SUPERIOR COURT OF WASHINGTON

FOR THE COUNTY OF KING

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| \_\_\_\_\_\_\_\_\_\_\_\_\_,*Plaintiff*,v.\_\_\_\_\_\_\_\_\_\_\_\_\_\_,  *Defendant*. |  Case No. **COURT’S FINDINGS AND CONCLUSIONS OF LAW RE: VIRTUAL jury trial**  |
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1. **FINDINGS**
2. Due to the increase in COVID-19 infections in Washington State and King County, the King County Superior Court has issued Emergency Orders suspending all in-person civil and criminal trials until March 29, 2021.[[1]](#footnote-1) This Court incorporates and adopts by reference the findings set forth in Emergency Orders #22, #25, and #28. Those Orders conclude that “it is not feasible or safe to continue to conduct trials with jurors travelling to the court and congregating in a courtroom.”

1. Emergency Order #22 further provides:

This Court finds that there is good cause and compelling circumstances to allow all pending civil jury trials proceed virtually via video using Zoom or an equivalent platform. In virtual civil jury trials, the parties, counsel, witnesses, and jurors will not be physically present in the courtroom and will appear and participate entirely by Zoom including during deliberations. The assigned judge will be physically present in the courtroom and provide a means for public access to observe the proceedings. In all cases where a virtual civil jury trial may be appropriate, the assigned judge will hold a pretrial conference in order to discuss the procedures for the trial and hear the positions of the parties to proceeding in that manner. The assigned judge will decide whether to conduct a virtual jury trial based upon the particulars of the case, the positions of the parties, and any legal issues raised.

1. Emergency Order #28 made the following findings:

With respect to civil jury trials, a virtual trial, where the parties and jurors attend remotely is a reasonable alternative. Over the last six months, the superior court has regularly conducted motion hearings and bench trials using the Zoom platform. With respect to jury trials the court has regularly used the Zoom platform during jury selection and for the presentation of remote witnesses’ testimony. This technology has worked relatively smoothly and even offers some advantages to in-person trials. During jury selection via Zoom, all of the juror’s faces are readily visible and their reactions can be easily seen. During virtual jury trials, the lawyers and witnesses are not required to wear masks, allowing them to be more clearly heard and their expressions seen.

The King County Superior Court has recently conducted several virtual civil jury trials with all parties, witnesses, and jurors attending remotely via Zoom. The trials have proceeded smoothly. Jurors appear attentive and engaged. The allowance of virtual civil jury trials will further the parties’ right to a civil jury trial by allowing cases to proceed to trial in a timely manner.

