SUPERIOR COURT OF WASHINGTON FOR COUNTY OF KING

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| ALKI TOURS, INC., a Washington corporation,  Plaintiff,  v.  TYSON VERSE; and RAIL AND SAIL VACATIONS, L.L.C., a Washington limited liability company,  Defendants,  v.  CLAIRE NOLAN, an individual,  Third-Party Defendant.. | NO. 19-2-15199-4 SEA |

**COURT’S OPENING INSTRUCTIONS TO THE JURY**

Dated: January 14, 2021

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JUDGE MATTHEW WILLIAMS

**General Introduction**

Good morning. Welcome back. You have been selected as the jury in this case.

As you know, I’m Matt Williams, one of your 53 Superior Court Judges.

We are on the record, in open court, here at the Kent Regional Justice Center. I am on the bench in Courtroom 3A. The courtroom doors are open (unlocked) and members of the public are free to enter and observe these proceedings. This Zoom meeting and all participants are being displayed in the courtroom, and you can see that the courtroom is being displayed on your screens. That being said, there is no one in the courtroom with me. Even our court staff are attending remotely.

SHARE - SLIDE 1

There may be observers who have no speaking role in these proceedings who are designated as “NON-VIDEO PARTICIPANTS”. To avoid confusion you should “HIDE” the non-video participants by placing your cursor on a thumbnail called “Stage” and pressing the right mouse button. That will bring up a short menu, and just click on “HIDE NON-Video Participants”.That will bring up a short menu, and just click on “HIDE NON-Video Participants”.

SLIDE 2

Our proceedings are being recorded by an electronic recording system that takes down everything that everyone says to create the formal Court Record.

No one else is to record these proceedings by any means without my express permission. To do so would be a violation of a court order and would subject you to potential civil or criminal sanctions.

Due to the COVID-19 Pandemic, we are conducting the entirety of this trial remotely through the Zoom video conferencing system. The Court’s version of Zoom is a special HPPA compliant and ultra-secure system. Our Court believes that this remote method is best for everyone’s health.

**Welcome and Oath**

* Now that you have been selected as jurors, you need to take another oath. Please raise your right hand and I will administer this oath.
* THE OATH
  + **Do you and each of you solemnly swear or affirm that you will fairly try the issues in this case according to the evidence and the instructions from the court?**
  + If so, please unmute, say, “I Will”, and give me a thumbs up.
  + Did anyone say no or not answer?
  + [State for the record that every juror gave a thumbs up.]
* Now, let’s discuss the rules for your participation in this Zoom jury trial.
* You are some of the very first people in the United States to participate in a Zoom jury trial, and we are grateful that you are here.
* We are having Zoom jury trials in part because, on the one hand, parties in lawsuits have a constitutional right to a jury trial, but on the other hand, the public health crisis means that we must take measures to minimize the spread of coronavirus.
* Courts in Washington are actually not covered by the Governor’s current order.
* We could require you to come participate in trial in-person, but we’re not doing that.
* This means that we must work even harder to give the parties to this lawsuit a fair trial, and you as jurors play a very important role.

**Juror Conduct During Zoom Trial [ Slide 3]**

* While this trial is taking place over Zoom, this is still a court hearing.
* I am physically present at the King County Courthouse in Kent/Seattle, and these proceedings are being recorded to make an official court record.
* Accordingly, you and all of us must conduct ourselves just as if we were all physically present in court.
* While we are in session, you must give your full, undivided attention to these proceedings. Do not try to multitask. You must not try to work, engage in childcare, or do anything other than provide your full attention to these proceedings.
* While we are in session, you should not move about your space. You should remain seated, and should not leave the screen for any reason.
* **[Slide 4]** While we are on breaks during the day, you may tend to your personal affairs, including making calls or tending your family/work.
* You should not speak during the proceedings.
* You should not gesture to the court, a witness, or a lawyer on screen during the proceedings.
* Other than as instructed, you should not use the Zoom chat function during the proceedings.

**Juror Zoom Rules[Slide 5]**

* **[Slide 6]** While we are in session, you must be able to see and hear us, and we must be able to see you. So, please do not turn off your video or switch to a photo or virtual background you must always have your video and your audio enabled.
* While we are in session, you must always have the screen on your device visible so that you can see the proceedings.
* While we are in session, you must always have your speaker enabled so that you can hear the proceedings.
* While we are in session, no one else should appear on your screen with you, and no one else should be attempting to view the proceedings using your device.
* While we are in session, you must keep your microphone muted unless I ask you to unmute.
* When you first sign in, my bailiff will set your screen name to your juror number. Please do not attempt to change your screen name We will use the same Zoom link every day.

