

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

-----X	:	
MICROSOFT CORPORATION,	:	
	:	
Plaintiff,	:	<b>Case No. 23 Civ. 10685 (PAE)</b>
-against-	:	
	:	
DUONG DINH TU,	:	
LINH VAN NGUYEN, and	:	
TAI VAN NGUYEN,	:	
	:	
Defendants.	:	
-----X		

---

**DECLARATION OF BRIAN T. MARKLEY IN SUPPORT OF  
MICROSOFT’S MOTION FOR DEFAULT JUDGMENT AND  
PERMANENT INJUNCTION**

---

I, Brian T. Markley, an attorney duly admitted to practice law in the State of New York and the Southern District of New York, hereby affirm the truth of the following under penalty of perjury:

1. I am an attorney with the law firm of Cahill Gordon & Reindel LLP and am counsel for Plaintiff Microsoft Corporation (“Microsoft”) in the above-captioned action.
  
2. I make this declaration pursuant to Rule 55.2 of the Local Civil Rules for the Southern District of New York, in support of Microsoft’s motion for the entry of default judgment and a permanent injunction against Defendants Duong Dinh Tu, Linh Van Nguyen (a/k/a Nguyen Van Linh), and Tai Van Nguyen (collectively, “Defendants”). Upon information and belief, Defendants are (1) not presently in the military service of the United States, and (2) neither minors nor incompetent persons under Rule 55.2(a)(1)(C) of the Local Civil Rules for the Southern District of New York.

3. This action was commenced on December 7, 2023 by Microsoft's filing, under seal, of a Complaint (Dkt. No. 10) and Emergency Motion for an *Ex Parte* Temporary Restraining Order and Order to Show Cause ("TRO Motion") (Dkt. No. 12). A true and correct copy of the Complaint (Dkt. No. 10) is attached hereto as **Exhibit 1**. True and correct copies of the motion papers associated with Microsoft's TRO Motion (Dkt. Nos. 12–19) are attached hereto as **Exhibit 2**.

4. On December 7, 2023, the Court issued an Emergency *Ex Parte* Temporary Restraining Order and Order to Show Cause ("TRO") (Dkt. No. 35-1) that remained under seal until December 13, 2023. A true and correct copy of the TRO is attached hereto as **Exhibit 3**.

5. On December 13, 2023, following execution of the TRO, Microsoft served Defendants with the Complaint, TRO, TRO Motion, and all attendant papers. A true and correct copy of Microsoft's December 18, 2023 letter to the Court (Dkt. No. 20) detailing such service is attached hereto as **Exhibit 4**.

6. The Court held a hearing on Microsoft's TRO Motion on December 20, 2023, at which Defendants failed to appear. At the conclusion of the hearing, the Court converted the TRO into a Preliminary Injunction Order (Dkt. No. 23). A true and correct copy of the Preliminary Injunction Order is attached hereto as **Exhibit 5**. Microsoft subsequently effectuated service on Defendants of the Preliminary Injunction Order, as set forth in the January 5, 2024 Declaration of Jason Rozbruch (Dkt. No. 26), a true and correct copy of which is attached hereto as **Exhibit 6**.

7. During the December 20, 2023 hearing, the Court requested that, if Microsoft did not intend to move for default judgment at the time Defendants were in default, Microsoft write the Court a letter explaining that it was still prosecuting this action.

8. On January 4, 2024, Microsoft represented to the Court that, although Defendants were in default as of January 4, 2024, Microsoft did not intend to move for default judgment at that time, since Microsoft intended to collect discovery from payment processors to inform the scope of the default judgment it would seek. A true and correct copy of Microsoft's January 4, 2024 letter (Dkt. No. 25) is attached hereto as **Exhibit 7**.

9. On January 4, 2024, the Court ordered Microsoft to submit a status update to the Court every 90 days. A true and correct copy of the Court's January 4, 2024 Order (uploaded to the docket on January 5, 2024 as Dkt. No. 27) is attached hereto as **Exhibit 8**.

10. On April 3, 2024 and July 3, 2024, Microsoft submitted status updates regarding Microsoft's discovery collection efforts and intentions to move for default judgment (Dkt. Nos. 30, 32). A true and correct copy of Microsoft's April 3, 2024 letter is attached hereto as **Exhibit 9**, and a true and correct copy of Microsoft's July 3, 2024 letter is attached hereto as **Exhibit 10**.

11. On July 23, 2024, Microsoft filed, under seal, a Motion for an *Ex Parte* Supplemental Preliminary Injunction Order ("Supplemental Preliminary Injunction Motion") (Dkt. No. 33), and the Court entered an *Ex Parte* Order for Supplemental Preliminary Injunction ("Supplemental Preliminary Injunction") on July 23, 2024 (Dkt. No. 41 at 3–4). A true and correct copy of the Supplemental Preliminary Injunction is attached hereto as **Exhibit 11** and Microsoft's Supplemental Preliminary Injunction Motion and associated motion papers (Dkt. Nos. 33–36) are attached hereto as **Exhibit 12**.

12. As set forth in its letter to the Court dated July 30, 2024 (so ordered on July 31, 2024 and uploaded to the docket on August 1, 2024 as Dkt. No. 40), following execution of the Supplemental Preliminary Injunction, Microsoft served Defendants with the Supplemental Preliminary Injunction, Supplemental Preliminary Injunction Motion, and all attendant papers. A

true and correct copy of Microsoft's July 30, 2024 letter to the Court detailing such service is attached hereto as **Exhibit 13**.

13. Microsoft is entitled to a default judgment against Defendants pursuant to Federal Rule of Civil Procedure 55(b), which provides that the Court may enter a default judgment without any further notice to a defendant that fails to appear. Defendants have been served by the email and publication alternative methods previously authorized by the Court and have failed to appear. On August 13, 2024, the clerk entered default under Local Civil Rule 55.1 and Federal Rule of Civil Procedure 55(a) (Dkt No. 46). A true and correct copy of the Clerk's Certificate of Default is attached hereto as **Exhibit 14**.

14. Microsoft is also entitled to a permanent injunction pursuant to Federal Rule of Civil Procedure 65 to prevent Defendants from continuing to run and operate a criminal enterprise that sells tools and services for committing cybercrime, and to prevent further harm to Microsoft and the general public that would be caused absent such permanent injunctive relief.

15. Microsoft is not seeking monetary damages. An inquest into damages is thus unnecessary.

#### **OTHER AUTHORITY**

16. Attached hereto as **Exhibit 15** is a true and correct copy of the January 11, 2023 Default Judgment and Order for Permanent Injunction in the matter of *Microsoft Corp. v. Malikov*, No. 22-cv-1328 (N.D. Ga. 2022), Dkt. No. 50.

17. Attached hereto as **Exhibit 16** is a true and correct copy of the March 31, 2017 Default Judgment Memorandum & Order in the matter of *Microsoft Corp. v. John Does 1-5*, No. 15-cv-06565 (E.D.N.Y. 2015), Dkt. No. 32.

18. Attached hereto as **Exhibit 17** is a true and correct copy of the March 31, 2017 Permanent Injunction & Order in the matter of *Microsoft Corp. v. John Does 1-5*, No. 15-cv-06565 (E.D.N.Y. 2015), Dkt. No. 33.

Dated: August 27, 2024  
New York, New York

By: /s/ Brian T. Markley

Brian T. Markley