

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

**STANDING ORDER RE JUROR QUESTIONNAIRES AND SOCIAL MEDIA
RESEARCH**

MAGISTRATE JUDGE VIRGINIA K. DEMARCHI

Effective: November 29, 2023

The Court uses the standard Jury Questionnaire administered by the Jury Office, amended to include some case specific questions, in most cases prior to trial. In advance of jury selection, the Jury Office will provide to counsel for the parties completed Juror Questionnaires returned by prospective jurors. The Court will hold a hearing prior to jury selection to determine whether any respondents should be excused in light of their answers.

The confidentiality of all completed Juror Questionnaires provided to counsel shall be maintained by the parties, their counsel, and anyone working for a party or counsel. This Order also restricts the parties, their counsel and anyone working for a party or counsel from contacting or attempting to contact any prospective juror. This means that the parties, their counsel, and any agent, consultant, investigator, or other person working for them shall not communicate with or otherwise contact or attempt to communicate with or attempt to otherwise contact any prospective juror in any manner, whether through social media, by email, by telephone or messaging platforms (including WhatsApp, Telegram, and the like), by mail, or in person.

The Court does not restrict the parties, their counsel, and any agent, consultant, investigator, or anyone working for them from conducting research regarding a prospective juror, provided that it is done only from generally available sources and that there is no actual contact or any reasonable possibility of contact with a prospective juror. Contact includes notifying a prospective juror that their social media profile has been viewed by a party, attorney, investigator, etc., even if that notification is inadvertent or provided automatically by the social media site. Recognizing that social media is constantly changing and evolving, the following guidelines are non-exhaustive examples of permissible research and impermissible contact:

1. LinkedIn may not be used to conduct any research on any prospective juror. A prospective juror who is on LinkedIn may be notified of the identity of anyone who uses LinkedIn to view the prospective juror's profile or other information, or be notified that an "anonymous" person viewed the prospective juror's profile or that an inquiry through LinkedIn has been made, even if an investigator uses an account that allows for "anonymous" searches. Those notifications constitute "contact" with the prospective juror. This restriction also applies to any other form of social media besides LinkedIn that has this feature or a similar feature, including TikTok if the automatic notification setting is employed.
2. Some social media sites have features to automatically notify users that their posts have been seen by certain people, such as temporary "stories" that provide the poster a list of accounts that have "viewed" the post. These features may not be used to conduct any

research on any prospective juror, even if they are posted publicly, because the automatic notification constitutes “contact” with the prospective juror, as the individual may be notified of the identity of anyone who views their post. This applies to “stories” on Instagram, SnapChat, and Facebook, and to any other form of social media with similar automatic notification features.

3. Other social media sites and features may only be used to view publicly available profiles, feeds, and posts. No “follow requests,” “friend requests,” or the like may be sent to any prospective juror on any social media site, regardless of whether a profile is public or private. These requests constitute contact, and a prospective juror who uses these sites may be notified of the identity of anyone who sends such a request. This applies to X (formerly Twitter), Facebook, Instagram, TikTok, SnapChat, Threads, and any other form of social media.

4. Only sources that are publicly available and private sources that derive their information from publicly available sources may be used to research a prospective juror. This includes private databases maintained by third parties based on open-source or other publicly available information, notwithstanding the fact that a subscription or fee may be needed to access those databases.

5. No in-person surveillance, no matter how brief, of any home, neighborhood, or place of work of any prospective juror or any family member of a prospective juror is allowed.

IT IS SO ORDERED.

Dated: November 29, 2023



VIRGINIA K. DEMARCHI
United States Magistrate Judge