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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

THE STATE OF WASHINGTON,)	
)	
Plaintiff,)	No. 19-2-28449-8 SEA
)	
v.)	SETTLEMENT AND CONSENT
)	DECREE AGAINST MERCURYS
MERCURYS MADNESS INC. d/b/a)	MADNESS INC. D/B/A MERCURYS
MERCURYS COFFEE,)	COFFEE CO.
)	
Defendant)	CLERK’S ACTION REQUIRED

I. SETTLEMENT SUMMARY

- 1.1 Plaintiff: State of Washington
- 1.2 Defendant: Mercurys Madness Inc.
- 1.3 Monetary Payment: \$50,000 (*see* Section VII)
- 1.4 Attorney for Plaintiff:
 - Rahul Rao
 - Assistant Attorney General
 - Eric S. Newman
 - Chief Litigation Counsel – Antitrust Division
- 1.5 Attorney for Defendant:
 - Aaron V. Rocke
 - Rocke Law Group, PLLC

1 **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.

6 2.2 The State initiated an investigation under the CPA into Defendant’s use of an
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
11 store locations throughout King County. The prohibition lasts for up to a year and a half
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
16 Defendant’s non-compete agreement suppresses competition for workers—including
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.

23 2.4 Defendant does not admit the allegations of the Complaint or any liability or
24 violation of law, and believes it has valid defenses to Plaintiff’s claims and any potential claims
25 that have been or could be asserted by Plaintiff against Defendant. Nevertheless, Defendant
26 agrees to entry of this Consent Decree to: (a) avoid the expense, inconvenience, and distraction
27 of burdensome and protracted litigation; (b) obtain the releases, orders, and final judgment

1 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.

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

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

10 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
18 Consent Decree or Notice at Exhibit 1 to each of its former employees whose employment
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.

23 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

1 entity, creation or dissolution of subsidiaries, or any other change that may affect compliance
2 obligations under this Consent Decree. A copy of this Consent Decree shall be given to any
3 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.

11 6.2 For the term of this Consent Decree, Defendant is prohibited from including a
12 non-compete provision in any existing or future employment agreements for employees earning
13 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
16 more than \$100,000 annualized, Defendant shall notify the Attorney General and request an
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.

1 **VIII. NO EFFECT IF THIS CONSENT DECREE IS NOT ENTERED**

2 8.1 In the event that this Consent Decree is not approved and entered by the Court,
3 then this Consent Decree shall be of no force or effect. Defendant and Plaintiff expressly reserve
4 all of their rights if this Consent Decree does not become final.

5 **IX. COMPLIANCE AND ENFORCEMENT**

6 9.1 The Court will retain jurisdiction for five (5) years for the purpose of enabling
7 any of the parties to this Consent Decree to apply to this Court at any time for such further orders
8 and directions as may be necessary or appropriate for the construction or implementation of any
9 of the provisions of this Consent Decree, for the enforcement of compliance, and for the
10 punishment of any violations.

11 9.2 On an annual basis until the expiration of this Consent Decree, Defendant shall
12 certify in writing to the Washington Attorney General that it has complied and is complying with
13 the provisions of this Consent Decree.

14 9.3 A violation of any of the terms of this Consent Decree shall, if proven, constitute
15 a violation of an injunction for which civil penalties of up to \$25,000 per violation may be sought
16 by the Attorney General pursuant to RCW 19.86.140.

17 9.4 In any contempt of court proceeding initiated to enforce this Consent Decree due
18 to a violation of its terms, Plaintiff or Defendant may seek, and the Court shall have the authority
19 to grant, all remedies available in such a proceeding.

20 9.5 Nothing herein precludes Plaintiff from enforcing the provisions of this Consent
21 Decree, or from pursuing any law enforcement action with respect to the acts or practices of
22 Defendant not covered by this Consent Decree or any acts or practices conducted after the
23 Effective Date.

24 9.6 The State releases Defendant from all claims that the State asserted or could assert
25 based on the conduct alleged in the Complaint.

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
9 Assistant Attorneys General
10 Antitrust Division
11 Office of the Attorney General of Washington
12 800 5th Avenue, Suite 2000
13 Seattle, WA 98104

14 To Defendant:

15 Aaron V. Rocke
16 Rocke Law Group PLLC
17 101 Yesler Way, Ste 603
18 Seattle, WA 98104

19 **XII. APPROVAL AND ORDER**

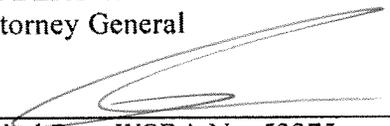
20 12.1 This Consent Decree is approved and hereby entered pursuant to
21 RCW 19.86.080. This proceeding in all other respects is hereby dismissed with prejudice with
22 all parties to bear their own attorneys' fees and costs.

23 IT IS SO ORDERED this _____ day of _____, 2019.

24 _____
25 KING COUNTY SUPERIOR COURT JUDGE

1 Presented By:

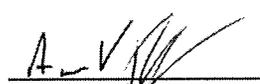
2 ROBERT W. FERGUSON
3 Attorney General

4 
5 _____
6 Rahul Rao, WSBA No. 53375
7 Assistant Attorney General
8 800 Fifth Avenue, suite 2000
9 Seattle, WA 98104-3188
10 (206) 442-4499
11 rahul.rao@atg.wa.gov

12 *Attorney for Plaintiff State of Washington*

13 Agreed to, Approved for Entry, and
14 Notice of Presentation Waived;

15 ROCKE LAW GROUP LLP

16 
17 _____
18 Aaron V. Roche
19 Roche Law Group PLLC
20 101 Yesler Way, Ste 603
21 Seattle, WA 98104

22 *Attorney for Defendant Mercurys Madness Inc.*

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APPENDIX A

Consistent with the Consent Decree in *State of Washington v. Mercurys Madness Inc.*, the State of Washington will take no enforcement action as to the following non-compete agreement(s):

1. “Mercurys Coffee Company Confidentiality and Fair Competition Agreement,” entered into by Mercurys Madness Inc. d/b/a Mercurys Coffee and employee holding position of President of Operations, signed and dated by employee on October 3, 2016, excluding the first sentence of ¶ 4 (Notification), which Mercurys waives the right to enforce.
2. “Mercurys Coffee Company Confidentiality and Fair Competition Agreement,” entered 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, excluding the first sentence of ¶ 4 (Notification), which Mercurys waives the right to enforce.
3. “Mercurys Coffee Company Confidentiality and Fair Competition Agreement,” entered into by Mercurys Madness Inc. d/b/a Mercurys Coffee and employee holding position of Chief Financial Officer, signed and dated by employee on October 13, 2019, excluding the first sentence of ¶ 4 (Notification), which Mercurys waives the right to enforce.

Exhibit 1 – Draft Notice

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 morgan@mercurys.com.

Best Wishes,
Mercurys Coffee Co.