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December 4, 2019

Alexandra Vitale
Product Manager
Osprey Bicycle Tours LLC
dba Discovery Bicycle Tours
2520 W. Woodstock Road
Woodstock, VT 05091

Scott and Thistle Cone, Members
Osprey Bicycle Tours LLC
dba Discovery Bicycle Tours
2520 W. Woodstock Road
Woodstock, VT 05091

RE: Alexandra Vitale

Dear Parties:

I represent Sojourn Bicycle & Active Vacations.

I write to demand immediate dismissal of Alexandra Vitale, who is employed by Discovery Bicycle Tours as the Product Manager in violation of her non-compete contract with my client. I also demand immediate cessation of use and return of any trade secrets or proprietary information of Sojourn. Further claims will be outlined below.

Alexandra Vitale worked for Sojourn as a Regional Product Manager from December 18, 2018 until July 5, 2019. As part of her employment, she signed and is still bound by the *Employment Contract - Regional Product Manager* dated December 19, 2018. See enclosure. Her employment by Discovery Bicycle Tours violates this contract and likely the Trade Secrets Act.

The terms of the agreement have two salient aspects: the agreement contained a binding one-year non-compete agreement and a restriction on use of Sojourn's confidential or proprietary information.

The agreement clearly states on page 2:

NONCOMPETITION AND NONSOLICITATION.

Throughout the duration of the Employee's employment by the Company and for a period of one (1) year thereafter, regardless of whether the termination is voluntary or involuntary:

1. Employee shall not, directly or indirectly, participate for his/her own account or the account of another as owner, partner, shareholder, joint venture, director, employee, agent, contractor, consultant or otherwise, in the conduct of any business that competes with any portion of the Business of the Company.
2. Employee shall not, directly or indirectly, on his/her own behalf or on behalf of another, solicit business of the same type as any portion of the Business of the Company from any Customer, except on behalf and for the Company. The term "Customer" shall mean any person or entity that is a customer of the Company at any time during or before the Employee's employment with the Company.
3. Employee shall not, for his/her own account or for the account of another, solicit, divert, entice away, or hire any of the Company's employees.

It is undisputed that Sojourn and Discovery are competing businesses.

Vermont Courts will uphold non-compete agreements such as this one and will enjoin the breaching party under such circumstances. See *Systems and Software, Inc. v. Barnes*, 2005 VT 95, 886 A.2d 762. There can be little doubt about the enforceability of this non-compete agreement. See *Vt. Elec. Supply Co., Inc. v. Andrus*, 132 Vt. 195, 198, 315 A.2d 456, 458 (1974) and *Fine Foods, Inc. v. Dahlin*, 147 Vt. 599, 603, 523 A.2d 1228, 1230 (1986).

If substantial progress is not made toward resolving the pending violations of the non-competition agreement, please be advised that Sojourn has authorized this firm to take whatever steps might be appropriate, including application to the Court for injunctive relief and monetary damages.

Sojourn is also investigating whether the anti-solicitation provisions regarding customers and employees have been violated.

Sojourn has informed this office that they have reason to believe that Ms. Vitale's hire may violate the Vermont Trade Secrets Act, 9 V.S.A. §§ 4601-4690 as well as provisions of the employment contract as Sojourn's confidential and proprietary information has been misappropriated.

The *Employment Contract - Regional Product Manager* states:

I understand and agree that through my employment relationship with Sojourn

that I will become aware of and have access to confidential or proprietary information pertaining to but not limited to, the company guests database, guest contact lists, tour development plans, route directions, and business development. I will not, either while or following employment by Sojourn, disclose or use any confidential or proprietary information other than for the sole purpose of Sojourn's benefit.

Upon information and belief, Ms. Vitale and Discovery Bicycle Tours may have been using confidential and propriety information of Sojourn, including but not limited to guest lists and route directions. Specifically, during her tenure at Sojourn, Ms. Vitale had access to certain trade secrets including but not limited to company growth and development plans, guest lists, vendor contracts, and route directions.

The guest lists and route directions are trade secrets within the meaning of the Vermont Trade Secrets Act. *Dicks v. Jensen*, 172 Vt. 43 (2001). A "trade secret," within the meaning of the Act is:

[i]nformation, including a formula, pattern, compilation, program, device, method, technique, or process, that: (A) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (B) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Sojourn's rights and efforts to protect its trade secrets are documented in the *Employment Contract*. Claims may be raised directly under the Act against both Ms. Vitale and Discovery Bicycle Tours for misappropriation of trade secrets. 9 V.S.A. § 4601. My client may seek monetary damages, attorney's fees, and/or injunctive relief. On behalf of my client, I demand that you cease and desist any further activities relying upon Sojourn's trade secrets or suffer claims for damages for misappropriation of trade secrets.

We are also investigating whether Sojourn's data was copied in violation of 13 V.S.A. § 4103 and §4105. The statute permits civil claims for damages.

Independent of claims based on the Trade Secrets Act, Discovery Bicycle Tours may also be held liable for merely encouraging or benefitting from any breach of the non-compete and non-disclosure contract by Ms. Vitale. "One who intentionally and improperly interferes with the performance of a contract... between another and a third person by inducing or otherwise causing the third person not to perform the contract, is subject to liability to the other for the pecuniary loss resulting to the other from the failure of the third person to perform the contract." § 766 of Restatement (Second) of Torts. Damages can include punitive damages.

