SETTLEMENT AGREEMENT BETWEEN MISSOURI BOARD OF COSMETOLOGY AND BARBER EXAMINERS AND NAIL SPA, CHRISTINA NGUYEN, OWNER

U-00736 JUL 21

Come now Nail Spa, Christina Nguyen, Owner (collectively, "Licensee") and the Missouri Board of Cosmetology and Barber Examiners ("Board") and enter into this settlement agreement for the purpose of resolving the question of whether Licensee's cosmetology establishment license, "Class MO – manicurist" license and "Class E – estheticians" license will be subject to discipline.

Pursuant to the terms of § 536.060, RSMo,[1] the parties hereto waive the right to a hearing by the Administrative Hearing Commission of the State of Missouri ("AHC") regarding cause to discipline the Licensee's licenses, and, additionally, the right to a disciplinary hearing before the Board under § 621.110, RSMo 2000.

Licensee acknowledges that Licensee understands the various rights and privileges afforded Licensee by law, including the right to a hearing of the charges against Licensee; the right to appear and be represented by legal counsel; the right to have all charges against Licensee proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing at the hearing against Licensee; the right to present evidence on Licensee's own behalf at the hearing; the right to a decision upon the record by a fair and impartial administrative hearing commissioner concerning the charges pending against Licensee and, subsequently, the right to a disciplinary hearing before the Board at which time Licensee may present evidence in mitigation of discipline; and the right to recover attorney's fees incurred in defending this action against Licensee's licenses. Being aware of these rights provided her by operation of law, Licensee knowingly and voluntarily waives each and every one of these rights and freely enters into this settlement agreement and agrees to abide by the terms of this document, as they pertain to Licensee.

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Licensee acknowledges that Licensee has received a copy of the inspection reports and other documents relied upon by the Board in determining there was cause to discipline Licensee's licenses, along with citations to law and/or regulations the Board believes was violated.

For the purpose of settling this dispute, Licensee stipulates that the factual allegations contained in this settlement agreement are true and stipulates with the Board that Licensee's establishment license, numbered 2004010562, "Class MO – manicurist" license, numbered 103771 and "Class E – estheticians" license,

[1] All statutory references are to Missouri Revised Statutes 2000, as amended, unless otherwise indicated.

numbered 2011039693 are subject to disciplinary action by the Board in accordance with the provisions of Chapters 621 and 329, RSMo.

Joint Stipulation of Fact and Conclusions of Law

1. The Missouri Board of Cosmetology and Barber Examiners ("Board") is an agency of the State of Missouri created and established pursuant to § 329.015, RSMo, for the purpose of executing and enforcing the provisions of Chapters 328 and 329, RSMo.

2. Licensee holds a cosmetology establishment license issued by the Board on or about April 20, 2004, license number 2004010562 for Nail Spa, located at 6648 Clayton Road, Richmond Heights, MO. Licensee also holds a "Class MO – manicurist" license, numbered 103771 and "Class E – estheticians" license, numbered 2011039693. Licensee's Missouri cosmetology establishment license, a "Class MO – manicurist" license and "Class E – estheticians" license were at all times relevant herein, and is now, current and active.

3. On or about August 21, 2012, the Board conducted an inspection of Nail Spa. Owner Christina Nguyen was present during the inspection and Nail Spa was open for business. The inspection revealed the following violations: the establishment was licensed for three operators but seven operators' licenses were posted in violation of § 329.045 and 20 CSR 2085-10.050; and credo blades were found at each pedicure station in violation of 20 CSR 2085-11.020. On or about September 10, 2012, the Board sent Licensee a violation notice following the August 21, 2012 inspection.

4. On or about September 5, 2013, the Board conducted an inspection of Nail Spa. Owner Christina Nguyen was present during the inspection and Nail Spa was open for business. The inspection revealed the following violations: the establishment was licensed for three operators but five operators' licenses were posted in violation of § 329.045 and 20 CSR 2085-10.050; and credo blades were found at the pedicure station of Minh Phuong Nguyen in violation of 20 CSR 2085-11.020. On or about September 24, 2013, the Board sent Licensee a violation notice following the September 5, 2013 inspection.