**Juror Security Rules [Slide 7]**

* **[Slide 8]** Please do NOT share the link to the Zoom trial with anyone, for any reason.
* The public is allowed to come to the courthouse and observe the proceedings on a screen in the courtroom, but the Zoom link you were provided is not for the public, and should not be shared with anyone, including your family or friends.
* Nor may you let anyone watch or listen with you.
* **[Slide 9]** Do not record these proceedings in any way or try to take screenshots or photographs of the parties, witnesses, your fellow jurors, or the evidence.

**Juror Zoom Connection Rules [Slide 10]**

* **[Slide11]** If you become disconnected at any time, please attempt to reconnect immediately.
* If you cannot immediately reconnect, please call my Bailiff Lisa Ziminisky right away at 206-477-1573, or email her at williams.court@kingcounty.gov. It is critical that we reconnect you right away, because we cannot continue the proceedings without all jurors present.
* If you have an urgent matter requiring my attention during the proceedings, please email Lisa.

**Schedule [Slide 12]**

* **[Slide 13]** We will usually start at 9:00 a.m. each day and end at 4:00 p.m. There may be times when I will want to adjust our schedule; I will let you know if I plan to do that.
* At the beginning of the court day, please join the Zoom at least 15 minutes before the trial resumes; generally, that means you should join the Zoom no later than 8:45 a.m.; I will keep you posted.

**Virtual Jury Room [Slide 14]**

* **[Slide 15]** When you join the Zoom in the morning for the resumption of trial, I will put you in the virtual jury room.
* When we are ready to start hearing testimony, I will bring you into the virtual courtroom.
* While you are in the virtual jury room, you are welcome to socialize with the other jurors. However, as I will explain to you in more detail, you may not discuss the facts or the law in this case until you are sent to deliberate on a verdict.
* At times during the trial, I may also send you into the virtual jury room so that I can discuss matters with the lawyers, outside of your presence. You may hear me at times refer to these instances as sidebars.

**Breaks [Slide 16]**

* We will also take breaks during the day.
* **[Slide 17]** Generally, we take a 15-minute break in the middle of the morning, a 90-minute break from 12:00 to 1:30, and a 15-minute break in the middle of the afternoon.
* During breaks, you will be sent to the virtual jury room. You are welcome to attend to your personal affairs during your breaks.
* Please do not leave Zoom during your breaks.
* **[Slide 18]** You are welcome to turn off your video during your break, but please do not leave Zoom.
* You should remain logged into the Zoom for the entire trial day.
* At the beginning of a break, I will tell you what time you must return from break; you must not be late, because we cannot resume without all jurors.
* At the end of the break, I will return you from the virtual jury room to the virtual courtroom.

**Trial Overview [Slide 19]**

This is a CIVIL Case brought by Plaintiff Alki Tours against Defendant Tyson Verse and Rail and Sail Vacations, LLC. The Defendants have asserted a counter-claim against plaintiffs, and a third-party complaint against Claire Nolan, the founder of Alki Tours.

Plaintiff Alki Tours, Inc. was formed in 1994 by Third-Party Defendant Claire Nolan. Alki Tours is a tour operator based in Seattle, Washington. Defendant Tyson Verse worked as a tour guide for Alki Tours for approximately 20 years. On October 31, 2018, Mr. Verse resigned from Alki Tours to operate his own tour business. Alki Tours alleges that Mr. Verse misappropriated its trade secrets, breached an employee duty of loyalty, and intentionally interfered with prospective business relationships. Mr. Verse denies these claims. For his part, Mr. Verse alleges that Alki Tours failed to pay him all wages that were due from 2016 through 2018, and that Ms. Nolan made defamatory statements about Mr. Verse to certain of its clients. Alki Tours and Ms. Nolan deny Mr. Verse’s claims.

