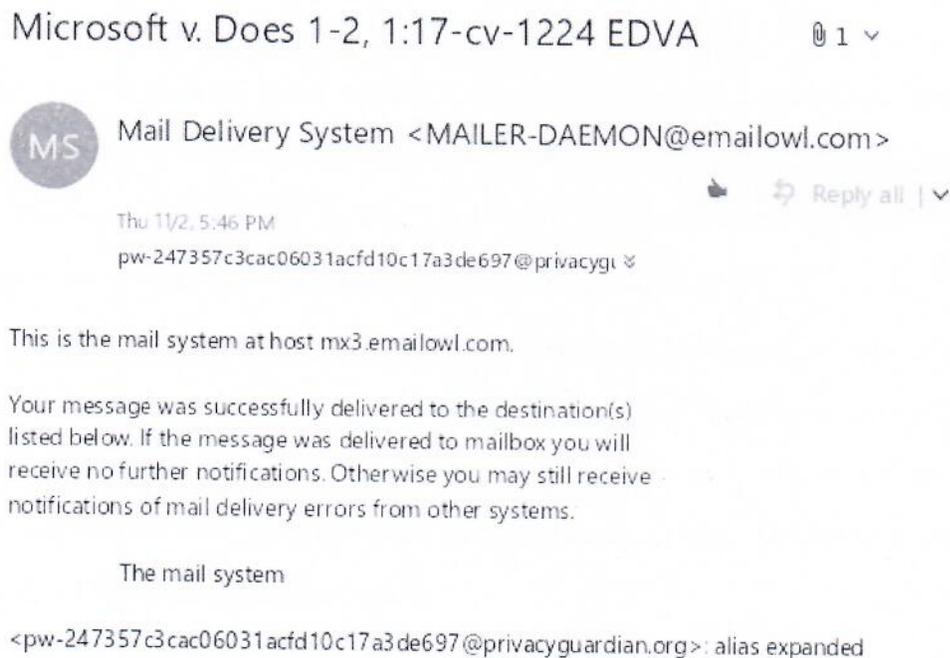
“Plaintiff Microsoft Corporation (“Microsoft”) has sued Defendants John Does 1-2 associated with the Internet domains listed below. Microsoft alleges that Defendants have violated Federal and state law by hosting a cybercriminal operation through these Internet domains, causing unlawful intrusion into Microsoft and Microsoft’s customers’ computers and computing devices; and intellectual property violations to the injury of Microsoft and Microsoft’s customers. Microsoft seeks a preliminary injunction directing the registry associated with these Internet domains to take all steps necessary to disable access to and operation of these Internet domains to ensure that changes or access to the Internet domains cannot be made absent a court order and that all content and material associated with these Internet domains are to be isolated and preserved pending resolution of the dispute. Microsoft seeks a permanent injunction, other equitable relief and damages. Full copies of the pleading documents are available at www.noticeofpleadings.net/barium

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17. On November 3, 2017, I oversaw the service on Defendants of the Notice of Execution, Motion to Unseal Case, Order granting Microsoft's Motion to Unseal Case, and all other pleadings, declarations, orders, and other submissions in this action by sending e-mails attaching all of the foregoing documents to the Defendants at the e-mail addresses listed above in paragraph 14. Each e-mail included the same text shown above in paragraph 16.

18. A confirmation of delivery to the e-mail servers used in connection with the e-mail addresses associated with Defendants was received by Alston after each e-mail was sent to such addresses, as described above (see the example shown in **Figure 1**, below), but despite Alston's request for a "read receipt" and use of an e-mail tracking service, Alston did not receive any confirmation that Defendants read the e-mails.

Figure 1



19. On October 30, 2017, I oversaw the service of the TRO on the website operators listed in Appendix A and Appendix B of the TRO, respectively, to the following contacts:

Helen J. Lee
VERISIGN
12061 Bluemont Way
Reston, VA 20190

E-mail: hjlee@Verisign.com

Aman Singh
Benjamin Kohel
Microsoft Corporation
One Microsoft Way
Redmond, Washington 98052
E-mail: amsin@microsoft.com
bekoehl@microsoft.com

Jessie Geraci
Scott Roberts
GitHub, Inc.
88 Colin P Kelly Junior Street
San Francisco, CA 94107
E-mail: jessephus@github.com
sroberts@github.com

20. On November 8, 2017, I oversaw the service via e-mail of all other pleadings, declarations, orders, and other submissions in this action to the same contacts listed above in paragraph 19.

