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7	SUPERIOR COURT OF WASHINGTON FOR KING COUNTY					
8	THE STAT	E OF WASHINGTON,)			
9		Plainti	.ff,)	No. 19-2-28449-8 SEA		
10	v.	V.		SETTLEMENT AND CONSENT		
11	MERCURYS MADNESS INC. d/b/a			DECREE AGAINST MERCURYS MADNESS INC. D/B/A MERCURYS COFFEE CO.		
12	MERCURYS COFFEE,			CLERK'S ACTION REQUIRED		
13		Derenda)	CLERK S ACTION REQUIRED		
14		I. SETTI	FMFN	T SUMMARY		
15	1.1	Plaintiff:		of Washington		
16	1.0					
17	1.2	Defendant:	Merc	urys Madness Inc.		
18	1.3	Monetary Payment:	\$50,0	00 (see Section VII)		
19 20	1.4	Attorney for Plaintiff:	Rahul Rao			
20			Assistant Attorney General Eric S. Newman			
21			Chief	Litigation Counsel – Antitrust Division		
23	1.5	Attorney for Defendant:		n V. Rocke		
24			Rock	e Law Group, PLLC		
25						
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		ECREE AGAINST MADNESS INC 1		ATTORNEY GENERAL OF WASHINGTON ANTITRUST DIVISION 800 FIFTH AVENUE, SUITE 2000 SEATTLE, WA 98104-3188 (206) 464-7744		

II. INTRODUCTION

2 2.1 Plaintiff, State of Washington, by and through its Attorney General, has
3 commenced an action pursuant to RCW 19.86, the Unfair Business Practices-Consumer
4 Protection Act (CPA), against Defendant, Mercurys Madness Inc. *d/b/a* Mercurys Coffee
5 Co.

2.2 The State initiated an investigation under the CPA into Defendant's use of an 6 7 overbroad and restrictive non-compete agreement. Specifically, Defendant requires all of 8 its employees, regardless of job duties, to sign a non-compete agreement as a condition of 9 employment. The non-compete agreement's express terms prevent former employees from 10 working for most other coffee shops within a 10-mile radius of any of Defendant's eight store locations throughout King County. The prohibition lasts for up to a year and a half 11 12 after employment ends. In addition, the non-compete agreement requires current and former 13 employees to provide a copy of the agreement to all potential new employers—regardless 14 of the employer or its location—for 24 months, which is an additional six months beyond 15 the 18-month competition prohibition expires. The State's complaint alleges that Defendant's non-compete agreement suppresses competition for workers-including 16 17 competition for better compensation, benefits, or working conditions-and constitutes an 18 unfair method of competition in violation of the CPA, RCW 19.86.020.

19 2.3 Plaintiff and Defendant have engaged in arms-length negotiations and have
20 agreed on a basis for settlement of all Plaintiff's claims against Defendant and to the entry of
21 this Settlement and Consent Decree (Consent Decree) without trial or adjudication of any issue
22 of fact or law.

2.4 Defendant does not admit the allegations of the Complaint or any liability or
violation of law, and believes it has valid defenses to Plaintiff's claims and any potential claims
that have been or could be asserted by Plaintiff against Defendant. Nevertheless, Defendant
agrees to entry of this Consent Decree to: (a) avoid the expense, inconvenience, and distraction
of burdensome and protracted litigation; (b) obtain the releases, orders, and final judgment

contemplated by this Consent Decree; and (c) put to rest and terminate with finality all claims
 that Plaintiff has or could have asserted against Defendant that relates in any way to or arise out
 of the allegations in the Complaint, as more particularly set forth below.

2.5 Defendant recognizes and states that it enters into this Consent Decree voluntarily
and that other than the promises contained herein, no promises or threats have been made by the
Attorney General's Office or any member, officer, agent or representative thereof to induce
Defendant to enter into this Consent Decree.

8 2.6 Plaintiff and Defendant waive any right they may have to appeal from this
9 Consent Decree and from any Order adopting it, provided that no substantive changes are made
10 to the Consent Decree after it has been presented to the Court.

