

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

<b>VIRNETX INC. AND LEIDOS, INC.</b>	§	
	§	<b>Civil Action No. 6:12-cv-855-RWS</b>
	§	<b>Jury Trial Demanded</b>
<b>v.</b>	§	
	§	
<b>APPLE INC.</b>	§	

**NOTICE REGARDING MEET AND CONFER  
AND AGREEMENTS RELATING TO POST-TRIAL MATTERS**

Pursuant to the Court’s instructions following the trial in the above-captioned matter (10/30/20 (PM) Tr. at 1291:24–1293:17) and the Court’s November 9, 2020 email, the parties have conferred regarding the post-trial hearing date, as well as a proposed briefing schedule, page limits for post-trial motions, and whether the hearing should occur in-person or remotely.

The parties jointly request that the post-trial hearing occur on either December 17 or 18, 2020, and propose the following briefing schedule and page limits, subject to the Court’s approval:

Filing	Due Date	Page limit
Opening briefs	11/18/2020	25 pages
Responsive briefs	12/3/2020	25 pages
Reply briefs	12/10/2020	10 pages
Sur-reply briefs	12/15/2020	5 pages

If the Court is unable to accommodate a hearing on December 17 or 18, then the parties jointly request that the hearing occur on December 30, 2020.

The parties also understand that the Court’s ruling on the parties’ respective 50(a) motions is reserved, such that neither Apple nor VirnetX shall submit a response to the 50(a) motions that were submitted on October 30, 2020.

Finally, Apple respectfully requests that the Court conduct the post-trial hearing by telephone or video for all parties. VirnetX does not oppose, but does not join, Apple in this request.

An in-person hearing would be a hardship for Apple due to the proximity of the hearing dates to the holidays. The majority of Apple's team that will attend the hearing are based in New York, which mandates that travelers returning from Texas must self-quarantine for fourteen (14) days.<sup>1</sup> Although it is now possible to "test out" of the entire quarantine, doing so would still require team members returning to New York to quarantine from their families for a certain period of time over the holidays.<sup>2</sup> Conducting the hearing remotely would obviate that hardship.

Moreover, while Apple appreciates that the Court may take steps to help minimize potential exposure to COVID-19, the situation across the country is now worse than it was over the summer, with nationwide cases hitting record-highs.<sup>3</sup> The pandemic is also resurging in Texas, including in Bowie County.<sup>4</sup> A remote hearing would minimize the risk of contracting and spreading COVID-19 for all participants.

Apple therefore respectfully requests that the Court conduct the hearing by telephone or video for all parties.

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<sup>1</sup> New York State, *COVID-19 Travel Advisory*, available at <https://coronavirus.health.ny.gov/covid-19-travel-advisory> (last visited: Nov. 11, 2020).

<sup>2</sup> Travelers may "test out" of New York's mandate after three (3) days of quarantine if they obtain: (1) a negative test that was administered "within three days of departure, prior to arrival in New York;" and (2) "[o]n day 4 of their quarantine, the traveler must obtain another COVID test." *Id.* "If both tests come[] back negative, the traveler may exit quarantine early upon receipt of the second negative diagnostic test." *Id.*

<sup>3</sup> *Compare CDC COVID Data Tracker*, CENTERS FOR DISEASE CONTROL AND PREVENTION, available at <https://covid.cdc.gov/covid-data-tracker> (last visited: Nov. 10, 2020) (on Nov. 9, 2020 the U.S. recorded 105,142 new case) *with* Dkt. 914, Ex. 8 (on Jul. 24, 2020 the U.S. recorded 72,219 new cases).

<sup>4</sup> *Compare Texas COVID-19 Data, Cases over Time by County*, TEXAS DEPARTMENT OF STATE HEALTH SERVICES, DSHS COVID-19 Dashboard, County Trends Dashboard, Bowie County, available at <https://dshs.texas.gov/coronavirus/additionaldata.aspx> (last visited: Nov. 10, 2020) (on Nov. 10, 2020 Texas recorded 10,865 new cases) *with* Dkt. 886 (on Jul. 12, 2020 Texas recorded 8,196 new cases).

Dated: November 11, 2020

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3) on November 11, 2020.

/s/ Leslie M. Schmidt