21. On November 16, 2017, I oversaw the service on Defendants by e-mail attaching Microsoft's Notice of Service, my declaration in support of Microsoft's Notice of Service, and exhibits in support thereof. In these e-mails attaching the documents, the following text was included:

"Plaintiff Microsoft Corporation ("Microsoft") has sued Defendants John Does 1-2 associated with the Internet domains listed below. Microsoft alleges that Defendants have violated Federal and state law by hosting a cybercriminal operation through these Internet domains, causing unlawful intrusion into Microsoft and Microsoft's customers' computers and computing devices; and intellectual property violations to the injury of Microsoft and Microsoft's customers. Microsoft seeks a preliminary injunction directing the registry associated with these Internet domains to take all steps necessary to disable access to and operation of these Internet domains to ensure that changes or access to the Internet domains cannot be made absent a court order and that all content and material associated with these Internet domains are to be isolated and preserved pending resolution of the dispute. Microsoft seeks a permanent injunction, other equitable relief and damages. Full copies of the pleading documents are available at www.noticeofpleadings.net/barium

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22. On November 28, 2017, I oversaw the service on Defendants by e-mail attaching this Court’s Preliminary Injunction Order. In these emails, the following text was included:

“Plaintiff Microsoft Corporation (“Microsoft”) has sued Defendants John Does 1-2 associated with the Internet domains listed below. Microsoft alleges that Defendants have violated Federal and state law by hosting a cybercriminal operation through these Internet domains, causing unlawful intrusion into Microsoft and Microsoft’s customers’ computers and computing devices; and intellectual property violations to the injury of Microsoft and Microsoft’s customers. Microsoft seeks a preliminary injunction directing the registry associated with these Internet domains to take all steps necessary to disable access to and operation of these Internet domains to ensure that changes or access to the Internet domains cannot be made absent a court order and that all content and material associated with these Internet domains are to be isolated and preserved pending resolution of the dispute. Microsoft seeks a permanent injunction, other equitable relief and damages. Full copies of the pleading documents are available at www.noticeofpleadings.net/barium

NOTICE TO DEFENDANT: READ THESE PAPERS CAREFULLY! You must “appear” in this case or the other side will win automatically. To “appear” you must file with the court a legal document called a “motion” or “answer.” The “motion” or “answer” must be given to the court clerk or administrator within 21 days of the date of first publication specified herein. It must be in proper form and have proof of service on Microsoft’s attorneys, Michael Zweiback at Alston & Bird LLP, 333 South Hope Street, 16th Floor, Los Angeles, CA 90071. If you have questions, you should consult with your own attorney immediately.”

23. Despite this robust notice and service, the Defendants have not contacted me, anyone at my firm, Microsoft, nor any other party associated with Microsoft. Despite notice and service, Defendants have not objected to the relief obtained in the TRO and the Preliminary

Injunction Order. Despite notice and service, Defendants have not objected to or disputed any pleading, declaration, fact, evidence or submission in this case.

Service By Mail Or Personal Delivery

24. When registering a domain name, the registrant provides identifying and contact information, including the registrant's name, postal address, e-mail address, phone number, administrative contact details, and technical contact details. This information is referred to as "WHOIS" data. (Dkt. 1, ¶¶ 42-43; Dkt. 7, ¶¶ 21-28.) As explained in the Complaint and my prior declaration (*id.*), the Defendants used a privacy protection service provided by QHoster. The following address was provided in the WHOIS data for the domains listed in Appendix B to the TRO:

Domain Administrator
1928 Highland Ave. Ste F104 PMB# 255
Phoenix, AZ 85016
United States

25. On November 9, 2017, Alston served printed copies of the Complaint, the TRO, and all other pleadings, declarations, orders, and other submissions in this action, by mail to the address shown above in paragraph 24. The package was refused and returned to sender. True and correct copies of the tracking information provided by the courier are attached hereto as

Exhibit 2.

26. Accordingly, based on my prior experience and from Microsoft's research, I believe that the most reliable contact information for effecting communication with Defendants were the e-mail addresses that were discovered to be associated with Defendants' domains. From my research, I conclude that such e-mail addresses were likely to be valid, as it is necessary to obtain web hosting services or Internet domain names and receive communications from the registrar.

27. For the same reasons, we have not attempted service on any mailing addresses or using The Hague processes.

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Contact By Defendants

28. As of May 21, 2018, I have not been contacted by any of the Defendants regarding this case or at all. I have also conferred with Richard Boscovich, Assistant General Counsel in Microsoft's Digital Crimes Unit, who confirms that Microsoft, or any party associated with it, has not been contacted by any of the Defendants regarding this case or at all.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge. Executed on this 21st day of May, 2018, in Los Angeles.



Michael Zweiback

CERTIFICATE OF SERVICE

I hereby certify that on May 21, 2018, the foregoing was electronically filed 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

pw-247357c3cac06031acfd10c17a3de697@privacyguardian.org

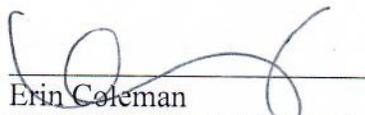
pw-9ac601599ef2efb03e6a219275dec3e3@privacyguardian.org

pw-877f3c900b076d2d6cc72e9f0ffa9431@privacyguardian.org

pw-4380d0683962fc036961decf2e2706ee@privacyguardian.org

pw-4ff25691f5f93d997636615c07785d57@privacyguardian.org

pw-34323988f7f7712edffc2932609bbfa0@privacyguardian.org



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