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STATE OF WASHINGTON  
KING COUNTY SUPERIOR COURT

STATE OF WASHINGTON,  
  
Plaintiff,

NO. 14-2-1870S-0SEA  
  
CONSENT DECREE

v.

eFOODHANDLERS, INC. an Oregon  
corporation; and MICHAEL KELM,  
individually and on behalf of his marital  
community as President and Secretary  
of eFoodhandlers, Inc.,  
  
Defendants.

I. JUDGMENT SUMMARY

1.1 Judgment Creditor: State of Washington

1.2 Judgment Debtors: eFoodhandlers, Inc. and Michael Kelm, individually and  
on behalf of his marital community;

1.3 Principal Judgment Amount:

- a. Restitution; See Section IV
- b. Costs and Fees: \$40,000.00

1.4 Post Judgment Interest Rate: 12% per annum, beginning twelve  
months from the date of Judgment.

1.5 Attorney for Judgment Creditor: Paula Selis, Senior Counsel

1.6 Attorney for Judgment Debtors: Christopher Weiss, Stoel Rives LLP

1           **1.7** Plaintiff, State of Washington, having filed a Complaint for Injunctive and  
2 Other Relief on July 3, 2014; and

3           **1.8** Defendants eFoodhandlers, Inc., and Michael Kelm, individually and on behalf  
4 of his marital community (together, "Defendants"), having been served with copies of the  
5 Complaint herein, and denying the State's claims and all liability; and

6           **1.9** Plaintiff appearing by and through its attorneys, Robert W. Ferguson, Attorney  
7 General, and Paula Selis, Senior Counsel; and

8           **1.10** Defendant appearing by and through their attorney Christopher Weiss of Stoel  
9 Rives LLP, and;

10           **1.11** Plaintiff and Defendants having stipulated and agreed upon a basis for  
11 resolving through settlement the matters alleged in the Complaint herein and to the entry of  
12 this Consent Decree (hereinafter "Decree") without the need for trial or adjudication of any  
13 issue of law or fact; and

14           **1.12** Plaintiff and Defendants having agreed that Defendants deny the allegations in  
15 the Complaint, deny liability and deny any and all alleged wrongdoing, and further agree that  
16 this Consent Decree does not constitute evidence or an admission regarding the existence or  
17 non-existence of any issue, fact, or violation of any law alleged by Plaintiff; and

18           **1.13** Defendants recognize and state that this Consent Decree is entered into  
19 voluntarily; and

20           **1.14** Defendants waive any right they may have to appeal from this Consent Decree;  
21 and

22           **1.15** Defendants further agree that they will not oppose the entry of this Consent  
23 Decree on the grounds the Consent Decree fails to comply with Rule 65(d) of the Rules of  
24 Civil Procedure, and hereby waive any objections based thereon; and

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1 (5) "Food service worker" means an individual who works (or intends to work)  
2 with or without pay in a food service establishment and handles unwrapped or  
3 unpackaged food or who may contribute to the transmission of infectious  
4 diseases through the nature of his/her contact with food products and/or  
equipment and facilities. This does not include persons who simply assist  
residents or patients in institutional facilities with meals, or students in K-12  
schools who periodically assist with school meal service.

5 (6) "Food worker card" means a food and beverage service workers' permit as  
6 required under chapter 69.06 RCW.

### 7 8 III. INJUNCTIONS

9 3.1 The injunctive provisions of this Consent Decree shall apply to Defendants and  
10 Defendants' successors, assigns, officers, agents, servants, employees, representatives, and all  
11 other persons or entities in active concert or participation with Defendants.

12 3.2 Defendants and their successors, assigns, transferees, officers, agents, servants,  
13 directors, employees, and all other person or entities in active concert or participation with  
14 Defendants shall be informed of the terms and conditions of this Decree within ten (10)  
15 business days of its entry.

16 3.3 Defendants and their successors, assigns, transferees, officers, agents,  
17 servants, directors, employees, and all other persons or entities in active concert or  
18 participation with Defendants are hereby enjoined and restrained from engaging in the  
19 following acts and practices in connection with any Internet-related businesses:

20 a. Advertising, marketing, or promoting any service that either explicitly  
21 or impliedly offers food service worker training, testing, or examination for use in the  
22 State of Washington; or, certification for issuance of a food worker card for use in  
23 Washington.

24 b. Making any misrepresentations or material omissions, either impliedly  
25 or explicitly, in the context of their sale, advertising or delivery of services to  
26 Washington residents with regard to the examination for, certification for, or issuance

1 of a food worker cards for use in the State of Washington, including but not limited to  
2 the misrepresentation that they are sponsored by, certified by or authorized by any  
3 official entity to engage in any of their practices.

