

Through its Motion, Apple seeks permission to contact the jurors outside the presence of the opposing party so that the jurors can comment freely on “their impressions of trial themes and individual attorney performances.” Docket No. 742 at 1. Alternatively, if the Court chooses to impose restrictions on how jurors are contacted, Apple proposed: (1) the Court informing jurors that they may contact counsel for VirnetX Inc. (“VirnetX”) or Apple voluntarily and providing contact information for counsel of both parties, or (2) VirnetX and Apple each preparing a questionnaire and separately distributing the questionnaires to the jurors. Docket No. 472 at 5 n.1.

In response, VirnetX states that Apple will use unrestricted contact with the jurors as a “fishing expedition” for additional grounds supporting a new trial. Docket No. 469 at 1, 3. VirnetX also explains that any educational benefit gained from unfettered access to jurors is outweighed by the privacy interests of the jurors. *Id.* at 6. VirnetX proposes restrictions for contacting jurors, including: (1) the Court notifying the jurors that they can contact the parties’ attorneys jointly about advocacy and trial presentation, or (2) the parties sending a joint questionnaire to the jurors; the questionnaire would identify the various attorneys who appeared in the case and ask questions related to each attorney’s trial presentation and advocacy, but not deliberations. *Id.* at 6 n.7.

The first proposal, informing jurors that they may contact attorneys in the case, gives the Court little supervision over the interaction between a juror and the attorneys. *See Kepreos*, 759 F.2d at 967. In addition, the juror could be inconvenienced if he or she must wait for both parties’ attorneys to be available for a conversation. *See* Docket No. 469 at 1–2.

The second proposal, a juror questionnaire, allows additional Court oversight. So that the parties may obtain feedback on their presentation and trial themes in a way that is meaningful

and helpful to them, separate questionnaires will be allowed. Each party will have an opportunity to review the opposing party's questionnaire and bring to the Court's attention any concerning questions before it is mailed to the jurors. Answers to the questionnaires provided by jurors will be given to the party who drafted the questionnaire. This will give parties the opportunity to receive and reflect on trial presentation and theme feedback in private; however, juror responses will need to be immediately disclosed to the opposing party if they raise concerns of juror misconduct or any other new grounds for a mistrial.

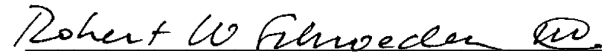
The procedure for contacting the jurors will occur as follows. By April 25, 2016, VirnetX and Apple may each file a questionnaire with no more than fifteen (15) questions. *See* Docket No. 469 at 6 n.7; Docket No. 472 at 5 n.1. The Court will be especially critical of questions with multiple subparts. The questions should focus on the trial presentation and themes witnessed by the jurors.

By April 29, 2016, objections of no more than five (5) pages may be filed regarding the opposing party's questionnaire. By May 3, 2016, the parties may file a reply of no more than five (5) pages responding to any objections. After the questionnaires are approved by the Court, the Court will mail them to the jurors with a cover letter from the Court and a return envelope. Juror responses to VirnetX's questionnaire will be provided to VirnetX; juror responses to Apple's questionnaire will be provided to Apple. Any responses received to the questionnaires must be designated as CONFIDENTIAL – ATTORNEYS' EYES ONLY to protect the privacy of the jurors.

The cover letter from the Court will ask the jurors if they are willing to speak with counsel for VirnetX and Apple by phone. If this question is answered in the affirmative, then the juror will be invited to provide a telephone number and information on the best time for

contacting him or her. This information will also be provided to counsel for the parties with additional instructions at that time.

SIGNED this 18th day of April, 2016.


ROBERT W. SCHROEDER III
UNITED STATES DISTRICT JUDGE