

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

VIRNETX INC., ET AL.,

Plaintiffs,

v.

APPLE INC.,

Defendant.

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CIVIL ACTION NO. 6:12-CV-00855-RWS

ORDER

Before the Court is Apple’s Motion to Continue Trial. Docket Nos. 914 (Sealed Motion), 918 (Redaction to Sealed Motion). In light of the COVID-19 epidemic, Apple requests the Court continue trial until November. Docket No. 918 at 7. VirnetX opposes. Docket Nos. 921 (Sealed Response), 924 (Redaction to Sealed Response). For the following reasons, Apple’s motion is **GRANTED-AS-MODIFIED**. The above-captioned case is **RESET** for trial at 9 a.m. on October 26, 2020. A final pretrial conference is **SET** for 10 a.m. on October 20, 2020 in Texarkana, Texas.

There is good cause for a continuance. *See* FED. R. CIV. P. 16(b)(4). Smith County—and the Tyler Division more generally—is in the midst of a COVID-19 outbreak. *See Confirmed COVID-19 Cases*, NE. TEX. PUB. HEALTH DIST., <https://www.nethealthcovid19.org/blog/post/confirmed-covid-19-cases> (last visited Aug. 6, 2020) (summarizing COVID-19 data for Smith County and surrounding counties). In fact, three counties in the Tyler Division rank among the top-30 counties for active COVID-19 cases in Texas: Anderson County (14th of 250), Smith

County (17th of 250) and Gregg County (26th of 250).¹ *Texas COVID-19 Data*, TEX. DEPT. OF ST. HEALTH SERVS., <https://dshs.texas.gov/coronavirus/additionaldata.aspx> (last updated Aug. 9, 2020). The continuance provided herein is relatively short, and its importance is not outweighed by VirnetX's alleged prejudice.

So ORDERED and SIGNED this 10th day of August, 2020.


ROBERT W. SCHROEDER III
UNITED STATES DISTRICT JUDGE

¹ Other divisions do not share the Tyler Division's statistics. VirnetX has cited Judge Gilstrap's order denying a similar motion in *Optis Wireless Tech., LLC v. Apple Inc.*, No. 2:19-cv-66-JRG. However, there are significant differences between the two divisions. For example, unlike the Tyler Division, the Marshall Division has no county in the top 50: Harrison County (78th of 250), Upshur County (111th of 250), Cass County (116th of 250), Camp County (125th of 250), Morris County (135th of 250) and Marion County (164th of 259).