

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

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EROS INTERNATIONAL PLC,

Plaintiff,

- against -

MANGROVE PARTNERS, NATHANIEL H. AUGUST,  
MANUEL P. ASENSIO, ASENSIO & COMPANY,  
INC., MILL ROCK ADVISORS, INC.,  
GEOINVESTING, LLC, CHRISTOPHER IRONS,  
DANIEL E. DAVID, FG ALPHA MANAGEMENT,  
LLC, FG ALPHA ADVISORS, FG ALPHA, L.P.,  
CLARITYSPRING INC., CLARITYSPRING  
SECURITIES LLC, NATHAN Z. ANDERSON AND  
JOHN DOES NOS. 1-30,

Defendants.

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Index No. 653096/2017

**AFFIRMATION IN SUPPORT  
OF MOTION TO EXTEND  
TIME TO SERVE JOHN DOE  
DEFENDANTS NOS. 1-20**

MICHAEL J. BOWE, an attorney duly admitted to practice law in the State of New York, affirms the following under penalty of perjury:

1. I am a Partner of the law firm Kasowitz Benson Torres LLP, attorneys for plaintiff Eros International Plc (“Eros” or the “Company”) in connection with the above-captioned action. I am admitted to practice law in the State of New York (registration no. 2557973). I am fully familiar with the facts and circumstances stated herein and submit this affirmation in support of Eros’ Motion to Extend Time to Serve John Doe Defendants Nos. 1-20 (the “John Doe Defendants”) under CPLR § 306-b.

**RELEVANT FACTS**

2. On June 6, 2017, Eros filed an initial Summons with Notice with this Court, a true copy of which is annexed hereto as Exhibit A. Pursuant to CPLR § 306-b, the Summons with

Notice must be served on all defendants named therein, including John Doe Defendants Nos. 1-20, within 120 days of filing, or October 4, 2017.<sup>1</sup>

3. Eros' action arises from Defendants' short and distort scheme attempting to eviscerate Eros' reputation and business for their own financial gain. To decimate Eros' stock price and profit from their admitted short positions, Defendants – often shrouded in anonymous aliases – have trumpeted incriminating falsehoods about Eros, including that it made fraudulent misrepresentations in its public filings with the U.S. Securities and Exchange Commission (“SEC”), launders money through sham transactions and is ensnared in a catastrophic liquidity crisis. Defendants' myriad lies have inflicted, and continue to inflict, substantial harm on Eros and its public shareholders.

4. The conspirators who carried out this ruinous short and distort scheme include a bevy of anonymous individuals and/or entities, the John Doe Defendants.

5. The John Doe Defendants fall into two broad categories. In the first category are numerous John Doe Defendants who published false, misleading, defamatory and disparaging statements on the Internet under the guise of anonymous aliases, in a purposeful attempt to mask their true identities and avoid the very accountability that flows from Eros' action. In the second category are the remaining John Doe Defendants, which were used by the short-seller defendants as investment funds to short Eros' stock and thus reap profits from their smear campaign.

6. The identities of the John Doe Defendants remain unknown to Eros, despite its diligent efforts to uncover them before and after it filed the Summons with Notice. Eros thus

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<sup>1</sup> On September 29, 2017, Eros filed a Supplemental Summons naming additional defendants, a true copy of which is annexed hereto as Exhibit B. Eros' deadline to serve that summons on the additional defendants is January 29, 2018.

respectfully requests that the Court (i) pursuant to CPLR § 306-b, extend the deadline to serve the John Doe Defendants by 120 days.

7. No prior relief of this kind has been requested in this action.

### ARGUMENT

8. New York law affords a plaintiff extended time to serve defendants, including John Does, on two independent grounds: (1) good cause and (2) the interests of justice. *See Redmond v. Jamaica Hosp. Med. Ctr.*, 29 A.D.3d 768, 770 (2d Dep't 2006) (granting plaintiff extension of time to serve John Doe defendants).

9. "Good cause" is shown where the movant has made reasonably diligent efforts to discover the identities of the John Doe Defendants to serve process. *See Redmond*, 29 A.D.3d at 770 (finding "good cause" where "plaintiff made diligent efforts to discover the identities of the [unknown] physicians before and after filing to effectuate service"); *see also Leader v. Maroney, Ponzini & Spencer*, 97 N.Y.2d 95, 104-06 (2d Dep't 2001).

