

1 **II. PARTIES**

2 2.1 Plaintiff is the State of Washington, through its Attorney General. The State files
3 this complaint under the CPA, RCW 19.86.080.

4 2.2 Defendant Mercurys Madness Inc. d/b/a Mercurys Coffee Co. (Mercurys) is a
5 Washington for-profit corporation with its principal place of business in Bellevue, King County,
6 Washington. Specifically, Mercurys is a coffee retail company that operates eight coffee stands
7 and shops in King County, Washington. It employs about 140 people, all of whom work in King
8 County. Nearly all Mercurys employees work in coffee stands and shops. A smaller group of
9 Mercurys employees are managers who also work in the coffee stands and shops. A handful of
10 employees work at the Mercurys headquarters in Bellevue.

11 **III. JURISDICTION AND VENUE**

12 3.1 This action alleges violations of the CPA, RCW 19.86. The Court has jurisdiction
13 over this matter pursuant to RCW 19.86.080.

14 3.2 Personal jurisdiction is proper because Defendant is a Washington corporation
15 doing business in Washington State whose activities were intended to, and did have, a substantial
16 and foreseeable effect on Washington trade and commerce, including in King County.

17 3.3 King County Superior Court is the proper venue because Mercurys’s principal
18 place of business is in King County, and the acts in this complaint occurred in King County.

19 **IV. TRADE AND COMMERCE**

20 **A. Background Information on the Affected Labor Market**

21 4.1 Nearly 20 percent of labor force participants in the United States were bound by
22 non-competes in 2014, and nearly 40 percent had signed at least one non-compete in the past.
23 Twelve percent of workers without a bachelor’s degree and earning less than \$40,000 a year sign
24 non-competes.
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1 4.2 Many workers do not realize they have signed a non-compete, or fully understand
2 its implications. For those that do, low wage and low skill workers are far less likely to negotiate
3 the terms of non-competes.

4 4.3 The majority of workers subject to non-competes do not possess trade secrets or
5 other proprietary business information.

6 4.4 Non-competes are nearly as common in states that enforce them as in states that
7 do not, suggesting that even if a non-compete agreement could not be enforced, the fact that it
8 appears in an employment agreement can chill worker mobility.

9 4.5 Non-competes artificially limit turnover by reducing labor market competition.

10 **B. Mercurys’s Anti-Competitive Agreement**

11 4.6 Until recently, as a condition of employment, Mercurys required all or
12 substantially all of its employees to sign a document called “Mercurys Coffee Company
13 Confidentiality and Noncompete Agreement” (Agreement).

14 **1. Non-Competition**

15 4.7 The Agreement contains a “Non-Competition” section, which states:

16 Non-Competition. During the employment relationship and for 18 months
17 following employment separation, Employee agrees not to compete as indicated
18 in this section. Restrictions are more limited for employees who work as an
individual contributor, such as barista, than for leaders and higher roles.

19 If Employee works exclusively in the role of individual contributor for the
20 Company, such as barista, the following restrictions apply: Employee agrees not
21 to directly or indirectly be employed by, provide services for, consult with,
22 advise, participate in, own, operate, manage, control, or engage in any Small
23 Competing Business which competes in any substantial way with the business of
the Company and is located within 10 miles of any of the Company’s then-
existing retail locations. For the purposes of this restriction, a Small Competing
Business means a business that has fewer than 40 locations operating under the
same brand, or a franchisee owned by Employee.

24 For employees who work at any time with the Company in the role of lead,
25 assistant manager, manager, area manager, director, president, or similar role
26 such as those in recurring management team meetings, the following restrictions
apply: Employee agrees not to directly or indirectly be employed by, provide
services for, consult with, advise, participate in, own, operate, manage, control,
or engage in any business which competes in any way with the business of the

1 Company and is located within 10 miles of any of the Company's then-existing
2 retail locations.

3 The restrictions in this section do not prohibit Employee from being an owner of
4 not more than five percent (5%) of the outstanding stock of a corporation which
5 is publicly traded, so long as Employee has no active participation in the business
6 of such corporation.

7 4.8 By restricting the mobility of Mercurys workers in this manner, this Non-
8 Competition provision restricts competition for those workers in the labor market.

9 4.9 Mercurys has acted to enforce the Non-Competition provision, up to and
10 including suing former employees in King County Superior Court, and in at least one instance,
11 suing a competitor for labor in King County Superior Court.

12 4.10 Mercurys's Non-Competition provision is not related to developing or preserving
13 its business.

14 4.11 Many employees who sign Mercurys's Non-Competition provision have no
15 customer base or significant relationship with Mercurys customers or suppliers.

16 4.12 Many if not all employees who sign Mercurys's Non-Competition provision
17 know no Mercurys trade secrets or other intellectual property, nor do they gain this information
18 in the course of their employment. Even if employees had access to trade secrets, those secrets
19 would be protected by a separate confidentiality provision in the Agreement.

20 4.13 This Non-Competition provision does not encourage Mercurys to train its
21 employees, as Mercurys must train its employees to do their jobs with our without the Non-
22 Competition provision.

23 4.14 The Non-Competition provision applies no matter how much training an
24 employee receives from Mercurys.

25 4.15 The 18-month duration of the Non-Competition provision is unreasonable.

26 4.16 The geographic restriction of the Non-Competition provision that restricts
employment within a 10-mile radius of any Mercurys coffee location, not only the location where
the employee worked, is unreasonable.

1 4.17 The Non-Competition provision applies to employees regardless of how long
2 Mercurys employed that employee.

3 4.18 The Non-Competition provision applies regardless of how the employee's
4 employment with Mercurys ends.

5 4.19 Though the Non-Competition provision in the Agreement will be unenforceable
6 in Washington by statute starting on January 1, 2020, Mercurys has taken no affirmative action
7 to waive its right to enforce or otherwise rescind the provision, which demonstrates Mercurys's
8 intent to maintain the chilling effect of the Non-Competition provision on competition for
9 workers in the labor market.

10 **2. Notification**

11 4.20 The Agreement also contains a "Notification" section, which states:

12 If Employee seeks work elsewhere during or for 24 months after Employee's
13 employment with Company, Employee will provide a copy of this Agreement to
14 any persons or entities by whom Employee is seeking work before accepting
15 employment with or engagement by them to enable the prospective employer to
16 judge for themselves compliance with this Agreement. Employee also agrees to
17 notify Company during the employment relationship and for 24 months
18 afterwards, of any other employer or work, Employee's new job title, a summary
19 of work responsibilities and similar information to enable the Company to
20 monitor compliance with this Agreement. The time periods in this Agreement are
21 tolled during any period of noncompliance; noncompliance is presumed if
22 Employee violates duties to notify Company.

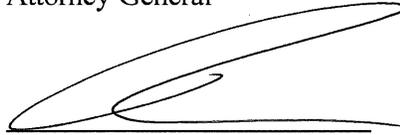
18 Employee understands and acknowledges that it is not Company's intent to
19 interfere with Employee's right to work, except in such situations where that work
20 or working relationship conflicts with a legitimate business interest of the
21 Company's. Employee agrees to notify the Company in writing if Employee gets
22 an opportunity that might be in violation of this Agreement or has questions about
23 the applicability of the Agreement. The Company wants to review these
24 opportunities for compliance and may, in its sole discretion, permit a written
25 exception to allow Employee to accept an opportunity.

23 4.21 The Notification Provision requires employees to give a copy of the Agreement
24 to any potential new employer during the application process, regardless of the industry or
25 location of the new employment.
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