"There is no legal right...[to] invade the area of another's agreement. An outsider who does so for his [or her] own purposes may be held liable to the promisee who suffers from such

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intervention.” *Giroux v. Lussier*, 126 Vt. 555, 561-562 (1967). “[T]he law has long recognized liability against one who intentionally intrudes to disrupt an existing contract relation.” *Mitchell v. Aldrich*, 122 Vt. 19, 22 (1960). “He is not free, under this rule, to induce a contract breach merely to obtain customers or other prospective advantage.” *Prosser and Keeton on Torts*, 5th Edition § 129, p. 986.

Any use of these trade secrets fits squarely within prohibited conduct restricted by statute under 9 V.S.A. § 4601.(2)(B)(ii)(II). It is therefore demanded that you 1) cease using or distributing Sojourn’s confidential data, 2) cease contacting Sojourn’s guests, and 3) identify any other usages of similar trade secret information and return copies of same or provide proof of the destruction of copies of this data. My client reserves all claims for damages at this time as the scope and extent of the violations are still being investigated.

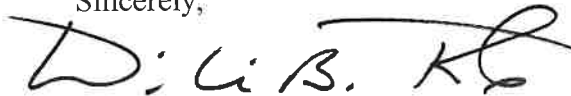
Please provide this firm with certification that Ms. Vitale has been terminated, that any data has been destroyed, and identifying any other disclosures by December 18, 2019.

If this matter cannot be timely addressed, this firm has been authorized to immediately file a lawsuit seeking an injunction and for damages, including punitive damages and attorney’s fees, pursuant to 9 V.S.A. § 4603.

If you are represented by counsel, please immediately forward this letter to your attorney and have your attorney contact this office.

We look forward to working with you to resolve this matter.

Sincerely,



William B. Towle

cc: Client

Enclosure: *Employment Contract - Regional Product Manager*

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Employment Contract – Regional Product Manager

Employee: Alexandra Vitale

This contract shall constitute the terms of employment between Sojourn Active Vacations, Inc. ("Sojourn") and the undersigned employee. This is a full-time position. Office hours are 9:00 AM – 6:00 PM Monday through Friday with occasional other hours as necessary. The core hours for the business operations are 10AM through 5PM Monday – Friday. If using flex time, it will be required to be in the office during the core hours.

Primary Responsibilities

- Management of all aspects of specific assigned tours
 - Planning, negotiations and contracting
 - Coordination with tour leaders
 - Updating of tour itineraries and route directions
 - Execution of assigned tours (prep paperwork, oversee invoicing and payments)
 - Quality/performance of assigned tours based upon guest and leader feedback.
 - Develop intimate knowledge of assigned tours via research, FAM trips, guiding.
- Development of New Tours

Secondary Responsibilities

- Support and assist with general office or operations projects and tasks.
- Other responsibilities as necessary or assigned.

Wages, Benefits & Time-Off

- Full-time, salaried position
- Sojourn Simple
 - Qualification on the 1st of January 2020
 - Maximum 3% company match
- Company holidays – 8 days (New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving and day after, Christmas Eve, Christmas Day) based upon annual calendar considerations.
- Vacation – 10 days – accrual of 0.82 days per month with no carry over to be prorated by number of days worked. After 1 full year of employment the employee will be eligible of a total of 15 days of vacation with no carry over to be accrued at 1.25 days per month to be prorated by number of days worked.
- Sick Days – 40 hours per year (accrued by month) and will not be allowed to carry over.

I understand and agree that through my employment relationship with Sojourn that I will become aware of and have access to confidential or proprietary information pertaining to but not limited to, the company guests database, guest contact lists, tour development plans, route directions, and business development. I will not, either while or following employment by Sojourn, disclose or use any confidential or proprietary information other than for the sole purpose of Sojourn's benefit. Since this is a management position within the Company and critical to running our business, this position is not eligible for overtime under the provisions of the Fair Labor Standards Act.

NONCOMPETITION AND NONSOLICITAION.

Throughout the duration of the Employee's employment by the Company and for a period of one (1) year thereafter, regardless of whether the termination is voluntary or involuntary:

1. Employee shall not, directly or indirectly, participate for his/her own account or the account of another as owner, partner, shareholder, joint venture, director, employee, agent, contractor, consultant or otherwise, in the conduct of any business that competes with any portion of the Business of the Company.
2. Employee shall not, directly or indirectly, on his/her own behalf or on behalf of another, solicit business of the same type as any portion of the Business of the Company from any Customer, except on behalf and for the Company. The term "Customer" shall mean any person or entity that is a customer of the Company at any time during or before the Employee's employment with the Company.
3. Employee shall not, for his/her own account or for the account of another, solicit, divert, entice away, or hire any of the Company's employees.
4. The restricted time period specified for all portions of this section shall be extended by the time of any breach of such provision, as determined by a court of competent jurisdiction or by arbitration.

At the conclusion of my period of commitment, I agree to immediately return all originals and all copies of confidential information in any form to Sojourn. I also agree, regardless of my location, to immediately return to the Sojourn office any documents (electronic or printed) or equipment in my possession.

Additionally, I certify that I am of sound mind and body and am able to pass the DOT Medical Exam for Commercial Driver Fitness. This requirement is necessary for all employees who may at some point be relied upon to assist with driving Sojourn vehicles and transporting of passengers or equipment, or guiding tours.

Earnings are subject to withholdings for taxes, social security or other charges as required by law. This agreement shall be governed by the laws of the State of Vermont. I understand that any decision to distribute a performance-based bonus or profit sharing, and the amount of such, shall be determined solely by the management of Sojourn and is not an automatic annual practice.

Position Status: Full-time
Reports To: President
Wage: \$50,000
Start Date: December 19, 2018
Payroll Schedule: First business day of the month (for prior month)
Payroll Method: Direct deposit
Health Insurance: Sojourn does not provide health insurance for employees.

I understand and agree to abide by the conditions as outlined in this document.



Employee



Date