

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

MICROSOFT CORPORATION,

Plaintiff,

V.

Case No. 1:25-CV-2695-MHC

DOES 1-10,

Defendants.

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF’S MOTION TO  
EXTEND TEMPORARY RESTRAINING ORDER**

# INTRODUCTION

This case involves a malicious scheme to distribute and exploit malware targeting customers of Plaintiff Microsoft Corp. (“Microsoft”). Specifically, this action targets the most widely distributed data-stealing malware family in the world, commonly known as Lumma, LummaStealer, or LummaC2 malware (“Lumma”). Lumma malware has been linked with a wide range of cybercrimes such as ransomware, financial fraud and even nation state-initiated activities.

On May 15, 2025, the Court issued an *ex parte* Temporary Restraining Order enjoining Defendants from (1) reproducing, distributing, creating derivative works of, or using unauthorized versions of Microsoft’s software; (2) using

without authorization the “Microsoft,” “Windows,” and “Edge” trademarks; (3) deploying, installing, executing, or copying malware, computer contaminants, malicious code, or unauthorized software on third party computers; (4) using infected victims’ computers to send commands and instructions to the infected computing device to control it surreptitiously and deliver malware that enables Defendants to take control of the victim’s computer or to use such computers to receive, transmit, or send commands from Lumma malware and associated infrastructure and services; and (5) distributing, operating, or using Lumma Malware for purposes of obtaining third party data without authorization. *See* ECF 15 (the “TRO”). The TRO further directs that traffic to certain identified domains be directed to Microsoft name servers (the “Subject Domains”). Also on May 15, 2025, the Court granted Microsoft’s motion for expedited discovery and motion to serve Defendants by alternative means, including email service. *See* ECF 16, 17.

Since May 15, 2025, Microsoft has successfully executed the TRO and disrupted Defendants’ infrastructure. Microsoft’s efforts allowed it to receive information from victim computers that reached out to certain of the seized domains, which is an important part of the TRO relief that will help Microsoft assist victims in cleaning their infected systems. Upon execution of the TRO, Microsoft served Defendants through notices posted at the seized domains, Microsoft’s pleadings notice website, and emails to abuse contacts where

available. There have also been national and international press articles related to this case to alert Defendants of this action.<sup>1</sup> Microsoft has not received any communications to date from any Defendant, however.

Because the TRO issued on May 15, 2025, the default 14-day period contemplated by Rule 65 currently expires on May 29, 2025. Fed. R. Civ. P. 65(b)(2) (“The order expires...after ...14 days...unless before that time the court, for good cause, extends it...”). As no Defendant has responded to the case yet or otherwise communicated with Microsoft, and in light of the fact that Microsoft has served subpoenas pursuant to the Court’s order permitting early discovery that may result in receipt of additional information in the next two weeks that may permit further notice efforts, Microsoft respectfully moves the Court to (1) extend the TRO for an additional 14 days, to and including June 12, 2025, and (2) requests that the Court schedule the preliminary injunction hearing between June 9 and 12, 2025 at a time convenient for the Court.

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<sup>1</sup> See, e.g., <https://blogs.microsoft.com/on-the-issues/2025/05/21/microsoft-leads-global-action-against-favored-cybercrime-tool/>; <https://www.digitaltrends.com/computing/microsoft-and-doj-deal-crushing-blow-to-lumma-malware-empire/>; <https://www.cybersecuritydive.com/news/microsoft-takedown-lumma-stealer/748727/>; and <https://www.europol.europa.eu/media-press/newsroom/news/europol-and-microsoft-disrupt-world%E2%80%99s-largest-infostealer-lumma>.

Extending the TRO for this short period will ensure continued safeguarding of the Subject Domains and infected computers until a time when the preliminary injunction hearing can be held. This brief extension of the TRO will not prejudice Defendants, since they have no legitimate need to engage in enjoined activities or to exercise control over the malicious domains at issue. Defendants also will have an opportunity to be heard at the preliminary injunction hearing, after even more attempts to provide notice to Defendants have been completed.