5. On or about November 5, 2013, the Board conducted an inspection of Nail Spa. Owner Christina Nguyen was present during the inspection and Nail Spa was open for business. The inspection revealed the following violations: the establishment was licensed for three operators but five operators' licenses were posted in violation of § 329.045 and 20 CSR 2085-10.050. On or about December 13, 2013, the Board sent Licensee a violation notice following the November 5, 2013 inspection.

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6. On or about March 21, 2014, the Board conducted an inspection of Nail Spa. Owner Christina Nguyen was present during the inspection and Nail Spa was open for business. The inspection revealed the following violations: credo blades were found with boxes of blades and one scraper in violation of 20 CSR 2085-11.020. Specifically, one credo blade and one scraper were found at station number five and the operator tried the hide the credo blade under towels at the station and a box of credo blades was found at station number one. On or about April 15, 2014, the Board sent Licensee a violation notice following the March 21, 2014 inspection.

7. Section 329.045.1, RSMo, states, in relevant part:

> Every establishment in which the occupation of cosmetology is practiced shall be required to obtain a license from the board. Every establishment required to be licensed shall pay to the board an establishment fee for the first three licensed cosmetologist estheticians and/or manicurists, and/or apprentices and an additional fee for each additional licensee[.]

8. Regulation 20 CSR 2085-10.050(1) states, in relevant part:

> The minimum biennial fee for a cosmetology establishment shall license the establishment for up to three (3) operators, including apprentices, students with temporary permits, or both. An additional fee is required for each additional operator working in the establishment. If at any time during the license period the number of operators working in the establishment exceeds the number of operators for which the establishment is licensed, it is the responsibility of the holder(s) of the establishment license to submit written notification to the board along with the fee for each additional operator.

9. Regulation 20 CSR 2085-11.020 states, in relevant part:

> (2) Sanitation Requirements.
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> ...
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> (L) Prohibited Practices. To prevent the risk of injury or infection—
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> 1. A licensee shall not use or offer to use in the performance of cosmetology services, or possess on the premises of a licensed cosmetology establishment, any razor-type callus shaver designed or intended to cut growths of skin on hands or feet such as corns and calluses including, but not limited to, a credo blade or similar type instrument. Any licensee using a razor-type callus shaver prohibited by this rule at a licensed cosmetology establishment or in the performance of any cosmetology, manicuring, or esthetician services shall be deemed to be rendering services in an unsafe and unsanitary manner. Cosmetology establishment licensees shall ensure that razortype callus shavers are

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not located or used on the premises of the cosmetology establishment;

2. The board shall provide a flyer prohibiting the use of these razor-type callus shavers. Every cosmetology establishment and cosmetology school shall post such flyer in plain view of the public in each of their establishment(s) and school(s); and

3. Violation of this rule shall constitute grounds for discipline under section 329.140.2(15), RSMo.

10. As a result of the violations, as described above in paragraphs 3 through 6, in violation of the statutes and regulations contained in paragraphs 7 through 9, Licensee violated lawful regulations adopted pursuant to chapter 329, RSMo, and failed to properly guard against contagious, infections or communicable diseases or the spread thereof for which the Board has cause to take disciplinary action against Licensee's cosmetology establishment license, "Class MO – manicurist" license and "Class E – estheticians" license.

11. Cause exists for the Board to take disciplinary action against Licensee's cosmetology establishment license, "Class MO – manicurist" license and "Class E – estheticians" license under § 329.140.2(6) and (15) RSMo, which states in pertinent part:

> The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered the person's certificate of registration or authority, permit or license for any one or any combination of the following causes:
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> ...
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> (6) Violation of, or assisting or enabling any person to violate, any provision of this chapter, or of any lawful rule or regulation adopted pursuant to this chapter;
>
> ...
>
> (15) Failure or refusal to properly guard against contagious, infectious or communicable diseases or the spread thereof.

Joint Agreed Disciplinary Order

Based upon the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the Board in this matter under the authority of § 621.045.3, RSMo:

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12. The terms of discipline shall include that the cosmetology establishment license, "Class MO – manicurist" license and "Class E – estheticians" license be placed on **PROBATION** for a period of three (3) years ("disciplinary period"). During Licensee's probation, Licensee shall be entitled to offer and engage in the practice of cosmetology under Chapter 329, RSMo, provided Licensee adheres to all of the terms of this Settlement Agreement.

