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7 **STATE OF WASHINGTON**
8 **KING COUNTY SUPERIOR COURT**

9 STATE OF WASHINGTON,

NO. 10-2-17794-9

10 Plaintiff,

CONSENT DECREE

11 v.

12 HARLEY EXTERIORS, INC., a
13 Washington corporation,

14 Defendant.

15 **1. JUDGMENT SUMMARY**

16	1.1. Judgment Creditor	State of Washington
17	1.2. Judgment Debtors	Harley Exteriors, Inc., a Washington corporation
18	1.3. Costs & Attorneys Fees:	\$ 12,000.00
19	Civil Penalties	\$25,000.00 (\$25,000 20 conditionally suspended)
21	1.4. Total Judgment	\$37,000.00 (\$25,000.00 22 conditionally suspended)
23	1.5. Post Judgment Interest Rate	12% per annum
24	1.6. Attorneys for Judgment Creditor:	Jack G. Zurlini, Jr. Assistant Attorney General
25	1.7. Attorneys for Judgment Debtor:	James W. Aiken
26		James W. Aiken, PS

1 **1.8.** Plaintiff State of Washington, having commenced this action and filed its
2 Complaint on May 18, 2010, and subsequently filed this Consent Decree, pursuant to the Unfair
3 Business Practices - Consumer Protection Act, chapter 19.86 RCW (CPA); and

4 **1.9.** Defendant, Harley Exteriors, Inc., having been served with the Summons and
5 Complaint; and Washington, appearing by and through its attorneys, Robert M. McKenna,
6 Attorney General and Jack G. Zurlini, Jr., Assistant Attorney General; and defendant Harley
7 Exteriors, Inc., appearing by and through its attorneys James W. Aiken, James W. Aiken, PS; and

8 **1.10.** Washington and Defendant having agreed on a basis for the settlement of the
9 matters alleged in the Complaint and to the entry of this Consent Decree against Defendant
10 without the need for trial or adjudication of any issue of law or fact; and

11 **1.11.** Defendant, by entering into this Consent Decree, does not admit the allegations of
12 the Complaint and specifically denies the allegations; and

13 **1.12.** Washington and Defendant agree this Consent Decree does not constitute
14 evidence or an admission regarding the existence or non-existence of any issue, fact, or violation
15 of any law alleged by Washington; and

16 **1.13.** Defendant recognizes and states this Consent Decree is entered into voluntarily
17 and that no promises, representations, or threats have been made by the Attorney General's Office
18 or any member, officer, agent, or representative thereof to induce it to enter into this Consent
19 Decree, except for the promises and representations provided herein; and

20 **1.14.** Defendant waives any right it may have to appeal from this Consent Decree; and

21 **1.15.** Defendant further agrees it will not oppose the entry of this Consent Decree on the
22 ground it fails to comply with Rule 65(d) of the Rules of Civil Procedure, and hereby waives any
23 objections based thereon; and

24 **1.16.** Defendant further agrees this Court shall retain jurisdiction of this action and
25 jurisdiction over Defendant for the purpose of implementing and enforcing the terms and
26 conditions of this Consent Decree and for all other purposes related to this matter; and

1.17. Defendant further agrees its payments made or due pursuant to this Consent Decree are not amenable to discharge in bankruptcy and it shall not seek or support their discharge in bankruptcy, nor oppose their being determined not amenable to discharge in bankruptcy; and

1.18. Defendant further agrees its payments made or due pursuant to this Consent Decree are not preferential transfers of assets and it shall not make nor support arguments to the contrary in bankruptcy court or elsewhere.

The Court, finding no just reason for delay pursuant to CR 54(b);

NOW, THEREFORE, it is hereby **ORDERED, ADJUDGED, AND DECREED** as follows:

2. GENERAL

2.1. This Court has jurisdiction of the subject matter of this action and of the parties. Washington's complaint in this matter states claims upon which relief may be granted under the provisions of the CPA.

2.2. For purposes of this Consent Decree the term "Defendant" where not otherwise specified shall mean Harley Exteriors, Inc., a Washington corporation.

2.3. This Consent Decree or the fact of its entry does not constitute evidence or an admission by any party regarding the existence or non-existence of any issue, fact, or violation of any law alleged by Washington.