10. The "interests of justice" standard, which is "additional" to and "broader" than "good cause," is a fact-intensive inquiry that balances multiple factors, including plaintiff's diligence in ascertaining defendants' identities, whether the limitations period has expired, the meritorious nature of the cause of action, the length of delay in service, the promptness of plaintiff's request for the extension and demonstrable prejudice to defendants. *Henneberry v. Borstein*, 91 A.D.3d 493, 496 (1st Dep't 2012) ("Granting plaintiff the opportunity to pursue this action [by way of extended time to serve] is not only consistent with the 'interest of justice' exception set forth in CPLR 306-b, but also with our strong interest in deciding cases on the merits where possible").

11. Here, both standards counsel in favor of granting Eros an extension of time to serve the John Doe Defendants.

12. Eros surpasses the “good cause” standard in light of its painstaking efforts to uncover the John Doe Defendants’ identities.

13. Over the course of many months before and after commencing this action, Eros has conducted extensive investigations into the identities of each of the John Doe Defendants, and other pseudonymous defendants named in the action. Despite its diligent efforts to date, and though it discovered the true identities of certain defendants posing under aliases, Eros has been able to uncover the true identities of the John Doe Defendants and will need to undergo additional, time-consuming efforts, such as third-party discovery, to do so.

14. Further, Eros easily meets the separate and broader “interests of justice” standard.

15. First, there is no question that Eros has made diligent efforts to discover the identities of the John Doe Defendants (*see* above at ¶¶ 12-13).

16. Second, the statute of limitations for the John Doe Defendants has not yet expired, because Eros filed the Summons with Notice within the applicable limitations periods for all of its causes of action. *See Leader*, 97 N.Y.2d at 197 (“the simple task of filing [is] the act that marks ‘interposition’ of the claim for Statute of Limitations purposes . . . with a follow-up grace period within which to effect service”).

17. Third, Eros’ action is meritorious. Eros’ action arises from a relentless market manipulation scheme among defendants, a cartel of corrupt short-sellers who are trying to damage Eros’ reputation and business for their own financial gain. To plunge Eros’ stock price and profit from their short positions, defendants have broadcasted incriminating falsehoods about Eros, including that it made fraudulent misrepresentations in its public filings with the U.S.

Securities and Exchange Commission (“SEC”), launders money through sham transactions, and is ensnared in a catastrophic liquidity crisis. Defendants’ myriad lies have inflicted, and continue to inflict, substantial harm on Eros’ reputation and business. They have impaired certain of Eros’ existing and prospective business relations, adversely affected its market reputation, as well as important business relationships, and resulted in decreased credit worthiness and the sustained artificial depression and erosion of Eros’ share price. Moreover, many of the relevant facts are known only by Defendants or are exclusively within their custody and control, and Eros believes that discovery will only serve to strengthen its already compelling case.

18. Fourth, Eros’ request for an extension is timely, as it falls within the 120-day window for service. *See Fernandez v. Morales Bros. Realty*, 110 A.D.3d 676, 677 (2d Dep’t 2013) (granting plaintiff’s request for an extension to serve, which it made only after the 120-day window had passed and it received defendant’s answer).

19. Finally, Eros’ diligence in discovering the true identities of the John Doe Defendants and its timely request far outweigh any conceivable, much less “demonstrable,” prejudice that an extension could cause. *White v. Maradiaga*, 8 A.D.3d 559, 560, 778 N.Y.S.2d 695 (2004) (reversing trial courts’ denial of plaintiffs’ motion to extend, in part because “the defendant failed to demonstrate [] any prejudice”). The John Doe Defendants regularly communicate with the named defendants through social media platforms, including Twitter – and, on information and belief, work closely with the named defendants through private means of communication. Thus, the John Doe Defendants would likely have actual notice of the lawsuit when the named defendants are served with process.<sup>2</sup>

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<sup>2</sup> In any event, under the settled relation-back doctrine, Eros has the right to seek joinder of the John Doe Defendants at a later point in time. *See CPLR 203(b); LeBlanc v. Skinner*, 103 A.D.3d 202, 201 (2d Dep’t 2012) (“joint tortfeasors will be deemed to be united in interest where

## CONCLUSION

20. Thus, given Eros' diligence and the fact that the balance of equities tips strongly in its favor, Eros respectfully requests that this Court grant its Motion to Extend Time to Serve John Doe Defendants Nos. 1-20 under CPLR § 306-b by 120 days.

Dated: New York, New York  
September 29, 2017

By: /s/ Michael J. Bowe  
Michael J. Bowe

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one is vicariously liable for the other . . . , such as where one tortfeasor is the agent of the other"); *Paliotto v. Hartman*, 9 Misc. 2d 963, 963 (Sup. Ct., Queens Cty. 1957) (co-conspirators "united in interest" for purposes of relation-back rule). Thus, even if Eros were to, at this time, forgo serving the John Doe Defendants, ultimately they could still be joined in the action – which further counsels against a finding of prejudice.