

**SETTLEMENT AGREEMENT BETWEEN MISSOURI BOARD OF COSMETOLOGY
AND BARBER EXAMINERS AND SHOW ME LUXE, LLC D/B/A MASSAGELUXE**

Come now Show Me Luxe, LLC D/B/A MassageLuxe ("MassageLuxe") 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 an establishment license shall be issued to MassageLuxe and whether if licensed, the license shall be subject to immediate discipline upon issuance.

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 any license issued to MassageLuxe, and, additionally, the right to a disciplinary hearing before the Board under § 621.110, RSMo.

MassageLuxe acknowledges that MassageLuxe had the opportunity to review the inspection reports and other documents relied upon by the Board in determining there was cause to discipline any issued license, along with citations to law and/or regulations the Board believes were violated.

For the purpose of settling this dispute, MassageLuxe stipulates that the factual allegations contained in this settlement agreement are true and stipulates with the Board that any issued license to MassageLuxe 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. MassageLuxe is an unlicensed entity operating a beauty shop located at 1208 NE Coronado Drive, Blue Springs, Missouri 64014. The owners of this business entity are Michael and Rebecca Collins of 122 Kimberly Court, Collinsville, IL 62234.

3. On or about July 25, 2018, the Board's inspector conducted a routine inspection at the 1208 NE Coronado Drive location. General Manager, Stephanie Bennett, was present at the time of the inspection and establishment was open for business. The Board's inspection revealed the following violations: the establishment was not licensed, in violation of 20 CSR 2085-10.010, Operators Lindsay Slayer and Amy Hursh

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

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did not have photos attached to their posted operator licenses, a violation of 20 CSR 2085-10.010, and no employee reporting form was available within the establishment, a violation of 20 CSR 2085-10.010. On or about August 6, 2018, the Board sent Licensee a violation notice regarding the July 25, 2018 inspection.

4. On or about October 26, 2018, the Board's inspector conducted a follow-up inspection at the 1208 NE Coronado Drive location. Assistant Manager, Rebecka Swope, was present at the time of the inspection and establishment was open for business. The Board's inspection revealed the following violation: the establishment was not licensed, in violation of 20 CSR 2085-10.010. On or about December 31, 2018, the Board sent Licensee a violation notice regarding the October 26, 2018 inspection.

5. On or about January 22, 2019, the Board's inspector conducted a follow-up inspection at the 1208 NE Coronado Drive location. Assistant Manager, Rebecka Swope, was present at the time of the inspection and establishment was open for business. The Board's inspection revealed the following violation: the establishment was not licensed, in violation of 20 CSR 2085-10.010. On or about February 26, 2019, the Board sent Licensee a violation notice regarding the January 22, 2019 inspection.

6. On or about May 21, 2019, the Board's inspector conducted a follow-up inspection at the 1208 NE Coronado Drive location. District Manager, Keely Eller, was present at the time of the inspection and establishment was open for business. The Board's inspection revealed the following violation: the establishment was not licensed, in violation of 20 CSR 2085-10.010. On or about May 28, 2019, the Board sent Licensee a violation notice regarding the May 21, 2019 inspection.

7. On or about June 28, 2019, the Board's inspector conducted a follow-up inspection at the 1208 NE Coronado Drive location. Front Desk employee, Jessica Zwiesler, was present at the time of the inspection and establishment was open for business. The Board's inspection revealed the following violation: the establishment was not licensed, in violation of 20 CSR 2085-10.010. On or about July 8, 2019, the Board sent Licensee a violation notice regarding the June 28, 2019 inspection.

8. 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

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licensure fees, and the board may take legal action pursuant to Chapter 328 and/or 329, RSMo.

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(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.

(A) Operator licenses, apprentice licenses, or student temporary permits shall either be posted at each respective assigned work station or all posted together in one (1) conspicuous, readily accessible, central location within the establishment area that will allow easy identification of the persons working in the establishment by clients, board representatives, or the general public.

