

**UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND**

NINTENDO OF AMERICA INC.,

Plaintiff,

v.

TROPIC HAZE LLC,

Defendant.

NO.

COMPLAINT

JURY DEMAND

PRELIMINARY STATEMENT

Plaintiff Nintendo of America Inc. (“Nintendo of America Inc.” or “Plaintiff”), by and through its counsel, on personal knowledge as to its own actions and on information and belief as to the actions, capabilities, and motivations of others, hereby alleges as follows:

1. Nintendo of America Inc., a wholly-owned subsidiary of Nintendo Co., Ltd., markets and distributes electronic video game consoles, games, and accessories developed by Nintendo Co., Ltd., including the Nintendo Switch, Nintendo Switch Lite, and Nintendo Switch OLED consoles (collectively the “Nintendo Switch”). Nintendo of America Inc. and Nintendo Co., Ltd. are together referred to herein as “Nintendo.” Nintendo also makes award-winning and beloved video games that can be played only on the Nintendo Switch, including such well-known franchises as *Mario* and *The Legend of Zelda*. Nintendo has sold over 139 million Nintendo Switch consoles (and counting), making it the third most popular video game console of all time.

2. Defendant Tropic Haze LLC is an entity that owns, develops, and operates “Yuzu,” a video game emulator for Nintendo Switch games. A video game emulator is a piece of software that allows users to unlawfully play pirated video games that were published only for a specific console on a general-purpose computing device. Yuzu allows Nintendo Switch games, which Nintendo authorizes for play solely on Nintendo Switch consoles, to be played

13. Defendant and its agents are fully aware of the use of Yuzu by others in performing circumvention, and in facilitating piracy at a colossal scale. As to circumvention, Yuzu's website acknowledges that the Nintendo Switch's decryption keys (the prod.keys) are required to decrypt games and includes links to software that unlawfully extract those keys from the Nintendo Switch.² As to piracy, for instance, one recent major Nintendo video game, *The Legend of Zelda: Tears of the Kingdom*, was unlawfully distributed a week and a half before its release by Nintendo. Infringing copies of the game that circulated online were able to be played in Yuzu, and those copies were successfully downloaded from pirate websites over *one million times* before the game was published and made available for lawful purchase by Nintendo. Many of the pirate websites specifically noted the ability to play the game file in Yuzu. Defendant's development and distribution of Yuzu to the public materially contributes

² See *Quickstart Guide*, Yuzu, <https://yuzu-emu.org/help/quickstart/> ("Dumping Decryption Keys") (accessed February 21, 2024).

to and induces those third parties to infringe the copyrights in Nintendo's games. Defendant is thus secondarily liable for the infringement committed by the users to whom it distributes Yuzu.

AO 399 (01/09) Waiver of the Service of Summons

UNITED STATES DISTRICT COURT

for the
District of Rhode Island



Nintendo of America Inc.

Plaintiff

v.

Tropic Haze LLC

Defendant

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Civil Action No. 24-cv-82

WAIVER OF THE SERVICE OF SUMMONS

To: Nicole Benjamin, Esq.

(Name of the plaintiff's attorney or unrepresented plaintiff)

I have received your request to waive service of a summons in this action along with a copy of the complaint, two copies of this waiver form, and a prepaid means of returning one signed copy of the form to you.

I, or the entity I represent, agree to save the expense of serving a summons and complaint in this case.

I understand that I, or the entity I represent, will keep all defenses or objections to the lawsuit, the court's jurisdiction, and the venue of the action, but that I waive any objections to the absence of a summons or of service.

I also understand that I, or the entity I represent, must file and serve an answer or a motion under Rule 12 within 60 days from 02/27/2024, the date when this request was sent (or 90 days if it was sent outside the United States). If I fail to do so, a default judgment will be entered against me or the entity I represent.

Date: 02/29/2024

Tropic Haze LLC

Printed name of party waiving service of summons

/s/ Michael Daly

Signature of the attorney or unrepresented party

Michael Daly

Printed name

Pierce Atwood LLP
One Citizens Plaza, 10th Floor
Providence, RI 02903

Address

mdaly@pierceatwood.com

E-mail address

(401) 590-3424

Telephone number

Duty to Avoid Unnecessary Expenses of Serving a Summons

Rule 4 of the Federal Rules of Civil Procedure requires certain defendants to cooperate in saving unnecessary expenses of serving a summons and complaint. A defendant who is located in the United States and who fails to return a signed waiver of service requested by a plaintiff located in the United States will be required to pay the expenses of service, unless the defendant shows good cause for the failure.