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

MICROSOFT CORPORATION **Plaintiff,** **v.** **JOHN DOES 1-51, CONTROLLING MULTIPLE COMPUTER BOTNETS THEREBY INJURING MICROSOFT AND ITS CUSTOMERS** **Defendants.**	**CASE NO. 1:17-CV-4566**

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 1-51. 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. 19 at pp. 12-13 (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 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 Does Defendants' distribution of malware which Microsoft has identified as "Gamarue". Defendants are the persons responsible for operating Internet domains used to propagate and control the Gamarue malware and related cybercrime operation. On November 17, 2017, 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. 19. 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. 19 at pp. 12-13. 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 publically available Internet website. *Id.*

Service of Process on Defendants

The Court authorized service by e-mail and publication on November 17, 2017. Dkt. 19 at pp. 12-13. On December 6, 2017, Plaintiff served e-mail addresses associated with Defendants' Internet domains. Zweiback Decl. ¶¶ 15-19. Plaintiff also served Defendants by publication on December 6, 2017 at website www.noticeofpleadings.net/gamarue. *Id.* at ¶¶ 7-10. Plaintiff used an e-mail tracking service to monitor whether service e-mails were received and read. *Id.* at ¶ 11. The service of process e-mails 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 December 27, 2017 (21 days after e-mail service). *Id.* at ¶ 4. To the best of Plaintiff's 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 e-mail 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., 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 numerous 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. Zweiback Decl. ¶¶ 12-21. 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.* While Defendants' specific physical addresses are unknown, the evidence indicates that Defendants carry out business through the e-mail addresses. *Id.* at ¶¶ 23-26. Moreover, it is likely that Defendants are aware of the notice website, which has been publicly available since December 6, 2017 and was included in the e-mails to the Defendants. Zweiback Decl. ¶¶ 9-11. 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. Zweiback Decl. ¶¶ 5-6.

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.

Therefore, pursuant to Fed. R. Civ. P. 55(a), entry of default against the non-responsive 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).

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III. CONCLUSION

For all the foregoing reasons, entry of default against the John Doe Defendants 1-51 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: April 16, 2018

Respectfully submitted,

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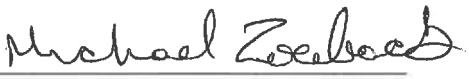
CERTIFICATION OF COMPLIANCE

Pursuant to L.R. 7.1(D), N.D. Ga., counsel for Plaintiff hereby certifies that this Request 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 16, 2018

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on April 16, 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:

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