NOW, THEREFORE, there being no just reason for delay for resolving the claims
alleged in Plaintiff's Complaint against Defendant, and before the taking of any testimony, and
without trial or adjudication of any issue of any fact or law herein, and upon consent of the
parties hereto, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

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III. JURISDICTION AND SCOPE

3.1 The Court has jurisdiction over the parties and the subject matter herein, as well
as the implementation, enforcement, and performance of the terms included in this Consent
Decree.

3.2 The Washington State Attorney General has the authority to bring this Action
pursuant to RCW 19.86.080. Venue is proper in King County Superior Court because the
Defendant conducts business in King County.

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IV. **DEFINITIONS**

THE COURT ORDERS that the following definitions shall be used in interpreting the
 terms of this Consent Decree:

4.1 "Defendant" shall refer to Mercury Madness Inc. *d/b/a* Mercurys Coffee Co.,
with its principal place of business located at 13110 NE 177th Pl. #323, Woodinville, WA 980725740.

4.2 "Effective Date" shall mean the date the Court enters this Consent Decree.

2 4.3 "Non-Compete Agreement" shall mean language in an employment agreement 3 or any similar article obligating a person's labor to Defendant in exchange for compensation, 4 whereby the employee agrees not to enter into or start a similar profession or trade in competition 5 against Defendant.

4.4 "State" shall mean the Plaintiff, State of Washington, by and through the 6 7 Attorney General.

8 4.5 "Complaint" shall mean the Complaint filed against Defendant, State of 9 Washington v. Mercurys Madness Inc.

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V. **APPLICABILITY**

11 5.1 Within thirty days after the Effective Date, Defendant shall make copies of this 12 Consent Decree, or a Notice at Exhibit 1, available to each of its current employees. This may 13 be satisfied by mailing the Consent Decree or Notice at Exhibit 1 via the U.S. Postal Service to 14 the employee's last known address, via electronic mail to the employee's last known email 15 address, or posting copies of the Consent Decree or Notice at Exhibit 1 in areas commonly 16 accessed by employees.

17 5.2 Within thirty days after the Effective Date, Defendant shall forward copies of this Consent Decree or Notice at Exhibit 1 to each of its former employees whose employment 18 19 terminated within the two years preceding the Effective Date. This may be satisfied either by 20 mailing the Consent Decree or Notice at Exhibit 1 via the U.S. Postal Service to the former 21 employee's last known address, or via electronic mail to the employee's last known email 22 address.

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5.3 The obligations in this Consent Decree shall apply to Defendant, its successors 24 and assigns, subsidiaries, affiliates, directors, officers, managers, agents, and employees.

25 5.4 Defendant shall notify the State in writing at least thirty days prior to any 26 proposed change that may affect its compliance obligations under this Consent Decree, such as 27 dissolution, assignment for the benefit of creditors, sale resulting in emergency of a successor

entity, creation or dissolution of subsidiaries, or any other change that may affect compliance
 obligations under this Consent Decree. A copy of this Consent Decree shall be given to any
 successor entity.

4 5.5 All parties agree that this Consent Decree is entered voluntarily and represents
5 the entire agreement of the parties. All parties agree and represent that any persons signing this
6 Consent Decree have been authorized to execute this Consent Decree.

7

VI. INJUNCTION

8 6.1 Except those non-compete agreements identified in Appendix A, Defendant shall
9 waive its right to enforce all existing and in-effect non-compete agreements, including those in
10 its current employee contracts as well as those for former employees.

6.2 For the term of this Consent Decree, Defendant is prohibited from including a
non-compete provision in any existing or future employment agreements for employees earning
less than \$100,000 annualized.

14 6.3 In the event Defendant reasonably believes that unique circumstances warrant 15 the use of a non-compete agreement for a specific potential new employee who would earn more than \$100,000 annualized, Defendant shall notify the Attorney General and request an 16 17 amendment to Appendix A to include the non-compete agreement for that new position or 18 specific employee. If the Attorney General denies Defendant's request, Defendant may petition 19 the Court to amend Appendix A accordingly, which the Attorney General may oppose. 20 Defendant is free to make an offer of employment to that potential employee simultaneously 21 with a proposed non-compete agreement. This proposed non-compete agreement must be 22 presented to the Attorney General for review within three business days after its presentation to 23 the potential new employee. That proposed non-compete agreement must also state that its 24 validity and enforceability is subject to modification of Appendix A of this Consent Decree, 25 and that barring such modification of Appendix A, the non-compete agreement is 26 unenforceable.