9. Regulation 20 CSR 2085-10.030 states:

(1) All barber and cosmetology establishment licensees shall:

(A) Designate on a form approved by the board the names of any employees practicing, or authorized to practice, as barbers or cosmetologists at the licensed establishment. The form shall remain current at all times and shall be signed by each employee as designated by the board. The form required by this section shall be maintained on the premises of the licensed establishment and shall be available to the board, its inspector or other designee, upon request; and

(B) Maintain records which verify that an employment relationship exists with any barber or cosmetologist designated as an employee pursuant to subsection (1)(A) of this rule. Records verifying an employment relationship may include, but are not limited to, payroll records, a signed employment contract or agreement or any record verifying federal or state tax withholdings, such as the Missouri Employee's Withholding Allowance Certificate (MO W-4), as amended and promulgated by the Missouri Department of Revenue, or the Quarterly Contribution and Wage Report (MODES 4-7), as amended and promulgated by the Missouri Department of Labor and Industrial Relations. Records verifying an employment relationship shall be produced to the board within ten (10) days of the request by the board, its inspector or other designee.

10. As a result of the violations, as described above in paragraphs 3 through 7, MassageLuxe violated Chapter 329, RSMo, and lawful regulations adopted pursuant to Chapter 329, RSMo, as described above in paragraphs 8 through 9 for which the Board has cause to take disciplinary action against an establishment licensed issued to MassageLuxe. Said cause would exist 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

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surrendered the person's certificate of registration or authority, permit or license for any one or any combination of the following causes:

...

(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;

...

(12) Failure to display a valid certificate or 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, RSMo:

11. The terms of discipline shall include that MassageLuxe shall obtain and submit an establishment license application and that immediately upon issue, said establishment license shall be placed on **PROBATION** for a period of three (3) years. During MassageLuxe's probation, MassageLuxe shall be entitled to offer and engage in the practice of cosmetology under Chapter 329, RSMo, provided MassageLuxe adhere to all of the terms of this Settlement Agreement.

I. SPECIFIC REQUIREMENTS

A. MassageLuxe shall obtain an establishment license within thirty-(30) days of the effective date of this Order.

II. GENERAL REQUIREMENTS

A. MassageLuxe, its Owners and Operators, 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. MassageLuxe, its Owners and Operators, shall keep the Board apprised of MassageLuxe, its Owners' and Operators', current home and work addresses and telephone numbers. MassageLuxe, its Owners and Operators, shall inform the Board within ten days of any change of home or work address and home or work telephone number.

C. MassageLuxe, its Owners and Operators, shall comply with all provisions of 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.

D. During the disciplinary period, MassageLuxe, its Owners and Operators, shall timely renew the issued license and timely pay all fees required for licensing and comply with all other board requirements necessary to maintain the issued license in a current and active state.

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- E. If at any time during the disciplinary period, MassageLuxe moves from the state of Missouri, ceases to be currently licensed under provisions of Chapter 329, RSMo, or fails to advise the Board of its current place of business, the time of MassageLuxe'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, RSMo.
- F. During the disciplinary period, MassageLuxe, its Owners and Operators, shall accept and comply with unannounced visits from the Board's representatives to monitor his compliance with the terms and conditions of this Settlement Agreement.
- G. If MassageLuxe, its Owners and Operators, fail 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).
- H. This Settlement Agreement does not bind the Board or restrict the remedies available to it concerning any other violation of Chapter 329, RSMo, by MassageLuxe, its Owners and Operators, not specifically mentioned in this document.

12. 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.

13. 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.

14. MassageLuxe, its Owners and Operators, together with MassageLuxe, its Owners' and Operators' heirs and assigns, and 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.

15. If no contested case has been filed against MassageLuxe, its Owners and Operators, MassageLuxe, its Owners and Operators have the right, either at the time the settlement agreement is signed

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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 issue to MassageLuxe. If MassageLuxe, its Owners and Operators, desire the Administrative Hearing Commission to review this Agreement, MassageLuxe, its Owners and Operators, may submit this request to: **Administrative Hearing Commission, United States Post Office Building, 131 W. High Street, P.O. Box 1557, Jefferson City, Missouri 65102-1557.**

16. If MassageLuxe, its Owners and Operators, have requested review, MassageLuxe, its Owners and Operators, and the Board jointly request that the Administrative Hearing Commission determine whether the facts set forth herein are grounds for disciplining the issued license and issue findings of fact and conclusions of law stating that the facts agreed to by the parties are grounds for disciplining the issued license. Effective the date the Administrative Hearing Commission determines that the agreement sets forth cause for disciplining the issued license, the agreed upon discipline set forth herein shall go into effect.

LICENSEE



Show Me Luxe, LLC D/B/A MassageLuxe
Authorized Representative

Date 11-7-2019

BOARD



Brittany Tomblinson, Executive Director
Missouri Board of Cosmetology and Barber Examiners

Date 11/15/2019



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