The Plaintiff’s attorney is: Michael Hunsinger

The Defendant’s Attorney is: Charles Rullman

* + I will now say a few words about the role and function each of us plays during a jury trial.
  + From this point forward, it is essential that all of your decisions be based upon the evidence and the law that come to you in this courtroom and only in this courtroom.
  + You must not allow yourself to be exposed to any outside information about this case.
  + Do not permit anyone to discuss or comment about it in your presence, and do not remain within hearing of such conversations. This includes electronic conversations as well as oral ones. So, no discussion means no e-mailing, text messaging, blogging, or any other form of electronic communications.
  + Except for the device that you are using to participate, all phones, tablets, laptops, and other communication devices must be turned off while you are in court and while you are in deliberations
  + The violation of this order is serious and might involve a personal penalty to you and might result in a mistrial which would cause great injury to the parties.
  + You must keep your mind free of outside influences so that your decision will be based entirely on the evidence presented during the trial and on my instructions to you about the law.
  + Until you are dismissed at the end of this trial, you must avoid outside sources such as the internet, print publications, radio, or television broadcasts that may discuss this case or issues involved in this trial.
  + If you start to hear or read information about anything related to the case, you must act immediately so that you no longer hear or see it.
  + By giving this instruction I do not mean to suggest that this particular case is newsworthy; I give this instruction in every case.
  + During the trial, do not try to determine on your own what the law is. Do not seek out any evidence on your own. Do not consult dictionaries or other reference materials.
  + Do not conduct any research into the facts, the issues, or the people involved in this case. This means you may not use Google or other internet search engines to look into anything at all related to this case.
  + Do not inspect the scene of any event involved in this case.
  + If your ordinary travel will result in passing or seeing the location of any event involved in this case, do not stop or try to investigate.
  + You must keep your mind clear of anything that is not presented to you in this courtroom.
  + During the trial, do not provide information about the case to other people, including any of the lawyers, parties, witnesses, your friends, members of your family, or members of the media.
  + If your friends or family ask you about the case, you should tell them that you are under a court order not to discuss it. When the trial is over you will be released from this instruction, you will be released from this instruction and you will then be free to discuss the case and your experiences as a juror.
  + If necessary, you may tell people (such as your employer or your child's daycare provider) that you are a juror and let them know when you need to be in court. If people ask you for more details, you should tell them that you are not allowed to talk about the case until it is over.
  + I want to emphasize that the rules prohibiting discussions include your electronic communications.
  + You must not send or receive information about anything related to the case by any means, including by text messages, email, telephone, internet chat, blogs, or social networking web sites.
  + Do not even mention being on a jury when using social media, such as updating your status on Facebook or sending a message on Twitter.
  + You don't want to do anything that will invite others to talk to you about your jury duty.
  + In short, do not communicate with anyone, by any means, concerning what you see or hear in the courtroom, and do not try to find out more about anything related to this case, by any means, other than what you learn in the courtroom.
  + These rules ensure that the parties will receive a fair trial. If you have any questions about these restrictions, please contact the bailiff.
  + If you become exposed to any information other than what you learn in the courtroom, that could be grounds for a mistrial.
  + A mistrial would mean that all of the work that you and your fellow jurors put into this trial will be wasted.
  + Retrials are costly and burdensome to the parties and the public
  + After you have delivered your verdict, you will be free to do any research you choose and to share your experiences with others.
  + Please do not communicate with me, the court staff, or anyone else connected to this case except as directed. But if you need help or have question you may direct it to Lisa via email. Please do not ask her any questions about the case or about the law, as she is not permitted to answer those types of questions.
  + I have instructed the lawyers, parties, and witnesses not to communicate with you outside of this Zoom courtroom.
  + I want to comment on one other aspect of your role and that is the importance of keeping an open mind throughout the various stages of these proceedings.
  + First: The lawyers will have an opportunity to make opening statements outlining the testimony of witnesses and other evidence that they expect to be presented during trial.
  + The lawyers will appear remotely, over Zoom, from various locations, and with various backgrounds behind them when they appear.
  + You are to draw no inferences from a lawyer’s location or background when they appear remotely.
  + Next: The plaintiff will present the testimony of witnesses or other evidence to you.
  + When the plaintiff has finished, the defendant may present the testimony of witnesses or other evidence.
  + Each witness may be cross-examined by the other side.
  + The witnesses will appear remotely, over Zoom, from various locations, and with various backgrounds behind them when they appear.
  + You are to draw no inferences from a witness’s location or background when they appear remotely.
  + **[Slide 20 ]**Exhibits may be presented to you on screen, over Zoom, using Zoom’s screen sharing function.
  + To load those exhibits the parties may use an application called ShareFile, which is an application utilized by the Superior Court Clerk’s Office to store the official exhibits.
  + Lawyers for both sides have access to these exhibits.
  + **[Slide 21]** While the lawyers are sharing exhibits you can expand or shrink the area of the screen share by “grabbing” the bar between the video thumbnails and the shared area and moving it back and forth.
  + **[Slide 22]** Next: When all of the evidence has been presented to you, I will instruct you on what law applies to this case.
  + I will read the instructions to you out loud.
  + You will have copies of the written instructions with you in the virtual jury room during your deliberations, which we will email to you.
  + Next: The lawyers will make closing arguments.
  + Finally: You will be sent to the virtual jury room where you will select a presiding juror.
  + The presiding juror will preside over your discussions of the case, which are called deliberations.
  + You will then deliberate in order to reach a decision, which is called a “verdict.”
  + Until you are in the jury room for those deliberations, you must not discuss the case with the other jurors or with anyone else.
  + During your deliberations, you must apply the law that I provide to you in my instructions to the facts that you find to have been proven.
  + Once you have been sent to deliberate on a verdict, you will be provided electronic access to a folder containing the exhibits admitted into evidence, along with instructions for accessing those exhibits.