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6.4 The Attorney General takes no position on the validity or enforceability under common law, the CPA, or any other state or federal law of any non-compete agreement listed in Appendix A, and nothing in this Consent Decree shall be construed to limit or bar any private party or other governmental entity (other than Plaintiff and its officials and agencies) from challenging the validity or enforceability of a non-compete agreement listed in Appendix A.

VII. MONETARY PAYMENT

7 7.1 Defendant agrees to settle this matter for \$50,000 (Settlement Funds) payable to
8 the State of Washington. The Attorney General will suspend the payment of \$25,000 of this
9 settlement amount (Suspended Amount) until the close of this Consent Decree's term, and will
10 subsequently waive payment of the Suspended Amount upon successful compliance—i.e., no
11 material breach—with this Consent Decree.

12 7.2 Under RCW 19.86.080, the Attorney General shall use the funds for recovery of
13 the costs and attorneys' fees incurred in this matter, future monitoring and enforcement of the
14 Consumer Protection Act, or for any lawful purpose in the discharge of the Attorney General's
15 duties at the sole discretion of the Attorney General.

16 7.3 Defendant shall pay to the State of Washington a total of \$25,000 (Owed 17 Amount) by wire transfer to the Attorney General on set installments of \$5,000, the first to be 18 paid within 30 days of the Effective Date of this Consent Decree, and subsequent payments to 19 be made every month on the 1st business day of the month for four additional installments. 20 Failure to timely make an installment payment on the Owed Amount, without prior written 21 agreement by the Attorney General's office, shall be a material breach of this Consent Decree. 22 Defendant will bear the Attorney General's costs and fees associated with any action to recover 23 Settlement Funds. At any point prior to close of the installment timeframe, Defendant is free to 24 partially or fully prepay any of the Owed Amount. Any payment made beyond the set \$5,000 25 installment amount will be applied toward a reduction in the Owed Amount.

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CONSENT DECREE AGAINST MERCURYS MADNESS INC. - 6 ATTORNEY GENERAL OF WASHINGTON ANTITRUST DIVISION 800 FIFTH AVENUE, SUITE 2000 SEATTLE, WA 98104-3188 (206) 464-7744

VIII. NO EFFECT IF THIS CONSENT DECREE IS NOT ENTERED

8.1 In the event that this Consent Decree is not approved and entered by the Court,
then this Consent Decree shall be of no force or effect. Defendant and Plaintiff expressly reserve
all of their rights if this Consent Decree does not become final.

5

IX. COMPLIANCE AND ENFORCEMENT

9.1 The Court will retain jurisdiction for five (5) years for the purpose of enabling
any of the parties to this Consent Decree to apply to this Court at any time for such further orders
and directions as may be necessary or appropriate for the construction or implementation of any
of the provisions of this Consent Decree, for the enforcement of compliance, and for the
punishment of any violations.

9.2 On an annual basis until the expiration of this Consent Decree, Defendant shall
certify in writing to the Washington Attorney General that it has complied and is complying with
the provisions of this Consent Decree.

9.3 A violation of any of the terms of this Consent Decree shall, if proven, constitute
a violation of an injunction for which civil penalties of up to \$25,000 per violation may be sought
by the Attorney General pursuant to RCW 19.86.140.

9.4 In any contempt of court proceeding initiated to enforce this Consent Decree due
to a violation of its terms, Plaintiff or Defendant may seek, and the Court shall have the authority
to grant, all remedies available in such a proceeding.

9.5 Nothing herein precludes Plaintiff from enforcing the provisions of this Consent
Decree, or from pursuing any law enforcement action with respect to the acts or practices of
Defendant not covered by this Consent Decree or any acts or practices conducted after the
Effective Date.

9.6 The State releases Defendant from all claims that the State asserted or could assert
based on the conduct alleged in the Complaint.

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9.7 Nothing in this Consent Decree shall be construed to limit or bar any other
 governmental entity (other than Plaintiff and its officials and agencies) from pursuing other
 available remedies, if any, against Defendant.