2.4. This Consent Decree finally resolves all CPA causes of action the Office of Attorney General of Washington, Consumer Protection Division, has filed or may have alleged against Defendant arising out of the facts described in the complaint filed in this action, except that Defendant's failure to comply with this Consent Decree shall permit the Attorney General of Washington to take such further action against Defendant and its owners, members, directors,

1 officers, agents, servants, employees, representatives, and all other persons in active concert or
2 participation with Defendant as provided in this Consent Decree.

3 4 **3. INJUNCTION**

5 **3.1.** The injunctive provisions of this Consent Decree shall apply to Defendant and to
6 its owners, members, directors, successors, assigns, transferees, officers, agents, servants,
7 employees, and representatives, and all other persons or entities in active concert or participation
8 with Defendant.

9 **3.2.** Defendant shall immediately inform its owners, members, directors, successors,
10 assigns, transferees, officers, agents, servants, and management level employees of the terms and
11 conditions of this Consent Decree by providing Defendant's owners, members, directors,
12 successors, assigns, transferees, officers, agents, servants, and management level employees a
13 copy of this Consent Decree. The Consent Decree shall be distributed to each such person on or
14 before the third business day after this Consent Decree has been entered by the court. Defendant
15 shall inform lower level employees of the prohibitions imposed on Defendant's business practices
16 by this Consent Decree, as outlined in paragraph 3.4 herein.

17 **3.3.** The following definitions shall apply to this Consent Decree:

18 **a.** "Customer" shall refer to any person, whether a business or individual.

19 **b.** "Advertise" or "Advertisement" shall refer to any direct or indirect
20 representation or promotional device used to market or promote the sale of products or
21 services and/or to educate, inform or attract customers, including but not limited to
22 those that are telephonic, Internet-based, electronic, digital, oral, visual, aural, written,
23 video or printed.

24 **c.** "Competent and Reliable Scientific Evidence" shall mean tests,
25 analyses, research, studies, or other evidence based on the expertise of professionals in
26 the relevant area or governmental agencies that have been conducted and evaluated in

1 an objective manner by persons qualified to do so using procedures generally accepted
2 in the profession to yield accurate and reliable results or by governmental agencies.

3 3.4. On or after the 45th day after the Court enters this Consent Decree, Defendant and
4 its owners, members, directors, successors, assigns, transferees, officers, agents, servants,
5 employees, representatives, and all other persons in active concert or participation with
6 Defendant are hereby enjoined, restrained, and prevented from directly or indirectly engaging
7 in the following acts or practices in the state of Washington and from failing to comply with
8 the provisions of the CPA, as amended, including but not limited to the following:

9 a. Misrepresenting, directly or by implication, the price, quality or
10 comparative value of its products and services;

11 b. Soliciting customers using direct or implicit misrepresentations of fact,
12 including but not limited to misrepresentations that create a false sense of urgency, and
13 misidentification of Defendant's employees or those who otherwise provide services to
14 customers at the request of the Defendant;

15 c. Repeatedly soliciting customers who have communicated to Defendant
16 they wished to end the communication or are not interested in purchasing Defendant's
17 products or services;

18 d. Failing to clearly and conspicuously disclose or misrepresenting,
19 directly or by implication, any material term, condition, or limitation of any offer,
20 claim, pledge, guarantee, rebate, refund, discount, or cancellation right to customers;

21 e. Making false advertising claims about its products or services, including
22 but not limited to failing to contemporaneously possess competent and reliable
23 scientific evidence that reasonably substantiates objective advertising claims regarding
24 energy or cost savings; and failing to contemporaneously possess a reasonable basis to
25 substantiate advertising claims as required by law;
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1 f. Failing to comply with 16 C.F.R. § 429.1, as amended, relating to notice
2 of cancellation rights and refunds.

3 **3.5.** Defendant shall in good faith review and resolve customer complaints or
4 inquiries it receives from customers or from another person on behalf of a customer, such as
5 the Better Business Bureau or the Washington State Attorney General's Office, within 90 days
6 of Defendant first receiving the complaint or inquiry. In addition, Defendant shall for the five
7 years following entry of this Consent Decree keep records of each customer complaint or
8 inquiry it receives that at a minimum shall include the identity of the customer along with his
9 most current address, telephone number and email address if available; a detailed description
10 of the complaint or inquiry and of its resolution; and an explanation by Defendant of why it
11 chose the particular resolution of each complaint or inquiry. Defendant shall also keep as part
12 of these records all documents related to each complaining customer, including but not limited
13 to customer files, for the same five year period. Defendant shall make the customer complaint
14 records and related documents available to Washington within thirty days of first receiving
15 written notice of Washington's request to review them. Defendant's failure to keep the
16 customer complaint records as required by this Consent Decree shall be a material breach of
17 the Consent Decree.