1. A hearing was held on \_\_\_\_\_\_\_\_\_\_\_\_\_. Pursuant to Emergency Orders #22, #25, $ #28 the Court requested the parties to state their respective positions as to conducting a virtual jury trial via Zoom.
	1. The plaintiff’s position is\_\_\_\_\_.
	2. The defendant’s positions is \_\_\_\_.
	3. The basis for \_\_\_’s objection is that\_\_\_\_\_\_\_\_\_.
2. In considering whether a virtual jury trial is appropriate, this Court has considered the nature of the claims in the case, the proposed evidence to be introduced, the witnesses involved, the possible prejudice of a further continuance, and any possible prejudice caused by a virtual jury trial.
3. The claims in this matter are as follows:
	1. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
	2. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
4. Based upon the Joint Statement of Evidence, the proposed exhibits are written documents, electronic documents, photographs, diagrams, or videos. These exhibits can be easily viewed during a virtual trial using Zoom. In fact, in this Court’s experience, the jurors will have a better view off the exhibits in a virtual trial than they would in an in-person trials, where the exhibits are displayed on a screen and can be difficult to read.
5. There estimated to be \_\_\_ witnesses. All of this witness testimony can be presented via the Zoom platform. Ina virtual trial, the jurors will have as good or even better view of the witness than during an in-person jury trial.
6. This case was filed on \_\_\_\_\_.
	1. It has now been pending for \_\_\_\_ (months/years).
	2. There have been \_\_\_ continuances.
7. The alternative to a virtual jury trial would be a continuance of indefinite duration. It is uncertain when it will be safe and appropriate to begin conducting civil jury trials with jurors present in the courtroom. When in-person jury trials resume, there will be a substantial backlog of pending criminal and civil cases, and criminal trials will receive priority. A further delay prejudices \_\_\_\_.
8. This Court inquired as to how \_\_\_ will be prejudiced by a virtual jury trial. \_\_\_ argued that \_\_\_\_. Upon consideration of those issues, the Court finds \_\_\_\_\_\_.
9. Having weighed the relevant factors, the Court finds that it is appropriate to conduct a virtual jury trial in this case.
10. **CONCLUSIONS OF LAW**
11. Washington Supreme Court requires that courts “follow *the most protective* public health guidance applicable in their jurisdiction,” and requires courts to “*continue using remote proceedings for public health and safety whenever appropriate*.” Fourth Revised & Extended Order Re Court Operations, *In the Matter of Statewide Response by Wash. State Courts to the COVID-19 Pub. Health Emergency*, at 3 (Wash. Oct. 13, 2020) (the “Fourth Supreme Court Order”) (emphasis added).
12. With respect to jury trials, this Court may “to adopt measures to protect public health and safety that are more restrictive” than the orders of the Washington Supreme Court, “as circumstances warrant.” Order Re: Modification of Jury Trial Proceedings, *In the Matter of Statewide Response by Wash. State Courts to the COVID-19 Pub. Health Emergency*, at 5 (Wash. June 18, 2020). At the same time the Supreme Court has stated that “Courts are encouraged to move toward conducting as much court business as can be done consistent with public health and safety, in the interest of the fair and timely administration of justice.”
13. This Court has the ability to fashion trial solutions that are the most protective of public health and appropriate for the proceedings.
14. In this case, the parties have a right to a jury trial. The right to jury trial in civil proceedings is protected solely by the Washington Constitution in article 1, section 21. *Sofie v. Fibreboard Corp.*, 112 Wn.2d 636, 644 (1989). “At its core, the right of trial by jury guarantees litigants the right to have a jury resolve questions of disputed material facts..” *Davis v. Cox*, 183 Wn.2d 269, 289, 351 P.3d 862, 871 (2015), *abrogated on other grounds by Maytown Sand & Gravel, LLC v. Thurston Cty.*, 191 Wn.2d 392 (2018).
15. Here, the parties will receive the essential guarantees provided for by the constitutional right to a jury trial: the jury will receive the evidence over Zoom and have access to the exhibits electronically. Jurors will receive the Court’s instructions on the law, and will be given a virtual jury room in which to deliberate.
16. Washington law also requires that during deliberations, jurors “must be kept together in a room provided for them, or some other convenient place.” RCW 4.44.300. The “statute is designed to insulate the jury from out-of-court communications that may prejudice their verdict.” State v. Crowell, 92 Wn.2d 143, 147 (1979).
17. This court’s procedures will satisfy the statutory requirements. The jurors will deliberate in a virtual Zoom meeting. The individual jurors will be ordered to isolate themselves in their location so that no one else can hear or participate in the deliberations. No other person or party will be allowed to observe or listen to the Zoom deliberations. The jurors will be instructed to notify the court by email if they have a question or a verdict. This procedure satisfies the requirement that the jury be in a convenient place.
18. With respect to witnesses, CR 43(a)(1) provides that with good cause in compelling circumstances and with appropriate safeguards, the court may permit testimony in open court by contemporaneous transmission from a different location.” Such good cause and compelling circumstances exist where in-person testimony could threaten an individual’s health. In re Marriage of Swaka, 179 Wn. App. 549, 557 (2014). In light of the COVID-19 pandemic, the Court concludes that there is good cause in compelling circumstances to allow all witnesses to testify over Zoom.
19. Finally, the virtual jury trial will comply with the requirement for public access to the trial. Here, the courtroom will be open to the public. The virtual trial will be displayed on a monitor and the public will be able to observe the full jury trial, other than deliberations.
20. **Address any other legal objections not covered above.**

 DATED \_\_\_\_\_\_\_\_\_\_.

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
 Judge

1. *See* Emergency Order #28, *In Re Matter of the Response By The King County Superior Court To The Public Health Emergency in Washington State*, No. 21-0-12050-3 (Jan. 22, 2021); Emergency Order #25, *In Re Matter of the Response By The King County Superior Court To The Public Health Emergency in Washington State*, No. 21-0-12050-3 (Jan. 11, 2021); Emergency Order #22 Re: Jury Trials, *In Re Matter of the Response By The King County Superior Court To The Public Health Emergency in Washington State*, No. 20-0-12050-5 (Nov. 23, 2020). [↑](#footnote-ref-1)