### **ARGUMENT**

By default, a TRO “expires at the time after entry—not to exceed 14 days—that the court sets, unless before that time the court, for good cause, extends it for a like period or the adverse party consents to a longer extension.” Fed. R. Civ. P. 65(b)(2). Whether to extend a TRO is an issue committed to the trial court’s sound discretion, *Doe v. Univ. of N.C. Sys.*, 2023 U.S. Dist. LEXIS 183018, at \*5 (W.D.N.C. Oct. 10, 2023), and there are no clearly delineated limits on what constitutes “good cause” under Rule 65(b)(2), *see Direct Biologics, LLC v. McQueen*, 2022 U.S. Dist. LEXIS 92720, at \*2 (W.D. Tex. May 16, 2022) (citing 11A Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 2953 (3d ed. 2022 Update)). “However, courts have found good cause” where “the grounds for originally granting the TRO continue to exist.” *Id.* Courts have also found good cause for extensions where additional time is needed to “decide

whether a preliminary injunction should be issued before the extension expires,” *Builder Servs. Grp., Inc. v. Dillon*, 2024 U.S. Dist. LEXIS 161110, at \*6 (W.D. Mo. July 16, 2024), or where complicated procedural issues made strict adherence to Rule 65’s presumptive 14-day limit impracticable, *see H-D Mich., LLC v. Hellenic Duty Free Shops S.A.*, 2011 U.S. Dist. LEXIS 105725, at \*3 (E.D. Wis. Sep. 19, 2011) (collecting cases like *Almetals, Inc. v. Wickeder Westfalenstahl, GMBH*, 2008 WL 624067, at \*2-3 (E.D. Mich. 2008) (extending TRO until plaintiff could effect service under Hague Convention) and *U.S. v. City of Asbury Park*, 340 F. Supp. 555, 557 n.3 (D.N.J. 1972) (complex evidentiary issues)); *see also Doe v. Univ. of N.C. Sys.*, 2023 U.S. Dist. LEXIS 183018, at \*5 (“Chief Judge Reidinger, the presiding Judge in this case, will be out of chambers until the end of October, i.e., longer than fourteen days. This Court will likely find good cause to extend the restraining order until Chief Judge Reidinger’s return”); *Am. Sys. Consulting, Inc. v. Devier*, 514 F. Supp. 2d 1001, 1010 (S.D. Ohio 2007) (extending duration of a TRO for good cause when it was set to expire due to “scheduling issues”).

Here, good cause exists to extend the TRO for all the reasons set forth in Microsoft’s Application for an Emergency *Ex Parte* TRO. There have been no material changes to the pertinent facts since issuance of the TRO, except partial remediation via the TRO of ongoing harm that was being caused by Defendants

and Microsoft’s attempts to provide Defendants with notice of the TRO, this action, and the preliminary injunction hearing. If the Subject Domains are permitted to fall back into Defendants control, however, Defendants could unlawfully continue their distribution and control of the Lumma malware through those domains, which remain hardcoded into the Lumma malware that continues to reside on some infected victim computers. “Courts routinely find that good cause exists for an extension if the circumstances that supported the initial grant of the temporary restraining order” have not changed. *FTC v. Automators LLC*, 2023 U.S. Dist. LEXIS 150791, at \*3 (S.D. Cal. Aug. 25, 2023) (collecting cases). In addition, it is important that the Subject Domains remain secured so that the Court can determine whether to convert the TRO into a preliminary injunction. *See Dillon*, 2024 U.S. Dist. LEXIS 161110, at \*6. Moreover, extending the TRO to June 12, 2025 will not result in any deprivation to Defendants. In fact, Defendants are prohibited by law from carrying out any of the conduct enjoined by the TRO, so the TRO does not actually harm Defendants at all. *See, e.g., 3M Co. v. Performance Supply, LLC*, 458 F. Supp. 3d 181, 197 (S.D.N.Y. 2020) (“It would not be a ‘hardship’ for Defendant to refrain from engaging in unlawful activities”); *Millennium Funding v. Doe*, Civil Action No. 1:21-cv-282 (RDA/TCB), 2021 U.S. Dist. LEXIS 220120, at \*40 (E.D. Va. Oct. 15, 2021) (“the only ‘hardship’ Defendant Doe would suffer from a permanent injunction would be the

requirement to follow clearly established trademark law and to cease running its unlawful piracy application. This apparent hardship, however, does not affect the balancing of interests under this test.”).

### CONCLUSION

For the foregoing reasons, Microsoft respectfully requests that the TRO be extended by fourteen days, until June 12, 2025, and that the preliminary injunction hearing be set between June 9 and 12, 2025 at a time convenient for the Court.

Dated: May 28, 2025

Respectfully submitted,

/s/ Joshua D. Curry

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### **CERTIFICATION 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: May 28, 2025

/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: May 28, 2025

/s/ Joshua D. Curry