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19 **4. ATTORNEY'S FEES AND COSTS**

20 **4.1.** Pursuant to RCW 19.86.080, Washington shall recover and Defendant shall pay
21 the costs and reasonable attorney's fees incurred by Washington in pursuing this matter pursuant
22 to Section 6 of this Consent Decree in the amount of \$12,000.

23 **4.2.** In any successful action to enforce this Consent Decree against Defendant,
24 Defendant shall bear Washington's reasonable costs, including reasonable attorneys' fees.

25 **4.3.** Defendant's failure to pay attorneys' fees and costs to Washington as required
26 by this Consent Decree shall be a material breach of the Consent Decree.

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5.2 In the event that the Court finds that Defendant is in material breach of any provision of this Consent Decree, civil penalties of \$25,000 shall automatically be unsuspended and assessed against Defendant in an amount deemed proper by the Court.

5.4. Defendant's failure to pay civil penalties to Washington as required by this Consent Decree shall be a material breach of the Consent Decree.

6.1. Defendant shall pay a total of \$12,000 at the time this Consent Decree is entered by the Court, or at such other time as agreed to by Washington in writing. Interest shall accrue at the rate of twelve percent (12%) per annum until such payment is made.

6.3. Defendant's failure to timely make payments as required by this Consent Decree, without written agreement by Washington, shall be a material breach of this Consent Decree.

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1 or participation with Defendant, in connection with any selling, advertising, or promotion of
2 products or services, or as an endorsement or approval of Defendant's acts, practices, or
3 conduct of business.

4 7.7. Washington shall be permitted, upon advance notice of twenty days to
5 Defendant, to access, inspect and/or copy, all business records or documents in possession,
6 custody or under control of Defendant to monitor compliance with this Consent Decree,
7 provided that the inspection and copying shall avoid unreasonable disruption of Defendant's
8 business activities.

9 7.8. To monitor compliance with this Consent Decree, Washington shall be
10 permitted to serve interrogatories pursuant to the provisions of CR 26 and CR 33 and to
11 question Defendant or any owner, member, officer, director, agent, or employee of Defendant
12 by deposition pursuant to the provisions of CR 26 and CR 30 provided that Washington
13 attempts in good faith to schedule the deposition at a time convenient for the deponent and his
14 or her legal counsel.

15 7.9. This Consent Decree in no way limits Washington from conducting any lawful
16 non-public investigation to monitor Defendant's compliance with this Consent Decree or to
17 investigate other alleged violations of the CPA, which may include but is not limited to secret
18 shopping or interviewing customers or former employees of Defendant.

19 7.10. Defendant shall fully cooperate with Washington and other civil regulatory
20 agencies in any civil investigation of any other person who advertised, marketed,
21 manufactured, or sold any of Defendant's products or services. Defendant also shall fully
22 cooperate with Washington and other civil regulatory agencies in any civil investigation of any
23 other agent, employee, independent contractor, or representative of Defendant who is alleged
24 to have violated any of the provisions of this Consent Decree after having received the Consent
25 Decree required pursuant to paragraph 3.2 herein. Defendant's failure to fully cooperate as
26 required by this paragraph 7.10 shall be a material breach of this Consent Decree.

1 7.11. The Complaint is hereby dismissed with prejudice with respect to Defendant and
2 this Judgment and Consent Decree is entered pursuant to RCW 19.86.080.

3 7.12. The Clerk of the Court is ordered to enter the foregoing Judgment and Consent
4 Decree immediately.

5 **DONE IN OPEN COURT** this _____ day of _____.

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8 _____
 JUDGE

9 Presented By:

10 ROBERT M. MCKENNA
11 Attorney General

12 By: _____
13 JACK G. ZURLINI, JR., WSBA #30621
14 Assistant Attorney General
15 Attorneys for Plaintiff State of Washington

16 Notice of Presentment Waived and
17 Approved as to Form by:

18 JAMES W. AIKEN, PS
19 Attorneys for Harley Exteriors, Inc.

20 By: _____
21 JAMES W. AIKEN, WSBA #1993
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