

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

MICROSOFT CORPORATION,)	
)	
Plaintiff,)	
)	
v.)	Case No. <u>1:25-CV-2695-MHC</u>
)	
DOES 1-10,)	<u>FILED UNDER SEAL</u>
)	
Defendants.)	
)	
)	
)	

**MEMORANDUM OF LAW IN SUPPORT OF
PLAINTIFF’S MOTION FOR ISSUANCE OF SUMMONS AND
AUTHORIZATION TO SERVE PROCESS ON DEFENDANTS BY
ELECTRONIC MEANS PURSUANT TO FED. R. CIV. P. 4(f)(3)**

I. INTRODUCTION

Plaintiff Microsoft Corporation (“Microsoft”) seeks an order directing issuance of summons to Defendants Does 1 through 10 (“Defendants”) without physical addresses listed on them and authorization to serve the Summons, Complaint, Motions, Orders, and all other pleadings and papers on Defendants by electronic means pursuant to Rule 4(f)(3) of the Federal Rules of Civil Procedure. Such an order is necessary because Defendants have hidden their physical addresses and operate anonymously on the internet to distribute and exploit malware targeting Microsoft customers, as more fully described in Plaintiff’s Complaint and the

Application of Microsoft Corporation For An Emergency *Ex Parte* Order For Temporary Restraining Order and Related Relief (“TRO”). It has not been possible to determine precise physical addresses for Defendants, even though Plaintiff has made significant good faith efforts to do so. Declaration of Derek Richardson in Support of Application of Microsoft Corporation For An Emergency *Ex Parte* Order For Temporary Restraining Order and Related Relief (“Richardson Declaration”) ¶ 47. Accordingly, Plaintiff should be permitted to obtain summons and affect service on Defendants by electronic means under Fed. R. Civ. P. 4(f)(3).

Plaintiff intends to serve Defendants via any known email addresses, abuse contacts, public websites, and any other means of contacting them that Microsoft is able to uncover upon execution of the TRO and obtaining discovery. These means should be more than sufficient to ensure Defendants receive fair and proper notice of this lawsuit and court filings. If Plaintiff obtains physical addresses for Defendants through discovery, it will serve them at those addresses, too.

II. LEGAL STANDARD

Rule 4(f)(3) permits alternative methods of service so long as those methods are consistent with due process, are not prohibited by international agreement, and are approved by the Court. *Brookshire Bros., Ltd. v. Chiquita Brands Int’l*, Case No. 05-CIV-21962, 2007 WL 1577771, at *2 (S.D. Fla. May 31, 2007) (denying motion to quash where the Court previously granted motion to serve by alternative means);

Rio Props. Inc., v. Rio Int'l Interlink, 284 F.3d 1007, 1014 (9th Cir. 2002) (affirming trial court's authorization of service pursuant to Rule 4(f)(3) without first exhausting all other options). Due process requires that persons whose property interests are at risk due to government action receive notice and an opportunity to be heard. *Thomas v. United States*, 681 Fed. Appx. 787, 790 (11th Cir. 2017). The notice must be "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Id.* (citing *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)). The decision to allow service by alternate means will be reviewed for an abuse of discretion. *Prewitt Enterprises, Inc. v. Organization of Petroleum Exporting Countries*, 353 F.3d 916, 922 (11th Cir. 2003).

Pursuant to Fed. R. Civ. P. 4(f), an individual outside the United States may be served in one of the following ways:

(1) by any internationally agreed means of service that is reasonably calculated to give notice, such as those authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents;

(2) if there is no internationally agreed means, or if an international agreement allows but does not specify other means, by a method that is reasonably calculated to give notice:

(A) as prescribed by the foreign country's law for service in that country in an action in its courts of general jurisdiction;

(B) as the foreign authority directs in response to a letter rogatory or letter of request; or

(C) unless prohibited by the foreign country's law, by:
[...] (ii) using any form of mail that the clerk addresses and sends
to the individual and that requires a signed receipt; or

(3) by other means not prohibited by international agreement, as the
court orders.

Fed. R. Civ. P. 4(f). A plaintiff is not required to serve a person or corporation
outside of the United States pursuant to the provisions of the Hague Service
Convention “where the address of the person to be served with the document is not
known.” *See* Hague Convention on Service Abroad of Judicial and Extrajudicial
Documents in Civil and Commercial Matters, Nov. 15, 1965, Art. 1, 20 U.S.T. 361,
T.I.A.S. No. 6638, 658 U.N.T.S. 163.

