

The Honorable Tana Lin

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BUNGIE, INC.,

Plaintiff,

v.

ELITE BOSS TECH INCORPORATED,
11020781 CANADA INC., DANIEL
FAGERBERG LARSEN, ROBERT JAMES
DUTHIE NELSON, SEBASTIAAN JUAN
THEODOOR CRUDEN A/K/A
“LUZYPHER,” JOHN DOE NO. 4 A/K/A
“GOODMAN,” YUNXUAN DENG A/K/A
“YIMOSECAI,” ANTHONY ROBINSON
A/K/A “RULEZZGAME,” EDDIE TRAN
A/K/A “SENTIENT”, CHENZHIJIE CHEN
A/K/A “CHENZHIJIE402, DSOFTE, CVR
37454303, MARTA MAGALHAES A/K/A
MINDBENDER A/K/A BLUEGIRL, AND
JOHN DOES NO. 9-20,

Defendants.

Case No. 2:21-cv-01112-TL

PLAINTIFF’S MOTION FOR PARTIAL
RECONSIDERATION AND FOR
EXTENSION OF TIME TO IDENTIFY
OR SERVE REMAINING
DEFENDANTS

**NOTE ON MOTION CALENDAR:
May 25, 2023**

OVERVIEW AND RELIEF REQUESTED

Plaintiff Bungie, Inc. asks the Court to partially reconsider its May 11th Order (Dkt. No. 79) that imposed deadlines for identifying and/or serving additional defendants and

1 amending the complaint, by either eliminating such deadlines or extending them greatly.¹ Bungie
 2 continues its efforts to identify the unnamed Doe Defendants, and is actively seeking further
 3 information that may allow that identification, but does not have that information yet. With
 4 regards to the defendants newly identified in the Amended Complaint, the one defendant that
 5 resides in the United States has been served, while the remaining defendants are believed to
 6 reside outside of the country and have taken pains to cover their tracks and obscure their
 7 residence.

8 The normal time limit for service “does not apply to service in a foreign country...” Fed.
 9 R. Civ. P. 4(m); *see also Lucas v. Natoli*, 936 F.2d 432, 432-433 (9th Cir. 1991) (holding that the
 10 time limit of Rule 4(m) does not apply to service on foreign defendants). Thus, Bungie
 11 respectfully submits that it is not in violation of Rule 4(m), and that it should not be subject to
 12 any artificial limit on effecting such service. If the Court nonetheless feels it must set a deadline
 13 for such service on foreign defendants, that deadline should not be until the end of the year,
 14 given the vagaries of Hague Convention service. Bungie further requests the Court extend its
 15 deadline to amend the complaint to identify any further Doe defendants by at least an additional
 16 **60 days** (i.e., until Wednesday, July 24, 2023), which Bungie believes will be enough time to
 17 allow it to receive additional information that may allow for that identification. As explained
 18 below, Bungie has good cause pursuant to Fed. R. Civ. P. 4(m) to request such an extension;
 19 even were Bungie’s reasons found to be insufficient, the Court still has discretion to extend the
 20 time period for identifying and/or serving such defendants and should exercise that discretion.

FACTUAL BACKGROUND

21
 22 As a result of previous settlements and further investigation, Bungie was able to obtain
 23 sufficient information name certain Doe defendants (the “Named Defendants”)² in its amended
 24

25 ¹ Bungie has already complied with part of the order. *See* Dkt. No. 80.

26 ² Those defendants being Sebastiaan Juan Theodoor Cruden aka Luzypher; Yunxuan Deng aka Yimosecai; Anthony
 Robinson, aka Rulezzgame; Chenzhijie Chen aka Chenzhiejie402; “Goodman”; Marta Magalhaes, aka Mindbender,

1 complaint filed on November 30, 2022. Dkt. No. 43. However, often all it had were names
2 and/or online handles and the city and country in which those Named Defendants were purported
3 to reside. *See, e.g.*, Dkt. No. 55 (summons issued on December 30, 2022, which also include
4 what information Bungie then had on the likely residence of those Named Defendants). As
5 shown on those summonses, Bungie's information at that time showed all but one of those
6 Named Defendants resided outside of the United States. Dkt. No. 55.

7 Since that time, Bungie has tried to engage with and further track down those Named
8 Defendants. Bungie served Eddie Tran, who is the only Named Defendant believed to reside in
9 the United States, on February 28th, 2023. Tewson Decl., ¶ 3; Dkt. No. 81. He appeared through
10 his attorneys on April 14, 2023. Dkt. No. 70, 71.

11 The remaining Named Defendants are all believed to reside outside of the United States.
12 Tewson Decl., ¶ 5 (identifying the countries in which each of the remaining Named Defendants is
13 believed to reside). On February 23, Bungie emailed each of the foreign Named Defendants
14 with a request to waive service pursuant to Fed. R. Civ. P. 4(d). Tewson Decl., ¶ 13. Those
15 requests have so gone unanswered except for Defendant Magalhaes. Tewson Decl., ¶ 15.

16 Those foreign Named Defendants had until April 23, 2024 to return that waiver. Fed. R.
17 Civ. P. 4(d)(1)(F). Only a month has elapsed since the deadline passed for those foreign Named
18 Defendants to notify Bungie that they would waive service. In an effort to control costs, Bungie
19 did not try to begin Hague Convention service proceedings until after that deadline ran. Tewson
20 Decl., ¶ 22.

21 Bungie is also currently in the process of attempting to identify the final Doe defendants
22 based on the information Bungie has received through various settlements. Bungie has settled
23 with previous defendants and has put the information it obtained from them to good use.