9.8 This Consent Decree shall be construed and interpreted to effectuate the intent of
the parties, which is to provide for a complete and final resolution of Plaintiff's claims that were
asserted, or could have been asserted, with respect to Defendant in this Consent Decree.

9.9 This Consent Decree shall be governed by and interpreted according to the
substantive laws of the State of Washington without regard to its choice of law or conflict of
laws principles.

9.10 Neither Plaintiff nor Defendant shall be considered the drafter of this Consent
Decree or any of its provisions for the purpose of any statute, case law or rule of interpretation
of construction that would or might cause any provision to be construed against the drafter of
this Consent Decree.

9.11 Solely for the purpose of determining or securing compliance with this Consent
Decree, Defendant authorizes its attorneys to accept service of a motion by Plaintiff to enforce
or interpret this Consent Decree.

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X. GENERAL PROVISIONS

18 10.1 This Consent Decree shall expire five years from the date of entry; provided,
19 however, that this Consent Decree may remain in effect after completion of such five year period
20 solely for the purpose of determining or enforcing compliance during its five-year period.

21 10.2 Plaintiff and Defendant have read and understand this Consent Decree and enter
22 into it voluntarily, each having been advised by its undersigned counsel of the meaning and
23 effect of each provision of this Consent Decree.

10.3 This Consent Decree may be executed in counterparts by the Attorney General
and Defendant, and a signature page sent via fax or electronic mail shall be deemed an original
signature for purposes of executing this Consent Decree.

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10.4 This Consent Decree shall not be construed to provide any rights to third parties.

CONSENT DECREE AGAINST MERCURYS MADNESS INC. - 8 ATTORNEY GENERAL OF WASHINGTON ANTITRUST DIVISION 800 FIFTH AVENUE, SUITE 2000 SEATTLE, WA 98104-3188 (206) 464-7744

1	10.5 If any part of this Consent Decree is hereafter adjudged by this Court to be					
2	unenforceable, the remaining provisions of the Consent Decree shall stay in full force and effect.					
3	XI. NOTIFICATIONS					
4	11.1 All notices issued pursuant to this Consent Decree shall be issued with a reference					
5	to the caption and number, to the following:					
6	To Plaintiff State of Washington:					
7	Rahul Rao					
8	Eric S. Newman Assistant Attorneys General Antitrust Division Office of the Attorney General of Washington 800 5th Avenue, Suite 2000 Seattle, WA 98104					
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10						
11						
12	To Defendant:					
13	Aaron V. Rocke Rocke Law Group PLLC					
14	101 Yesler Way, Ste 603 Seattle, WA 98104					
15						
16	XII. APPROVAL AND ORDER					
16	AII. AII KOVAL AND ORDER					
17	12.1 This Consent Decree is approved and hereby entered pursuant to					
17 18	12.1 This Consent Decree is approved and hereby entered pursuant to					
17 18	12.1 This Consent Decree is approved and hereby entered pursuant to RCW 19.86.080. This proceeding in all other respects is hereby dismissed with prejudice with					
17 18 19 20 21	12.1 This Consent Decree is approved and hereby entered pursuant to RCW 19.86.080. This proceeding in all other respects is hereby dismissed with prejudice with					
 17 18 19 20 21 22 	12.1 This Consent Decree is approved and hereby entered pursuant to RCW 19.86.080. This proceeding in all other respects is hereby dismissed with prejudice with all parties to bear their own attorneys' fees and costs.					
 17 18 19 20 21 22 23 	12.1 This Consent Decree is approved and hereby entered pursuant to RCW 19.86.080. This proceeding in all other respects is hereby dismissed with prejudice with all parties to bear their own attorneys' fees and costs.					
 17 18 19 20 21 22 23 24 	12.1 This Consent Decree is approved and hereby entered pursuant to RCW 19.86.080. This proceeding in all other respects is hereby dismissed with prejudice with all parties to bear their own attorneys' fees and costs.					
 17 18 19 20 21 22 23 24 25 	12.1 This Consent Decree is approved and hereby entered pursuant to RCW 19.86.080. This proceeding in all other respects is hereby dismissed with prejudice with all parties to bear their own attorneys' fees and costs. IT IS SO ORDERED this day of, 2019.					
 17 18 19 20 21 22 23 24 25 26 	12.1 This Consent Decree is approved and hereby entered pursuant to RCW 19.86.080. This proceeding in all other respects is hereby dismissed with prejudice with all parties to bear their own attorneys' fees and costs. IT IS SO ORDERED this day of, 2019.					
 17 18 19 20 21 22 23 24 25 	12.1 This Consent Decree is approved and hereby entered pursuant to RCW 19.86.080. This proceeding in all other respects is hereby dismissed with prejudice with all parties to bear their own attorneys' fees and costs. IT IS SO ORDERED this day of, 2019.					