III. ARGUMENT AND CITATION OF AUTHORITY

A. PLAINTIFFS ARE NOT REQUIRED TO SERVE DEFENDANTS THROUGH THE HAGUE SERVICE CONVENTION BECAUSE DEFENDANTS’ ADDRESSES ARE UNKNOWN

Plaintiff suspects Doe Defendant 1 (aka “Shamel”) may be located in Russia,¹
but this has not been confirmed and Plaintiff does not know the actual physical

¹ Although Russia is a signatory to the Hague Service Convention, service of
process between the United States and Russia pursuant the Hague Service
Convention has been suspended since July 2003. *See*
[https://travel.state.gov/content/travel/en/legal/Judicial-Assistance-Country-
Information/RussianFederation.html](https://travel.state.gov/content/travel/en/legal/Judicial-Assistance-Country-Information/RussianFederation.html) (service of process section). Thus, as to
Defendant Doe 1, the Hague Service Convention would not apply even if Doe 1's
location is confirmed to be in Russia and his name and address are uncovered.

address of any Defendant, despite making diligent efforts to locate these addresses. Richardson Declaration ¶ 5, 47. As operators of a sophisticated Internet-based cybercriminal operation, Defendants prefer to stay anonymous to avoid being held accountable for their malfeasance. Because Plaintiff is unable to ascertain Defendants' actual physical addresses, Plaintiffs are not required to serve process on any foreign Defendants pursuant to the Hague Service Convention. *See Microsoft Corp. v. Malikov*, No. 1:22-CV-1328, 2022 WL 1694773, at *1 (N.D. Ga. Apr. 8, 2022) ("Because Defendants' physical addresses are not known or not ascertainable, Plaintiffs are not required to serve Defendants pursuant to the Hague Service Convention."); *U.S. Commodity Futures Trading Comm'n v. Rubio*, No. 12-CV-22129, 2012 WL 3614360, at *2 (S.D. Fla. Aug. 21, 2012) (holding that "the Hague Service Convention is not applicable here because it 'shall not apply where the address of the person to be served with the documents is not known.'"); *Philip Morris USA Inc. v. Veles Ltd.*, No. 06 Civ. 2988, 2007 WL 725412, at *2 (S.D.N.Y. March 12, 2007) (finding the Hague Service Convention inapplicable because physical addresses could not be confirmed as valid).

IV. SERVICE OF DEFENDANTS BY ELECTRONIC MEANS COMPORTS WITH DUE PROCESS AND PROVIDES FAIR NOTICE

Federal courts have authorized a variety of electronic service methods where a plaintiff demonstrates the method is likely to notify a defendant of the pendency of the action. The U.S. Bankruptcy Court for the Northern District of Georgia was

one of the first federal courts in the country to authorize service of process by electronic mail. *See In re Int'l Telemedia Associates, Inc.*, 245 B.R. 713 (Bankr. N.D. Ga. 2000). In doing so, the court emphasized the reliability of using the defendant's preferred channels of communication:

If any methods of communication can be reasonably calculated to provide a defendant with real notice, surely those communication channels utilized and preferred by the defendant himself must be among them.... A defendant should not be allowed to evade service by confining himself to modern technological methods of communication not specifically mentioned in the Federal Rules. Rule 4(f)(3) appears to be designed to prevent such gamesmanship by a party.

In re Int'l Telemedia, 245 B.R. at 721. Many courts since the *Telemedia* decision have followed suit and approved of service by electronic means, including email, website publication, and online social media platforms such as Facebook and Twitter. *See, e.g., Rio Props.*, 284 F.3d 1007, 1017 (9th Cir. 2002) (holding “without hesitation” that e-mail service of a foreign online business defendant is constitutional.); *National Association for Stock Car Auto Racing, Inc. v. Does*, 584 F. Supp.2d 824, 826 (W.D.N.C. 2008) (authorizing service by publication on plaintiff's website.); *Popular Enters., LLC v. Webcom Media Group, Inc.*, 225 F.R.D. 560, 562 (E.D. Tenn. 2004) (authorizing service by email); *U.S. v. Mohammad*, 249 F. Supp.3d 450, 454 (D.D.C. 2017) (authorizing service by Facebook message and email); *St. Francis Assisi v. Kuwait Finance House*, 16-CV-

3240-LB, 2016 WL 5725002 (N.D. Cal. Sep. 20, 2016) (authorizing service by Twitter).

This Court has also approved service by electronic means in cases like this one that involved persons in foreign countries where electronic service is a method plaintiff has shown is likely to notify defendants of the pendency of the action. *See Microsoft v. Malikov*, 2022 WL 1694773, at *2 (authorizing service by email and other electronic means); *see also AMPB Metals Exports, Inc. v. Metal Scrap Sol., LLC*, No. 1:22-CV-04026-SEG, 2023 WL 9915427, at *3 (N.D. Ga. June 30, 2023) (authoring service by email, WhatsApp, and LinkedIn).

Defendants are operators of a sophisticated Internet-based cybercriminal operation who purposefully communicate and transact business exclusively by electronic means. Defendants conceal their identities and physical contact information and locations in an effort to avoid being served, thereby attempting to avoid liability for their illegal conduct. The only means of communicating with Defendants is by electronic means, such as electronic mail. Therefore, service by electronic means and email under these circumstances is particularly warranted.

