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 EROS' SECOND MOTION TO EXTEND TIME TO SERVE JOHN DOE DEFENDANTS NOS. 1-5 & 7-30**

Mot. Seq. No. 7

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' Second Motion to Extend Time to Serve John Doe Defendants Nos. 1-5 and 7-30 (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 [Dkt. No. 1], 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 by October 4, 2017.[1]

3. On October 6, 2017, this Court granted Eros' first motion for an extension of time to serve John Doe Defendants by 120 days, to February 1, 2018 [Dkt. No. 16]. A true and correct copy of the Court's order is attached hereto as Exhibit B.

4. As this Court is aware, Eros' action arises from Defendants' short and distort scheme, by which Defendants sought to decimate Eros' reputation and business for their own financial gain. The conspirators who carried out this ruinous short and distort scheme include a number of anonymous parties, the John Doe Defendants.

5. The John Doe Defendants fall into two broad categories.

6. In the first category are numerous John Doe Defendants who published false, misleading, defamatory and disparaging statements on the Internet using anonymous pseudonyms, in a purposeful attempt to mask their true identities and avoid accountability and detection.

7. In the second category are the remaining John Doe Defendants, which represent the investment funds that the short-seller defendants used to short Eros' stock and thereby reap profits throughout the course of their multi-year disinformation campaign.

8. In an October 30, 2017 email to Eros' counsel, counsel for defendants ClaritySpring Inc., ClaritySpring Securities LLC and Nathan Z. Anderson (the "ClaritySpring Defendants") admitted that the ClaritySpring Defendants did business as John Doe Defendant No. 6, "Hindenburg Research." The ClaritySpring Defendants confirmed the same in a

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

stipulation so-ordered by the Court on November 3, 2017 [Dkt. No. 31], and again in their motion to dismiss briefing [Dkt. No. 95].

9. On November 30, 2017, in their motion to dismiss briefing, defendants Mangrove Partners and Nathaniel H. August (the "Mangrove Defendants") acknowledged that they were submitting their motion to dismiss on their own behalf and on behalf of "any other person or entity that Eros purports to identify through its allegations against John Does Nos. 7-9."[2] Mem. of Law in Support of Defs. Mangrove Partners' and Nathaniel H. August's Order to Show Cause [Dkt. No. 48], at 1 n.1. However, they did not reveal the identities of the persons or entities behind these John Does.

10. In addition, Eros undertook extensive efforts to identify online mediums used by the John Doe Defendants, including forums and websites that were used to disseminate defamatory information about Eros. In particular, Eros served document subpoenas on the following five third-party website operators: Vetr, Inc., StockTwits, Inc., Scribd, Inc., Twitter, Inc. and LinkedIn Corporation ("LinkedIn"), true and copies of which are attached as Exhibits D-H, respectively. Each of these subpoenas was narrowly tailored to call for documents sufficient to identify the identities and IP addresses of all persons who registered for, maintained, posted, logged in or otherwise used the relevant websites under a John Doe alias (*e.g.*, "Unemon," "Orange Peel Investments"); and, where applicable, all direct messages between the John Doe alias and other website members concerning Eros.

[2] As alleged in paragraph 40 of Eros' Complaint [Dkt. No. 3], John Does Nos. 7-9 refer to Mangrove's or August's affiliate(s), or any related investment fund(s) owned in whole or in part by Mangrove or August, that Mangrove or August used between January 1, 2015 and the present to short Eros' stock.

11. All third-parties but one, LinkedIn, have responded, but none of the information produced has enabled Eros to uncover the identity of any additional John Doe Defendants.

12. The deadline for LinkedIn to produce documents or otherwise respond to Eros' subpoena is in February 2018.

13. Eros thus respectfully requests that, pursuant to CPLR § 306-b, the Court extend Eros' deadline to serve John Doe Defendant Nos. 1-5 & 7-30 by 120 days, to June 1, 2018.

14. Eros requested similar relief on October 2, 2017, which this Court granted (*see supra*, at ¶ 3).

**ARGUMENT**

15. 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).

16. "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").

17. 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.").

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

19. Eros surpasses the "good cause" standard in light of its persistent efforts to uncover the John Doe Defendants' identities.

20. 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, Eros has not been able to uncover the true identities of the majority of the John Doe Defendants and needs more time to complete discovery already served and undertake additional third-party discovery to do so.

21. Further, Eros easily meets the separate and broader "interests of justice" standard.

22. First, Eros has made diligent efforts to discover the identities of the John Doe Defendants (*see supra* at ¶¶ 8-10).

23. 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").

24. 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. In order to adversely affect Eros' stock price and profit from their short positions, Defendants broadcasted incriminating falsehoods about Eros, including that it made fraudulent misrepresentations in its public filings with the U.S. Securities and Exchange Commission ("SEC"), laundered 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. Specifically, 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 of Eros' share price.

25. Fourth, Eros' request for an extension is timely, as it falls within the 120-day extended 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).

26. Finally, Eros' diligence in trying to uncover 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. *See White v. Maradiaga*, 8 A.D.3d 559, 560 (2d Dep't 2004) (reversing trial courts' denial of plaintiffs' motion to extend, in part because "the defendant failed to demonstrate [] any prejudice"). Eros' continued efforts to discover the identities of the John Doe Defendants has not, and will not, delay the proceedings as to the defendants who have been served. Also, given the John Doe Defendants history of communicating with the named Defendants – both through social media platforms and, on information and belief, private modes of communication – they likely have acquired actual

notice of this lawsuit,[3] such that they are aware the Eros is actively trying to determine their true identities.[4]

**CONCLUSION**

27. 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 Second Motion to Extend Time to Serve John Doe Defendants Nos. 1-5 & 7-30 under CPLR § 306-b and thus provide Eros an additional 120 days, to June 1, 2018 to serve the John Doe Defendants not yet served.

Dated: New York, New York
February 1, 2018

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

[3] Indeed, one John Doe Defendant, "Unemon," has tweeted about Eros' having commenced this action. *See* https://twitter.com/unemon1/status/915234964681175042 ("so, let me get this straight. $EROS did not have the money to pay back CF in time last January ... yet finds times to sue short sellers? LoL").

[4] 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 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., June 27, 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.