SETTLEMENT AGREEMENT BETWEEN MISSOURI BOARD OF COSMETOLOGY AND BARBER EXAMINERS AND BROOKE STURGESS

Come now Brooke Sturgess ("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 "Class CA - hairdressing and manicuring" operator 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 license, and, additionally, the right to a disciplinary hearing before the Board under § 621.110, RSMo.

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 license. Being aware of these rights provided Licensee 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.

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

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

Licensee's license, 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 "Class CA - hairdressing and manicuring" operator license, numbered 2012007155 is 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 "Class CA - hairdressing and manicuring" license, license number 2012007155. Licensee's operator license was current and active at all times herein.

3. On or about June 18, 2015, the Board's inspector conducted an inspection of Leigh Mason Salon, located at 854 Bryan Road, O'Fallon, Missouri. Licensee was not present at the time of the inspection. The Board's inspection revealed the following violation: Licensee did not hold a booth rental establishment license, in violation of Sections 329.030, 329.045, RSMo, and 20 CSR 2085-10.010. On or about June 30, 2015, the Board sent Licensee a violation notice regarding the June 18, 2015 inspection.

4. On or about July 29, 2015, the Board's inspector conducted a follow-up inspection of Leigh Mason Salon. Licensee was present at the time of the inspection. The Board's inspection revealed the following violation: Licensee did not hold a booth rental establishment license, in violation of Sections 329.030, 329.045, RSMo, and 20 CSR 2085-10.010. On or about August 11, 2015, the Board sent Licensee a violation notice regarding the July 29, 2015 inspection.

5. On or about September 4, 2015, the Board's inspector conducted a follow-up inspection of Leigh Mason Salon. Licensee was present at the time of the inspection. The Board's inspection revealed the following violation: Licensee did not hold a booth rental establishment license, in violation of Sections 329.030, 329.045, RSMo, and 20 CSR 2085-10.010. On or about September 23, 2015, the Board sent Licensee a violation notice regarding the September 4, 2015 inspection.

6. On or about November 6, 2015, the Board's inspector conducted a follow-up inspection of Leigh Mason Salon. Licensee was not present at the time of the inspection. The Board's inspection revealed the following violation: Licensee did not hold a booth rental establishment license, in violation of Sections 329.030, 329.045, RSMo, and 20 CSR 2085-10.010. On or about November 17, 2015, the Board sent Licensee a violation notice regarding the November 6, 2015 inspection.

7. On or about December 31, 2015, the Board's inspector conducted a follow-up inspection of Leigh Mason Salon. Licensee was present at the time of the inspection. The Board's inspection revealed the following violation: Licensee did not hold a booth rental establishment license, in violation of Sections 329.030, 329.045, RSMo, and 20 CSR 2085-10.010. On or about January 11, 2016, the Board sent Licensee a violation notice regarding the December 31, 2015 inspection.

8. Section 329.030, RSMo, states:

> It is unlawful for any person in this state to engage in the occupation of cosmetology or to operate an establishment or school of cosmetology, unless such person has first obtained a license as provided in this chapter.

9. 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 cosmetologists esthetician and/or manicurists, and/or apprentices and an

additional fee for each additional licensee. The fee shall be due and payable on the renewal date and, if the fee remains unpaid thereafter, there shall be a late fee in addition to the regular establishment fee or, if a new establishment opens any time during the licensing period and does not register before opening, there shall be a delinquent fee in addition to the regular establishment fee. The license shall be kept posted in plain view within the establishment at all times.

10. Regulation 20 CSR 2085-10.010 states, in relevant part:

(1) New Barber Establishments or Cosmetology Establishments.

...

(C) No establishment shall open in Missouri until the board receives a completed application, on a form supplied by the board, the biennial establishment fee is paid, the establishment passes a board inspection, and the application is approved by the board. If an establishment opens for business before the board issues the original establishment license, a delinquent fee shall be assessed in addition to all other required licensure fees, and the board may take legal action pursuant to Chapter 328 and/or 329, RSMo.

...

(3) Display of license. Establishment licenses shall be posted within the establishment in plain view at all times so that it may be easily seen by the public. Establishment licenses issued to a station or booth rental establishment shall be posted in plain view at the respective work station.

11. As a result of Licensee's conduct as described above in paragraphs 3 through 7, Licensee violated chapter 329, RSMo, and lawful regulations adopted pursuant to chapter 329, RSMo, as described above in paragraphs 8 through 10, for which the Board has cause to take disciplinary action against Licensee's "Class CA - hairdressing and manicuring" operator license.

12. Cause exists for the Board to take disciplinary action against Licensee's "Class CA - hairdressing and manicuring" operator license under § 329.140.2(6) and (12), 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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> ...
>
> (12) Failure to display a valid license if so required by this chapter or any rule promulgated hereunder[.]

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:

13. The terms of discipline shall include that the "Class CA - hairdressing and manicuring" operator license, license number 2012007155, be placed on **PROBATION** for a period of three (3) years. 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 the terms of this Settlement Agreement.

I. SPECIFIC REQUIREMENTS

Licensee shall obtain a booth rental establishment license from the Board pursuant to Chapter 329, RSMo. Licensee shall obtain the booth rental establishment license for Leigh Mason Salon within thirty (30) days of the effective date of this settlement agreement.

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 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 July 1, 2016.

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 Chapters 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 license(s) and timely pay all fees required for licensing and comply with all other board requirements necessary to maintain Licensee's license(s) 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, RSMo, 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 Chapters 328 and 329, RSMo, by Licensee not specifically mentioned in this document.

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

15. 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.

16. 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.

17. 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.

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18. 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 fact 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

Brooke Sturgess

Date 3/10/16

BOARD

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

Date 3/18/2016

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Missouri Board of Cosmetology
& Barber Examiners