If the Court grants the TRO and after the TRO is executed,² Plaintiff proposes to provide notice of the Summons, Complaint, and TRO to Defendants and to serve

² As discussed in Plaintiffs' TRO brief, notice of this action and the TRO cannot be made on Defendants until after the TRO is executed because notice to

Defendants with process and other papers in this case by electronic mail using any known email addresses, abuse contacts, public websites, and any other means of contacting them that Microsoft is able to uncover upon execution of the TRO. First, Plaintiff submits that this is a highly reliable method of notifying Defendants of the lawsuit and of serving Defendants with process because their primary means of communicating in connection with the scheme alleged in the complaint is through such electronic means. As such, permitting email service on Defendants comports with Due Process. Second, Plaintiffs anticipate that once the TRO is executed, Defendants will realize that their infrastructure is disabled and will check their associated email accounts (e.g., the email accounts used to register the malicious domains) to see what is happening, and/or will initiate contact with the undersigned counsel via email, as some Defendants have done in the past in connection with similar cases. Declaration of Robert L. Uriarte in Support of Application of Microsoft Corporation for an Emergency *Ex Parte* Order for Temporary Restraining Order and Related Relief ¶ 7. Service of process and related documents using abuse contacts and associated email addresses, therefore, is very likely to notify Defendants of this action and proceedings, and as such, it also comports with Due

Defendants would allow them to destroy the evidence of their illicit activity and give them the opportunity to move the instrumentalities they use to conduct their unlawful activity.

Process. Therefore, service by this method is also very likely to provide Defendants with actual notice of this action and, therefore, also comports with Due Process.

V. SERVICE BY ELECTRONIC MEANS IS NOT PROHIBITED BY INTERNATIONAL AGREEMENT

Where, as here, a plaintiff is not required adhere to the Hague Service Convention, the Court may authorize service “by other means not prohibited by international agreement.” Fed. R. Civ. P. 4(f)(3). Even if the Hague Service Convention could apply, Article 10 of the Hague Service Convention specified a number of alternative methods of service, including postal channels, judicial officers, or other competent persons. At present, the only foreign country in which Microsoft suspects any defendant may reside is Russia. *See* Richardson Declaration ¶ 5. Microsoft, however, has not yet confirmed this suspicion and lacks name and address information for that Defendant, rendering compliance with the Hauge Convention impossible. Moreover, although Russia has objected to all of the alternative methods of service in Article 10, this objection only prohibits services by those means specifically objected to in Article 10 (i.e., by “postal channels,” “judicial officers,” or other “officials”). This Court and others have concluded that “[w]here a signatory nation has objected to only those means of service listed in Article 10, a court acting under Rule 4(f)(3) remains free to order alternative means of service that are not specifically referenced in Article 10.” *See Gurung v. Malhotra*, 279 F.R.D. 215, 219 (S.D.N.Y. 2011) (authorizing service by email to defendant in

India and holding where a “signatory nation has objected to only those means of service listed in Article X, a court acting under Rule 4(f)(3) remains free to order alternative means of service that are not specifically referenced in Article X.”); *Microsoft v. Malikov*, 2022 WL 1694773, at *1-2 (noting Russia’s suspension of cooperation with the United States under the Hague Service Convention and authorizing service by email to a defendant in Russia under Rule 4(f)(3)); *see also F.T.C. v. PCCare247 Inc.*, 12 Civ. 7189, 2013 WL 841037 at *3-*4 (S.D.N.Y. March 7, 2013) (authorizing service by email and Facebook in India where India objected only to means of service listed in Article 10). Because Russia has not objected to service by electronic means, this Court may authorize such alternative service pursuant to Rule 4(f)(3) even if any Defendant is located in Russia. *See Microsoft v. Malikov*, 2022 WL 1694773, at *1-2; *see also Richemont Int’l SA v. Individuals, P’ships & Unincorporated Ass’ns identified on Schedule A*, No. 20-cv-61367, 2020 U.S. Dist. LEXIS 210762, at *3 (S.D. Fla. July 10, 2020) (authoring service by email where defendants addresses were unknown, but where it was shown that defendants were likely to receive notice by email, for defendants residing in Russia, China, Australia, India, Japan, Korea, Morocco, Sri Lanka, Ukraine, Indonesia, and Singapore).

VI. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that this Court direct the issuance of summons to Defendants Does 1 through 10 without a physical address and authorize Plaintiff to serve Defendants after the TRO has been executed with the Summons, Complaint, TRO, and all subsequent pleadings and documents upon each Defendant in this action by electronic means, including using email addresses provided by the Defendants themselves.

Dated: May 14, 2025

Respectfully submitted,

/s/ Joshua D. Curry

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CERTIFICATE OF COMPLIANCE

Pursuant to L.R. 7.1(D), N.D. Ga., counsel for Plaintiffs hereby certifies that this Application 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 14, 2025

/s/ Joshua D. Curry