In deciding this case, you will be asked to apply a concept called “burden of proof.” Burden of proof refers to the measure or amount of proof required to prove a fact. The burden of proof in this case is proof by a preponderance of the evidence. Proof by a preponderance of the evidence means that you must be persuaded, considering all the evidence in the case, that a proposition is more probably true than not true.

It is your duty as a jury to decide the facts in this case based upon the evidence presented to you during this trial. Evidence is a legal term. Evidence includes such things as testimony of witnesses, documents, or other physical objects.

* It also is your duty to accept the law from my instructions, regardless of what you personally believe the law is or what you think it ought to be. You are to apply the law from my instructions to the facts, and in this way decide the case.
* At the end of the trial I will give you more detailed instructions that will control your deliberations. When you deliberate, it will be your duty to weigh and to evaluate all the evidence received in the case and, in that process, to decide the facts. To the facts as you find them, you will apply the law as I give it to you, whether you agree with the law or not.
* The only evidence you are to consider consists of testimony of witnesses and exhibits admitted into evidence. When witnesses testify, please listen very carefully. You will need to remember testimony during your deliberations because testimony will rarely, if ever, be repeated for you. Any exhibits admitted into evidence will be provided to you during your deliberations.
* The lawyers' remarks, statements, and arguments are intended to help you understand the evidence and apply the law. However, the lawyers' statements are not evidence or the law. The evidence is the testimony and the exhibits. The law is contained in my instructions to you. You must disregard anything the lawyers say that is at odds with the evidence or the law in my instructions.
* You may hear objections made by the lawyers during trial. Each party has the right to object to questions asked by another lawyer, and may have a duty to do so. These objections should not influence you. Do not make any assumptions or draw any conclusions based on a lawyer's objections.
* One of my duties as judge is to decide whether specific evidence should be admitted during trial. For example, if a party offers a photograph as an exhibit, I will decide if it is admissible based on applicable legal concepts. Do not be concerned about the reasons for my rulings. You must not consider or discuss any evidence I do not admit or that I tell you to disregard.
* Our state constitution prohibits a trial judge from making a comment on the evidence. Because it is your role to evaluate the evidence, it would be improper for me to express, by words or conduct, my personal opinion about the value of a particular witness's testimony or an exhibit. I will not intentionally do this. If it appears to you that I have indicated in any way my personal opinion concerning any evidence, you must disregard this entirely

**JUROR NOTES**

* + You will be allowed to take notes during the trial.
  + You may take notes in any format you would like, whether they are handwritten or on a computer, so long as you ensure that your note taking does not interfere with your ability to listen to and observe the witness and exhibited admitted into evidence.
  + If you choose to take notes, I must remind you to listen carefully to all testimony and to carefully observe all witnesses.
  + While you may take notes concerning the testimony of witnesses and exhibits admitted into evidence, you may not, under any circumstances, for any reason, record any of the proceedings, take photos or screen captures or screen grabs of any of the proceedings, or copy and paste anything from the proceedings.
  + However, during breaks, and when court is not in session, you must not read your notes. In addition, you must not discuss your notes with anyone or show your notes to anyone until you begin deliberating on your verdict. This includes other jurors. During deliberation, you may discuss your notes with the other jurors or show your notes to them.
  + We allow you to take notes to assist you in remembering clearly, not to substitute for your memory.
  + You are also not to assume that your notes are more accurate than the memories or notes of the other jurors.
  + After you have reached a verdict, you must destroy your notes, whether by disposing of your handwritten notes or deleting your electronic notes. Do not save them, send them or post them.
  + No one should be allowed to read them.

