

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

**VIRNETX INC. AND
LEIDOS, INC.,**

Plaintiffs,

v.

APPLE INC.,

Defendant.

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Civil Action No. 6:12-cv-855

PUBLIC VERSION

JURY TRIAL DEMANDED

**APPLE INC.'S UNOPPOSED MOTION FOR
RELIEF FROM STANDING ORDERS RELATING TO
COURT OPERATIONS DURING THE NATIONAL PANDEMIC**

Apple respectfully requests that Apple’s in-house attorney, David Melaugh, (i) be permitted to attend the final pretrial conference by telephone; and (ii) be granted relief from the Tyler Division’s Standing Order Number 6:20-01 so that he may enter the Tyler Courthouse for the upcoming jury trial in this matter, with proof of a negative COVID-19 test.

Plaintiffs do not oppose the requested relief.

I. BACKGROUND

The final pretrial conference in this matter is scheduled for October 20, 2020 in Texarkana, Texas. (Dkt. 934). The jury trial is scheduled to begin on October 26, 2020 in Tyler, Texas. (*Id.*)

Both the Texarkana and Tyler Courthouses are subject to standing orders relating to the COVID-19 pandemic. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Both orders are expected to be in effect for the upcoming pretrial conference and trial.

Apple’s trial team includes David Melaugh, Senior Director of IP Litigation at Apple. [REDACTED]

[REDACTED]

[REDACTED]

And he has attended two prior trials between the parties. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Absent the relief requested by this Motion, Mr. Melaugh would not be permitted to attend the upcoming pretrial conference and a substantial portion of the upcoming trial due to the Texarkana and Tyler Orders.

II. ARGUMENT

Apple respectfully requests the following relief: (i) that Mr. Melaugh be permitted to attend the October 20, 2020 final pretrial conference by telephone; and (ii) that Mr. Melaugh be permitted to attend the trial in-person prior to the expiration of a 14-day quarantine period, with proof of a negative COVID-19 test. *See Sims v. ANR Freight Sys., Inc.*, 77 F.3d 846, 849 (5th Cir. 1996) (“[A] district judge has broad discretion in managing his docket, including trial procedure and the conduct of trial.”); *Team Worldwide Corp. v. Academy, Ltd.*, No. 2:19-cv-00092-JRG-RSP, (E.D. Tex. Sept. 11, 2020), Dkt. 145 (granting exemption from standing orders relating to the COVID-19 pandemic). [REDACTED]

[REDACTED]

[REDACTED] the requested relief is critical to safeguarding Apple’s ability to defend itself in this matter.

The requested relief also minimizes COVID-19-related risks. With respect to the pretrial conference [REDACTED] if Mr. Melaugh attends telephonically, he could do so while in quarantine. When the trial begins on October 26,

[REDACTED]

¹ The World Health Organization reports that “[p]eople with COVID-19 generally develop signs and symptoms ... on an average of 5-6 days after infection.” (Ex. 1).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].² Finally, Mr. Melaugh would comply with the Tyler Order’s and the Court’s requirements, including “wear[ing] a face mask or face covering,” while in “any common areas of the Courthouse,” “maintain[ing] at least six feet of physical distance from other persons when possible,” and self-monitoring for “a fever, persistent cough, shortness of breath, persistent pain or pressure in the chest, nausea, new loss of taste or smell, or other symptoms of COVID-19.” (See the Tyler Order; *see also* 2020/08/03 Pretrial Hr’g Tr. at 11:5-7, 13:25-17:11).

III. CONCLUSION

For the foregoing reasons, Apple respectfully requests that the Court (i) permit Mr. Melaugh to attend the final pretrial conference by telephone; and (ii) grant Mr. Melaugh relief from the Tyler Division’s Standing Order Number 6:20-01 so that he may enter the Tyler Courthouse for the upcoming jury trial in this matter, with proof of a negative COVID-19 test.

² In the event that Mr. Melaugh were to receive a positive COVID-19 diagnosis, he would remain quarantined until receiving a negative test.

Dated: October 6, 2020

Respectfully submitted,

/s/ Leslie Schmidt

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ATTORNEYS FOR APPLE INC.

CERTIFICATE OF SERVICE

I hereby certify that all counsel of record who have consented to electronic service are being served with a copy of this document via electronic mail on October 6, 2020. I also hereby certify that all counsel of record who have consented to electronic service are being served with a notice of filing of this document, under seal, pursuant to L.R. CV-5(a)(7) on October 6, 2020.

/s/ Leslie Schmidt
Leslie Schmidt

CERTIFICATE OF CONFERENCE

The undersigned certifies that the parties have complied with Local Rule CV-7(h)'s meet and confer requirement. Plaintiffs do not oppose the requested relief.

/s/ Leslie Schmidt
Leslie Schmidt

CERTIFICATE OF AUTHORIZATION TO FILE UNDER SEAL

This is to certify that this court document should be filed under seal because it contains material designated under the Protective Order approved and entered in this case.

/s/ Leslie Schmidt
Leslie Schmidt