4 c. Using the name of the State of Washington in the context of their sale,  
5 advertising or delivery of food service worker training, education, testing, or  
6 examination for use in the State of Washington; or, certification for issuance of a food  
7 worker cards for use in Washington, including but not limited to any partial use of the  
8 name, any combination of the name with any other term or name, or any reference in  
9 their URL, search results or pictorial representations.

#### 10 IV. RESTITUTION

11 4.1 Pursuant to RCW 19.86.080, Defendants shall provide restitution to all  
12 Washington consumers identified in Defendants' response to Interrogatory No. 1 of the  
13 Attorney General's Civil Investigative Demand dated January 30, 2014, who purchased  
14 Defendants' services.

15 4.2 Defendants shall provide payment for consumer restitution as follows:

16 a. Defendants shall fully refund all customers identified in Defendants'  
17 response to Interrogatory No. 1 of the Attorney General's Civil Investigative Demand  
18 dated January 30, 2014, who purchased Defendants' services. Such refund shall be in  
19 the form of a check drawn to the order of the consumer for the full amount paid, which  
20 shall be mailed to the consumer's last known address. The envelope containing  
21 Defendants' payment of the restitution required herein shall display Defendants'  
22 corporate return address, which shall include "Washington eFoodhandlers" and shall  
23 clearly and conspicuously display the language "REFUND INFORMATION  
24 ENCLOSED" on the front of the envelope. The mailing containing the check shall  
25 include a letter with the following text:

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Dear Consumer:

Pursuant to the settlement of a lawsuit by the State of Washington against Washington eFoodhandlers, you are receiving a refund check for a purchase you previously made for Washington food worker training.

Sincerely,  
Washington eFoodhandlers, Inc.

b. Sixty (60) days after the entry of this Consent Judgment, Defendants shall provide a status report on the identity of the persons to whom refunds were made, their current mailing addresses and email addresses, the date of the refunds, and the amount of the refunds.

4.3 In the event that a consumer claims that he or she purchased services from Defendants but has not been included on the list of Washington consumers identified in Defendants' Response to Interrogatory No. 1 of the Attorney General's Civil Investigative Demand dated January 30, 2014, such consumer shall be entitled to a full refund within 14 (fourteen) days of his or her request, provided that the consumer can demonstrate proof of purchase through a credit card statement, correspondence with Defendants, a copy of a certificate issued by Defendants, or other reasonable proof of purchase.

**V. PAYMENT TO THE STATE**

5.1 Pursuant to RCW 19.86.080, Defendants shall pay the sum of \$40,000.00 to the State of Washington as Defendants' fulfillment of all obligations on any claim for recovery of attorneys' fees and costs. The Attorney General shall use the funds for recovery of its costs and attorneys' fees in investigating this matter, future monitoring and enforcement of this Consent Decree, future enforcement of RCW 19.86, or for any lawful purpose in the discharge of the Attorney General's duties at the sole discretion of the Attorney General.



1 Defendants, in deposition, pursuant to the provisions and notice requirements of CR 30, in order  
2 to monitor compliance with this Consent Decree.

3 6.5 Under no circumstances shall this Consent Decree or the names of the State of  
4 Washington or the Office of the Attorney General, Consumer Protection Division, or any of its  
5 employees or representatives be used by Defendants' agents or employees in connection with  
6 the promotion of any product or service or an endorsement or approval of Defendants'  
7 practices.

8 6.6 Nothing in this Consent Decree shall be construed as to limit or bar any other  
9 governmental entity or consumer from pursuing other available remedies against Defendants.

10 **VII. DISMISSAL AND WAIVER OF CLAIMS**

11 7.1 This Consent Decree resolves with prejudice all issues raised by the Attorney  
12 General pertaining to the acts or omissions addressed in the Complaint filed in this matter. Upon  
13 entry of this Consent Decree, all claims in this matter, not otherwise addressed by this Consent  
14 Decree are dismissed with prejudice.  
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16 DONE IN OPEN COURT this \_\_\_\_\_ day JUL - 7 2014, 2014.

17 **CARLOS VELAZQUEZ**

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19 JUDGE/COURT COMMISSIONER  
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Approved for entry and presented by:

ROBERT W. FERGUSON

Attorney General



PAULA SELIS, WSBA #12823

Assistant Attorney General

Attorneys for Plaintiff

State of Washington

Form Approved for Entry, and  
Notice of Presentation Waived:

STOEL RIVES LLP



CHRISTOPHER WEISS, WSBA #14826

Attorneys for Defendants