

# Sealed

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CIVIL ACTION NO.

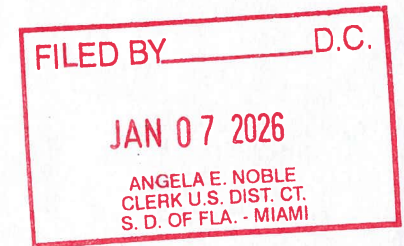
MICROSOFT CORPORATION, H2-  
PHARMA, LLC, and GATEHOUSE DOCK  
CONDOMINIUM ASSOCIATION, INC.,

Plaintiffs

v.

DOES 1-7,

Defendants



**FILED UNDER SEAL**

**PLAINTIFFS' MOTION AND MEMORANDUM IN SUPPORT OF 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**

Plaintiffs Microsoft Corporation, H2-Pharma, LLC, and Gatehouse Dock Condominium Association, Inc. ("Plaintiffs") seek an order directing issuance of summons to Defendants Does 1 through 7 ("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 software and services targeting Microsoft customers for financial fraud, as more fully described in Plaintiffs' Complaint and Plaintiffs' Emergency *Ex Parte* Motion for a Temporary Restraining Order and Related Relief ("TRO"). As operators of a sophisticated Internet-based cybercriminal operation, Defendants prefer to stay anonymous to avoid being held accountable for their malfeasance. As such, it has not been possible to determine

precise physical addresses for Defendants, even though Plaintiffs have made significant good faith efforts to do so. Declaration of Sean Ensز in Support of Plaintiffs' Motion for a Temporary Restraining Order and Related Relief ("Ensز Declaration") ¶ 38. Accordingly, Plaintiffs should be permitted to obtain summons and effect service on Defendants by electronic means under Fed. R. Civ. P. 4(f)(3).

Plaintiffs intend to serve Defendants by publishing a notice of this action on the domains that are the subject of the TRO motion, which are domains that Defendants are known to frequently visit and use. In addition, Plaintiffs intend to serve Defendants via any known email addresses, abuse contacts, public websites, and any other means of contacting them that Plaintiffs are 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 Plaintiffs obtain physical addresses for Defendants through discovery, they 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).

### **III. ARGUMENT**

#### **A. SERVICE OF DEFENDANTS BY ELECTRONIC MEANS COMPORTS WITH DUE PROCESS AND PROVIDES FAIR NOTICE**

Federal courts, including this one, have authorized a variety of electronic service methods, including email, website publication, and online social media platforms such as Facebook and Twitter, where a plaintiff demonstrates the method is likely to notify a defendant of the pendency of the action. *See, e.g., Chanel, Inc. v. Individual, P’ship, or Unincorporated Ass’n*, No. 17-62441-CIV, 2017 WL 8794733, at \*5 (S.D. Fla. Dec. 13, 2017) (authorizing service by e-mail and website publication); *TracFone Wireless, Inc. v. Bitton*, 278 F.R.D. 687, 693 (S.D. Fla. 2012) (finding that service of process by e-mail was reasonably calculated to apprise defendant of the action and give it an opportunity to respond); *Chanel, Inc. v. Zhixian*, Case No. 10-cv-60585-JIC, 2010 WL 1740695 (S.D. Fla. April 29, 2010) (e-mail service “reasonably calculated to notify Defendants of the pendency of this action and provide him with an opportunity to present objections.”); *In re Int’l Telemedia Associates, Inc.*, 245 B.R. 713 (Bankr. N.D. Ga. 2000) (“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....”); *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.); *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).

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. Therefore, service by electronic means under these circumstances is particularly warranted.

If the Court grants the TRO and after the TRO is executed,<sup>1</sup> Plaintiffs propose to provide notice of the Summons, Complaint, and TRO to Defendants by causing a message to be displayed on the subject domains. As a result, any Defendants attempting to visit the computing environments used to carry out the conduct described in the Complaint and Microsoft's TRO motion will be given actual notice of these proceedings and will be provided with links to all case documents. In addition, Plaintiffs will endeavor to serve 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 Plaintiffs are able to uncover upon taking third party discovery.

---

<sup>1</sup> 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 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.

Plaintiffs submit that their proposed method of electronic service 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 electronic service on Defendants comports with Due Process. Plaintiffs believe that once the TRO is executed, Defendants will realize that their infrastructure is disabled and will visit the subject domains to see what is happening. It may also be the case that some Defendants will initiate contact with the undersigned counsel via email, as some Defendants have done in the past in connection with similar cases. Service of process and via the subject domains is very likely to notify Defendants of this action and proceedings, and as such, it also comports with Due Process.

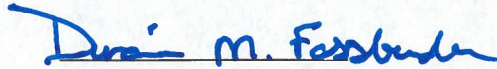
#### **IV. CONCLUSION**

For the foregoing reasons, Plaintiffs respectfully request that this Court direct the issuance of summons to Defendants Does 1 through 7 without a physical address and authorize Plaintiffs 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 publication of a notice on the subject domains and via any known email addresses, abuse contacts, public websites, and any other means of contacting them that Plaintiffs are able to uncover upon execution of the TRO and obtaining discovery.



Dated: January 7, 2026

Respectfully submitted,



Diana Marie Fassbender

Diana Marie Fassbender (Florida Bar No. 17095)  
ORRICK, HERRINGTON & SUTCLIFFE LLP  
215 NW 24th St, Suite 200  
Miami, FL 33127  
Tel: (202) 339-8533  
dszego@orrick.com

Robert L. Uriarte (*pro hac vice* forthcoming)  
ORRICK, HERRINGTON & SUTCLIFFE LLP  
355 S. Grand Ave.  
Ste. 2700  
Los Angeles, CA 90017  
Tel: (213) 629-2020  
Fax: (213) 612-2499  
ruriarte@orrick.com

Ana M. Mendez-Villamil (*pro hac vice* forthcoming)  
ORRICK, HERRINGTON & SUTCLIFFE LLP  
The Orrick Building  
405 Howard Street  
San Francisco, CA 94105  
Tel: (415) 773-5700  
amendez-villamil@orrick.com

*Of Counsel:*  
Richard Boscovich  
MICROSOFT CORPORATION  
Microsoft Redwest Building C  
5600 148th Ave NE  
Redmond, Washington 98052  
Tel: (425) 704-0867  
rbosco@microsoft.com

*Attorneys for Plaintiffs*