1	Presented By:			
2	ROBERT W. FERGUSON Attorney General			
3				
4				
5	Rahul Rao, WSBA No. 53375 Assistant Attorney General			
6	800 Fifth Avenue, suite 2000 Seattle, WA 98104-3188			
7	(206) 442-4499 rahul.rao@atg.wa.gov			
8				
9	Attorney for Plaintiff State of Washington			
10				
11	Agreed to, Approved for Entry, and			
12	Notice of Presentation Waived;			
13	ROCKE LAW GROUP LLP			
14	A J/A/			
15	Aaron V. Rocke			
16	Rocke Law Group PLLC 101 Yesler Way, Ste 603			
17	Seattle, WA 98104			
18	Attorney for Defendant Mercurys Madness Inc.			
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	CONSENT DECREE AGAINST MERCURYS MADNESS INC 10	ATTORNEY GENERAL OF WA: ANTITRUST DIVISIO 800 FIFTH AVENUE, SUIT SEATTLE, WA 98104-3 (206) 464-7744		

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1	APPENDIX A					
2	Consistent with the Consent Decree in <i>State of Washington v. Mercurys Madness Inc.</i> ,					
3	the State of Washington will take no enforcement action as to the following non-compete					
4	agreement(s):					
5						
6	1. "Mercurys Coffee Company Confidentiality and Fair Competition Agreement," entered into by Mercurys Madness Inc. d/b/a Mercurys Coffee and employee holding					
7	position of President of Operations, signed and dated by employee on October 3, 2016,					
8	excluding the first sentence of \P 4 (Notification), which Mercurys waives the right to enforce.					
9	2. "Mercurys Coffee Company Confidentiality and Fair Competition Agreement," entered					
10	into by Mercurys Madness Inc. d/b/a Mercurys Coffee and employee holding position of Chief Operating Officer, signed and dated by employee on February 28, 2019,					
11	excluding the first sentence of \P 4 (Notification), which Mercurys waives the right to					
12	enforce.					
13	3. "Mercurys Coffee Company Confidentiality and Fair Competition Agreement," entered into by Mercurys Madness Inc. d/b/a Mercurys Coffee and employee holding position					
14	of Chief Financial Officer, signed and dated by employee on October 13, 2019, excluding the first sentence of \P 4 (Notification), which Mercurys waives the right to					
15	enforce. $(1000000000000000000000000000000000000$					
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	CONSENT DECREE AGAINST MERCURYS MADNESS INC 11 ATTORNEY GENERAL OF WASHINGTON ANTITRUST DIVISION 800 FIFTH AVENUE, SUITE 2000 SEATTLE, WA 98104-3188 (206) 464-7744					

Current or Former Employee name and address

Re: Change to Our Agreement

Dear [Former] Employee:

You are receiving this because you are a current or former Mercurys employee. As you may have heard, our state recently took interest into no-poach and noncompetes. Numerous companies, including Mercurys, were included in this. After discussing it at length, we reached an agreement that provides peace of mind for Mercurys and our current and past employees. We have removed the noncompete provision from all future employment agreements. Further, we will not enforce noncompetes against anyone in our current or past agreements (except for a few key people specifically named). The other aspects of the agreement, such as keeping personnel and company information confidential, remain in effect.

If you have questions regarding your obligations to Mercurys or for a copy of the resolution, please contact Morgan Harris at <u>morgan@mercurys.com</u>.

Best Wishes, Mercurys Coffee Co.