

**CAUSE NO. 2017-10832**

|                                   |   |                                 |
|-----------------------------------|---|---------------------------------|
| <b>JETALL COMPANIES, INC.</b>     | § | <b>IN THE DISTRICT COURT OF</b> |
|                                   | § |                                 |
|                                   | § |                                 |
| <b>vs.</b>                        | § |                                 |
|                                   | § | <b>HARRIS COUNTY, TEXAS</b>     |
|                                   | § |                                 |
| <b>RICHARD HEIL, TODD OAKUM,</b>  | § |                                 |
| <b>and RENEE DAVY f/k/a RENEE</b> | § |                                 |
| <b>DAVY f/k/a RENEE OAKUM</b>     | § | <b>152ND JUDICIAL DISTRICT</b>  |

**JETALL’S MOTION FOR MISTRIAL**

Jetall Companies, Inc. files this Motion for Mistrial and respectfully shows the Court as follows:

**I.  
INTRODUCTION**

The world has been changed by the Covid-19, Coronavirus, pandemic. Under this changed world, people are discouraged if not prohibited from congregating in groups in public places and to keep their social distances to prevent the spread of the virus. Schools, restaurants, bars, malls, the NBA, the NHL, Major League baseball, the Houston Rodeo, and other places where groups of people can congregate have been suspended or closed due to the virus. Cities, such as San Fransico, have entered a quarantine order requiring residents to stay home. People are instructed to keep their social distances and to frequently wash their hands to prevent the spread of the virus.

In light of the foregoing, the Court assigned this case to trial beginning Monday, March 9, 2020. On Friday, March 13 2020, Texas Governor Gregg Abbott declared a state

of emergency due to the Coronavirus pandemic. In response to Governor Abbott's declaration of a state of emergency, the Texas Supreme Court issued a First Emergency Order regarding the Covid-19 State of Disaster, which among other things, required all courts in Texas to modify or suspend all deadlines and procedures to avoid risk to court staff, parties, attorneys, jurors and the public (the "Emergency Order"). *See* Misc. Docket No. 20-007, FIRST EMERGENCY ORDER REGARDING THE COVID-19 STATE OF DISASTER. Harris County suspended all jury service from Friday, March 13, 2020 to Thursday, April 30, 2020. To Jetall's knowledge, this case was the only trial conducted by any court in Harris County. This trial may have been the only trial conducted in Texas during the declaration of emergency. Indeed, on March 19, 2020, Governor Abbot banned gatherings of 10 or more people.

On the March 18, 2020, the Court declared a mistrial stating that it could not subject the jury, the Court's staff, the litigants and the public to the risk of catching or spreading the virus. The Court rescinded the order of mistrial after arguments from Defendants that they were not rich and would suffer the burden and expense of a new trial. Jetall did not consent to the order rescinding a mistrial and in fact objected that it violated the Emergency Order. Defendants waived presentation of their case-in-chief and the case proceeded to closing arguments. The jury returned a verdict in less than 30 minutes.

The jury was improperly influenced and operated under a specter of the Coronavirus. The trial required the jury to maintain close contact with 13 other members while listening to the evidence and deliberation, and throughout each day of trial. Many of the jurors stated, as they were rushing to leave the courthouse, that they wanted to be

done with their deliberations and leave the courthouse by five p.m. The jury was improperly motivated and influenced by the specter of life and health to quickly answer the jury charge in a manner that could result in a quick deliberation. The jury spent more time in reading the verdict and selecting the foreman before even considering the parties' trial exhibits or the evidence.

## **II. ARGUMENT**

A trial court abuses its discretion to grant a mistrial if an impartial verdict cannot be reached. *See Ladd v. State*, 3 S.W.3d 547, 567 (Tex. Crim. App. 1999). The determination of whether a court abuses its discretion by not granting a mistrial must be made by examining the particular facts of the case. *See id.* Here, the Court's first inclination was correct when it originally declared a mistrial on March 18, 2020. The jury could not return an impartial verdict given the circumstances. The trial was infected with the fear of Coronavirus. When a state of emergency has been declared and schools, bars, restaurants, and public venues are closed, the jurors could not have avoid the influence to answer the liability questions with a "No" to leave the courthouse and dangerous condition forced upon them by jury service, service which Harris County had properly suspended from March 13, 2020 to Thursday, April 30, 2020.

Many wondered why the trial of this cause, the only trial in all of Harris County, continued in light of the Texas Supreme Court's emergency order and the public directive for persons to keep their social distance. The Court only rescinded its order of mistrial due to Defendants' arguments and plea of hardship and expense. Defendants' hardship and

expense should not have been considered, much less outweigh the paramount concern of health and safety and whether the jury could return an impartial verdict. It could not.

**III.  
PRAYER**

For these reasons, Plaintiff Jetall Companies Inc. prays that this Court grant a mistrial and for all other relief, at equity and law, to which Plaintiff may show itself to be justly entitled.

Respectfully submitted,

**MAI & NA PLLC**

*/s/ Pete Mai*

By: \_\_\_\_\_

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## **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing was served in accordance with the Texas Rules of Civil Procedure on all counsel of record on this the 20th day of March, 2020 by e-serve notification.

*/s/ Pete Mai*

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PETE MAI

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**ORDER GRANTING MISTRIAL**

On \_\_\_\_\_, 2020, this Court considered Plaintiff's Motion for Mistrial. After considering same, the Court finds that said motion has merit and should be Granted. It is Ordered that the above cause is set for a new trial

**SIGNED**, this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
JUDGE PRESIDING