

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

BLADEROOM GROUP LIMITED, et al.,  
Plaintiffs,  
v.  
FACEBOOK, INC., et al.,  
Defendants.

Case No. [5:15-cv-01370-EJD](#)

**ORDER AFTER JURY TRIAL (DAY 4)**

**I. DEPOSITION OF MARCO MAGARELLI**

Plaintiffs are permitted leave to depose Marco Magarelli for an additional 70 minutes. As indicated on the record, the purpose of the deposition is for Plaintiffs to complete questioning related to the production of Magarelli's notebooks, and is in lieu of in-court proceedings on this issue that had commenced but were not completed.

**II. EMERSON'S MOTION FOR MISTRIAL AND/OR ADJOURNMENT AND CONTINUANCE**

The court was notified before the start of evidence on April 9, 2018, that Plaintiffs and Facebook entered into a confidential settlement agreement. Facebook was released from the remainder of trial proceedings based on the representation that the settlement will soon result in a dismissal of Plaintiffs' claims against Facebook.

Emerson thereafter moved for a mistrial or adjournment and continuance based on (1) publicity unrelated to this case, and (2) the potential impact from Facebook's absence on the jury. The court denied the motion on the record. This order clarifies the basis for that ruling.

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**A. Unrelated Publicity**

As to unrelated publicity, the court already addressed this issue in response to a prior mistrial motion. After questioning each member of the jury, the court observed there was no evidence that any of the current jurors were exposed to problematic content outside of trial. Dkt. No. 750. The court went on to explain:

At this point, Defendants have “merely urged” or presumed that the jury must have been exposed to prejudicial information. But “[t]he presumption is the other way.” United States v. Eaglin, 571 F.2d 1069, 1084 (9th Cir. 1977). “As Mr. Justice Holmes said in Holt v. United States, 218 U.S. 245, at p. 251: ‘If the mere opportunity for prejudice or corruption is to raise a presumption that they exist, it will be hard to maintain jury trial under the conditions of the present day.’” Id. at 1084-85.

The court also noted that jurors are presumed to follow the court’s instructions. The jurors in this case were told what they can and cannot consider as evidence, that anything heard or seen outside of court is not evidence, and that they should decide the case solely on the evidence received at the trial. The court has reminded the jury of these instructions on at least two occasions.

The same reasoning applies to the instant motion. These circumstances do not constitute the type of “extreme situation” justifying a presumption of prejudice, since the potentially problematic news coverage is not about Emerson, not about this case, and not “of the kind where ‘a court could not believe the answers of the jurors and would be compelled to find bias or preformed opinions as a matter of law.’” United States v. Dischner, 974 F.2d 1502, 1524 (9th Cir. 1992) (quoting United States v. Rewald, 889 F.2d 836, 863 (9th Cir. 1989)). Indeed, the coverage of distinct conduct by a soon-to-be-dismissed party has not reduced this trial to a “hollow formality” for Emerson. Id. (citing Rideau v. Louisiana, 373 U.S. 723, 726 (1963)).

Nor has Emerson demonstrated that ex parte information from news coverage will cause actual prejudice. See United States v. Madrid, 842 F.2d 1090, 1093 (9th Cir. 1988). Such a showing is not satisfied by the jury’s exposure to publicity; the relevant question is whether the jurors have such fixed opinions that they cannot judge the case impartially. See Dischner, 974 F.2d at 1524-25. Though Emerson believes negative publicity about Facebook’s other conduct

1 has and will continue to increase based on recent developments, there is at present no reason to  
2 find that potential exposure to outside information will impede the jury's ability to remain  
3 impartial toward Emerson. In fact, the jurors indicated during individual questioning last week  
4 that they could impartially decide this case, and Emerson has not presented any evidence for the  
5 court to find otherwise.

6 Furthermore, the court notes there is little to be gained from starting a new trial, either in  
7 two weeks or in several months. Facebook's conduct remains relevant whether or not it appears as  
8 a defendant, and there is no guarantee the news climate will be more favorable to Emerson in the  
9 future. Moreover, the current jury was thoroughly vetted by Facebook's counsel before it had  
10 reached an agreement to settle Plaintiffs' claims, ensuring that individuals with prejudicial  
11 preconceptions about Facebook were not seated as jurors.

12 As before, the court is not convinced that media coverage about conduct unrelated to this  
13 action will not have such a prejudicial effect on the jury such that Emerson cannot receive a fair  
14 trial.

15 **B. Facebook's Absence**

16 Emerson argues that Facebook's absence from trial could affect the jury's liability  
17 decision, making it more likely the jury will find in favor of Plaintiffs and against Emerson. The  
18 court disagrees.

19 This situation - where one defendant settles mid-trial - is neither unusual nor unique to this  
20 case. And outside of speculation, Emerson has not cited any evidence supporting the proposition  
21 that its right to an impartial jury is violated merely because Facebook will no longer put on a  
22 defense. In any event, the court has alleviated the possibility of prejudice by instructing the jury it  
23 should not consider Facebook's absence when deciding Plaintiffs' claims against Emerson.  
24 Accordingly, Plaintiffs' settlement with Facebook is not a sufficient reason to terminate or  
25 postpone the trial.

26 Recent developments will not preclude Emerson from receiving a fair trial before an  
27 impartial jury. Thus, Emerson's Motion for Mistrial and/or Adjournment and Continuance is

DENIED.

**IT IS SO ORDERED.**

Dated: April 9, 2018



EDWARD J. DAVILA  
United States District Judge

United States District Court  
Northern District of California