24 Tewson Decl., ¶ 7. Bungie issued document subpoenas on May 24th, 2023 to Google (with a
25 _____
26 aka Bluegirl, aka Bruno Silva; and Eddie Tran, aka Sentient.

1 return date of June 15th) to obtain information on a specific account that has not yet been
2 personally identified, such as IP addresses, log-in information, and any registration information.
3 Tewson Decl., ¶ 23. Bungie expects that this information when received should be sufficient to
4 uncover the identity of this account, which belongs to one of the unnamed Doe Defendants.
5 Bungie is also anticipating a settlement with another cooperative defendant and is preparing to
6 interview that defendant, which interview would hopefully provide further useful information to
7 help Bungie identify Doe Defendants and get further information on the foreign Named
8 Defendants. Tewson Decl., ¶ 25. Bungie is optimistic that settlement will be executed within
9 the next 60 days.

10 As the Court is already aware, the Wallhax Enterprise (in which the various Named
11 Defendants and Doe Defendants are or were involved) is a wide-ranging international conspiracy
12 among various actors to create, market, sell, and profit from the illegal Wallhax Cheat. *See* Dkt.
13 Nos. 28, 77. Those involved in the Wallhax Enterprise have taken great pains to cover their
14 tracks to make it difficult to identify them. Bungie has been diligent in seeking to uncover such
15 actors, and each settlement helps illuminate different aspects of the Enterprise. Each interview
16 Bungie conducts and new information it obtains unveils new facets, and sometimes entirely new
17 elements, of this illicit enterprise, which in turn creates new avenues to investigate and new
18 sources of information to pursue that helps Bungie identify further Doe defendants or get better
19 information about Named Defendants. The intelligence obtained from Bungie’s settlements to
20 date allowed Bungie to identify the Named Defendants in the Amended Complaint. Bungie is
21 optimistic that this next round of negotiation and investigation will achieve similar results.

22 ARGUMENT

23 **A. The Court should reconsider its deadlines as Rule 4(m) does not apply to service on**
24 **foreign defendants.**

25 By its explicit text, Rule 4(m) “does not apply to service in a foreign country . . .” Fed.
26 R. Civ. P. R. 4(m). The Ninth Circuit has unambiguously held that the time limit of Rule 4(m)

1 does not apply to service on foreign defendants. *Lucas v. Natoli*, 936 F.2d 432, 432-433 (1991);³
 2 *accord Pennsylvania Orthopedic Ass'n v. Mercedes-Benz A.G.*, 160 F.R.D. 58, 60-61 (E.D. Pa.
 3 1995) (“[t]he few courts that have addressed this aspect of Rule 4(m) have held that the rule acts
 4 to remove any deadline for serving a complaint in a foreign country.”).

5 The Civil Rules do not impose any deadline for locating and serving foreign defendants,
 6 and neither should this Court. To the best of Bungie’s knowledge, the remaining unserved
 7 Named Defendants reside in foreign countries, and thus if they will not willingly accept service,
 8 and unless the Court allows alternative service of process by email or other means,⁴ Bungie will
 9 have to resort to the more cumbersome and often lengthy process under the Hague Convention.
 10 Thus, Bungie requests that the Court vacate that portion of its Order that suggests the remaining
 11 Named Defendants will be dismissed, and allow Bungie to continue with its efforts to better
 12 identify, locate, and serve the remaining Named Defendants without any artificial deadline.

13 **B. THE COURT SHOULD EXTEND ANY DEADLINES FOR AMENDING THE**
 14 **COMPLAINT OR OTHERWISE SERVING REMAINING DEFENDANTS**

15 A plaintiff should generally be given a chance through discovery to identify unknown
 16 Doe defendants. *Gillespie v. Civiletti*, 629 F.2d 637, 642 (9th Cir. 1980). As in *Gillespie*,
 17 Bungie’s outstanding subpoena to Google, along with an expected interview of another
 18 participant in the Wallhax Enterprise, is likely to allow for identification of and service on
 19 additional Doe defendants. The Court’s recent Order on Bungie’s motion for default judgment
 20 demonstrates that Bungie’s claims against the remaining Doe Defendants have merit. Dkt.
 21 No.77.

22
 23
 24 ³ The Ninth Circuit was there interpreting the language of former Rule 4(i), which has now become Rule 4(m). The
 operative language regarding service in foreign countries has not changed.

25 ⁴ Bungie is aware that this Court has denied such requests before. *Fang Cong v. Xue Zhao*, Case No. 2:21-cv-
 26 01703-TL (W.D. Wash. August 17, 2022). However, in this instance, such alternative service may be warranted, as
 the remaining Named Defendants are deliberately elusive because of the criminal nature of their enterprise.

1 DATED this 25th day of May, 2023.

2
3 By: s/ Brian W. Esler
4 Brian W. Esler, WSBA No. 22168
5 MILLER NASH LLP
6 605 5th Ave S, Ste 900
7 Seattle, WA 98104
8 Telephone: (206) 624-8300
9 Fax: (206) 340-9599
10 Email: brian.esler@millernash.com

11 Akiva M. Cohen, New York Bar No. 4328969
12 (Admitted *pro hac vice*)
13 KAMERMAN, UNCYK, SONIKER
14 & KLEIN, P.C.
15 1700 Broadway
16 New York, NY 10019
17 Telephone: (212) 400-4930
18 Email: acohen@kusklaw.com

19 Dylan M. Schmeier, Colorado Bar No. 50573
20 (Admitted *pro hac vice*)
21 KAMERMAN, UNCYK, SONIKER
22 & KLEIN, P.C.
23 750 W. 148th Ave #4216
24 Westminster, CO 80023
25 Telephone: (719) 930-5942
26 Email: dschmeier@kusklaw.com

Attorneys for Plaintiff

4889-9859-8502.1