JUROR QUESTIONS

* + **[Slide 23]** You will be allowed to propose written questions to witnesses after the lawyers have completed their questioning.
  + You may ask questions in order to clarify the testimony, but you are not to express any opinion about the testimony or argue with a witness.
  + If you ask any questions, remember that your role is that of a neutral fact finder, not an advocate.
  + Before I excuse each witness, I will offer you the opportunity to write out questions using the chat function in Zoom.
  + I will open up the virtual jury room, and ask you to write out any question you may have in the chat function. That question is to be directed to me, and only to me.
  + As soon as you have completed typing out any question you may have, you are to leave the virtual courtroom by entering the breakout jury room while I talk with the lawyers about your questions.
  + I will review the question to determine if it is legally proper.
  + I will then bring you back into the virtual courtroom by closing your breakout room.
  + There are some questions that I will not ask, or will not ask in the wording submitted by the juror. This might happen either due to the rules of evidence or other legal reasons, or because the question is expected to be answered later in the case.
  + If I do not ask a juror's question, or if I rephrase it, do not attempt to speculate as to the reasons and do not discuss this circumstance with the other jurors.
  + By giving you the opportunity to propose questions, I am not requesting or suggesting that you do so.
  + It will often be the case that a lawyer has not asked a question because it is legally objectionable or because a later witness may be addressing that subject.
  + All of your questions will be copied from the Zoom chat onto court forms and filed in the court record.
* **[Slide 24]** Now, let’s practice using the chat function. Each of you please type into the chat function your juror number

**Zoom Practice [Slide 25]**

* Before we proceed to opening statement, let’s practice going in and out of the virtual jury room.
* In a moment, I will send all of you to the virtual jury room.
* Once you are in the virtual jury room, please do not attempt to leave the jury room.
* Once you are there, I want Juror # 1 to use the Ask for Help button to test that feature. That will alert us that you need assistance.
* So I’m going to send you briefly to the virtual jury room now, and once there, Juror # 1 should use the Ask for Help button.
* After I receive that message, I will close the virtual jury room, and you will be returned to us here in the main courtroom.

**FINAL INSTRUCTION & WPI 1.01 – Implicit Bias**

* + Having taken your oath as jurors, you are now what the law calls officers of this court.
* It is important that you discharge your duties without discrimination, meaning that bias regarding the race, color, religious beliefs, national origin, sexual orientation, gender, or disability of any party, any witnesses, and the lawyers should play no part in the exercise of your judgment throughout the trial. These are called “conscious biases”—and, it is important, for you to be aware of any such bias that exist within you.
* However, there is another more subtle tendency at work that we must all be aware of. This part of human nature is understandable but must play no role in your service as jurors. In our daily lives, there are many issues that require us to make quick decisions and then move on. In making these daily decisions, we may well rely upon generalities, even what might be called biases or prejudices. That may be appropriate as a coping mechanism in our busy daily lives but bias and prejudice can play no part in any decisions you might make as a juror. Your decisions as jurors must be based solely upon an open-minded, fair consideration of the evidence that comes before you during trial.
* As jurors, you are officers of this court. As such, you must not let your emotions overcome your rational thought process. You must reach your decision based on the facts proved to you and on the law given to you, not on sympathy, prejudice, or personal preference. To assure that all parties receive a fair trial, you must act impartially with an earnest desire to reach a just and proper verdict.
  + **Please give your attention to the plaintiff’s opening statement**

**RECESS INSTRUCTION**

**We are going to take a short break, and I am going to put you into a breakout room.**

**During this recess, and every other recess, do not discuss this case among yourselves or with anyone else, including your family and friends. This applies to your internet and electronic discussions as well.**

**You may not talk about the case via text messages, e-mail, telephone, internet chat, blogs, or social networking web sites. If anybody asks you about the case, or about the people or issues involved in the case, you are to explain that you are not allowed to discuss it.**

**Do not allow anyone to give you information about the case, including in your electronic communications. If you start to overhear a discussion or receive information about anything related to this case, you must act immediately so that you no longer hear or see it. If you become aware of outside information, you must privately notify court staff; do not discuss these matters with other jurors.**

DISCHARGE

**At the outset of this trial, alternate jurors were selected to serve in case a juror became unable to serve.**

**I am now able to release the alternate jurors. Juror numbers \_\_\_\_, you are partially excused.**

**Alternates are \_\_\_\_\_\_\_\_\_\_\_ (in that order)**

We t**hank you for your service to this court and to our system of justice. The work that you have done as an alternate juror was necessary for a fair and efficient trial.**

**Although, you are excused, if one of the other jurors were to become unable to complete deliberations you would be recalled to deliberate.**

**Please make sure that the bailiff has your number and your email. Please continue to monitor both.**

**The bailiff will call or email you to let you know when the deliberations complete. Until then, please do not discuss the case with anyone. Please, do not allow anyone to give you information about the case, the parties, or the issues involved in the case**