SETTLEMENT AGREEMENT BETWEEN MISSOURI BOARD OF COSMETOLOGY AND BARBER EXAMINERS AND PRETTY NAILS, TINA PHAM, OWNER

Come now Pretty Nails, Tina Pham, 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 and class MO manicurist license will be subject to discipline.

Pursuant to the terms of § 536.060, RSMo 2000, 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 she understands the various rights and privileges afforded her by law, including the right to a hearing of the charges against her; the right to appear and be represented by legal counsel; the right to have all charges against her proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing at the hearing against her; the right to present evidence on her 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 her and, subsequently, the right to a disciplinary hearing before the Board at which time he may present evidence in mitigation of discipline; and the right to recover attorney's fees incurred in defending this action against her 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 her.

Licensee acknowledges that she has received a copy of the investigative report and other documents relied upon by the Board in determining there was cause to discipline her 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 2008019064 and operator license, numbered 2002014269 are subject to disciplinary action by the Board in accordance with the provisions of Chapter 621, Cum. Supp. 2009 and Chapter 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 2000, 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 July 1, 2008, License No. 2008019064 for Pretty Nails. Pretty Nails is located at 911 D Highway, Business 60 West, Dexter, MO 63841. Licensee also holds a class MO manicurist license, License No. 2002014269. Licensee's Missouri license establishment license and manicurist license were at all times relevant herein, and is now, current and active.

3. On or about June 15, 2010, the Board conducted an inspection of Pretty Nails. The inspector noted that one operator was present. The inspection revealed the following violations:

a. Sterilization solution was not an EPA registered disinfectant and was not fungicidal, bactericidal and virucidal active in violation of 20 CSR 2085-11.020.

b. Floors, walls, ceilings, equipment and contents were not clean and in good repair in violation of 20 CSR 2085-11.020.

c. The backbars, work-stations and/or rollabouts were not clean in violation of 20 CSR 2085-11.020.

d. All licenses posted were not current in violation of 20 CSR 2085-10.010 and 20 CSR 2085-11.020.

e. Drawers were not clean and free of unsanitized implements in violation of 20 CSR 2085-11.020.

4. On or about July 6, 2010, the Board sent Licensee a violation notice regarding the violations from the June 15, 2010 inspection requesting that the violations detailed in paragraph 4 above be corrected immediately and informing Licensee that the Board would conduct a follow-up inspection.

5. On or about June 28, 2010, the Board received an email regarding Licensee. The email stated that the complainant had faxed a complaint regarding Pretty Nails as well as three pictures related to the complaint. The email stated that the complainant received a pedicure at Pretty Nails on June 25, 2010. Complainant stated that her feet soaked in a water solution for 40 minutes and then they did "various pedicure

treatments like trimming my toenails and etc." The complaint alleged that the employee performing the pedicure used a Credo razor and removed "chunks of my flesh along with a callus." The complainant stated that when she informed the employee her feet were stinging, he applied a lotion and placed her feet back in the water. The complaint alleged that when the complainant's feet started to dry and she walked on them, she noticed discomfort. Within an hour her feet turned red, bled, and became very sore. The next morning, complainant asked for a refund, which she received. As of the date of her email, June 28, 2010, she stated it causes a great amount of pain and she was unable to wear regular shoes. The Board received the complaint form from the complainant by mail on September 8, 2010.

6. On or about August 20, 2010, the Board attempted to conduct an inspection of Pretty Nails. The inspector noted one employee present. The inspection resulted in no violations.

7. On or about November 26, 2010, the Board invited Licensee to the next Board sponsored sanitation workshop at no cost to the licensee.

8. On or about November 29, 2010, the Board provided Licensee with a copy of the complaint for review and requested that Licensee submit a written response no later than within 10 days of receipt of the letter. The Board received no response.

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

(1) Physical Facilities.

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> (B) Floors, Walls, Ceilings, Equipment and Contents. For areas where all classified occupations of cosmetology are practiced, including retail cosmetic sales counters, all floors, walls, ceilings, equipment and contents shall be constructed of washable materials and must be kept clean and in good repair at all times.

...

(2) Sanitation Requirements.

...

> (D) Disinfecting and Storing Implements. All implements (instruments or tools) used in cosmetology establishments and schools, including scissors, clips, blades, rods, brushes, combs, etc. shall be thoroughly cleansed after each use. All implements which may come in contract directly or indirectly with the skin of the patron shall be disinfected with an Environmental Protection Agency (EPA)- registered disinfectant, which may be a spray solution. The label on the disinfectant shall show that it is EPA-

> registered with demonstrated bactericidal (disinfectant), virucidal, and fungicidal activity and shall be used according to the manufacturer's instructions. All implements shall be completely immersed in the solution, or, if not capable of immersion, thoroughly dipped in the solution for a period of not less than five (5) minutes. Implements shall either be stored in the solution or removed and stored in a dust-tight cabinet, covered container or drawer at all times when not in use. The dust-tight cabinet, covered container or drawer shall be kept free of other items not capable of being disinfected. Implements shall be permitted to air dry[.]

10. As a result of the sanitation violations, as described above in paragraph 4, in violation of the regulations contained in paragraph 10, Pretty Nails 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 establishment license and manicurist license.

11. Cause exists for the Board to take disciplinary action against Licensee's establishment license and operator 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;
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> ...
>
> (15) Failure or refusal to properly guard against contagious, infectious or communicable diseases or the spread thereof.

<u>Joint Agreed Disciplinary Order</u>

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 2000:

1. The terms of discipline shall include that the cosmetology establishment license and operator license be placed on **PROBATION** for a period of five (5) 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 she adheres to all of the terms of his Settlement Agreement.

I. SPECIFIC REQUIREMENTS

A. Licensee shall correct all sanitation violations from the June 15, 2010, inspection within 30 days of the date of execution of this Agreement.

B. Licensee, Tina Pham, and all employees of Pretty Nails shall attend the next available sanitation workshop offered by the Board. Licensee shall be responsible for contacting the Board to determine the date of the next workshop and ensuring that he and his employees attend the workshop.

II. 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 she 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 July 1, 2011.

C. Licensee shall keep the Board apprised of her 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 her 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 herself from the state of Missouri, ceases to be currently licensed under provisions of Chapter 329, or fails to advise the Board of her current place of business and residence, the time of his 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 her 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.

2. 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, 324, RSMo.

3. 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.

4. Licensee, together with her heirs and assigns, and her 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.

5. 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.**

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

LICENSEE

Pretty Nails
Tina Pham, Owner

Date 3/22/11

BOARD

Emily R. Carroll,
Executive Director
Missouri Board of Cosmetology and Barber Examiners

Date March 3, 2011

RECEIVED
MAR 28 2011
Missouri Board of Cosmetology & Barber Examiners