I. GENERAL REQUIREMENTS

A. Licensee shall meet with the Board or its representatives at such times and places as required by the Board after notification of a required meeting.

B. Licensee shall submit reports to the Missouri Board of Cosmetology and Barber Examiners, Post Office Box 1062, Jefferson City, Missouri 65102, stating truthfully whether Licensee has complied with all the terms and conditions of this Settlement Agreement by no later than January 1 and July 1 during each year of the disciplinary period. The first report shall be due January 1, 2015.

C. Licensee shall keep the Board apprised of Licensee's current home and work addresses and telephone numbers. Licensee shall inform the Board within ten days of any change of home or work address and home or work telephone number.

D. Licensee shall comply with all provisions of the Chapter 329, RSMo; all applicable federal and state drug laws, rules, and regulations; and all federal and state criminal laws. "State" here includes the state of Missouri and all other states and territories of the United States.

E. During the disciplinary period, Licensee shall timely renew Licensee's licenses and timely pay all fees required for licensing and comply with all other board requirements necessary to maintain Licensee's licenses in a current and active state.

F. If at any time during the disciplinary period, Licensee removes Licensee from the state of Missouri, ceases to be currently licensed under provisions of Chapter 329, or fails to advise the Board of Licensee's current place of business and residence, the time of Licensee's absence, unlicensed status, or unknown whereabouts shall not be deemed or taken as any part of the time of discipline so imposed in accordance with § 329.140.3, RSMo.

G. During the disciplinary period, Licensee shall accept and comply with unannounced visits from the Board's representatives to monitor Licensee's compliance with the terms and conditions of this Settlement Agreement.

H. If Licensee fails to comply with the terms of this Settlement Agreement, in any respect, the Board may impose such additional or other discipline that it deems appropriate, (including imposition of the revocation).

I. This Settlement Agreement does not bind the Board or restrict the remedies available to it concerning any other violation of Chapter 329, RSMo, by Licensee not specifically mentioned in this document.

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15. The parties to this Agreement understand that the Missouri Board of Cosmetology and Barber and Examiners will maintain this Agreement as an open record of the Board as provided in Chapters 329, 610 and 324, RSMo.

16. The terms of this settlement agreement are contractual, legally enforceable, and binding, not merely recital. Except as otherwise provided herein, neither this settlement agreement nor any of its provisions may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge, or termination is sought.

17. Licensee, together with Licensee's heirs and assigns, and Licensee's attorneys, do hereby waive, release, acquit and forever discharge the Board, its respective members and any of its employees, agents, or attorneys, including any former Board members, employees, agents, and attorneys, of, or from, any liability, claim, actions, causes of action, fees, costs and expenses, and compensation, including but not limited to, any claims for attorney's fees and expenses, including any claims pursuant to § 536.087, RSMo, or any claim arising under 42 U.S.C. § 1983, which may be based upon, arise out of, or relate to any of the matters raised in this case, its settlement, or from the negotiation or execution of this settlement agreement. The parties acknowledge that this paragraph is severable from the remaining portions of this settlement agreement in that it survives in perpetuity even in the event that any court of law deems this settlement agreement or any portion thereof to be void or unenforceable.

18. If no contested case has been filed against Licensee, Licensee has the right, either at the time the settlement agreement is signed by all parties or within fifteen days thereafter, to submit the agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties to the settlement agreement constitute grounds for denying or disciplining the license of the licensee. If Licensee desires the Administrative Hearing Commission to review this Agreement, Licensee may submit this request to: **Administrative Hearing Commission, Truman State Office Building, Room 640, 301 W. High Street, P.O. Box 1557, Jefferson City, Missouri 65101.**

19. If Licensee has requested review, Licensee and Board jointly request that the Administrative Hearing Commission determine whether the facts set forth herein are grounds for disciplining Licensee's license and issue findings of act and conclusions of law stating that the facts agreed to by the parties are grounds for disciplining Licensee's license. Effective the date the Administrative Hearing Commission determines that the

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agreement sets forth cause for disciplining Licensee's license, the agreed upon discipline set forth herein shall go into effect.

LICENSEE	BOARD
Nail Spa Christina Nguyen, Owner	Emily R. Carroll, Executive Director Missouri Board of Cosmetology and Barber Examiners
Date 7. 14 14	Date 7/21/2014

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