

SETTLEMENT AGREEMENT BETWEEN MISSOURI BOARD OF COSMETOLOGY AND BARBER EXAMINERS AND KENDAL MERCURIO AND NOGGINS, LLC, KENDAL MERCURIO, OWNER

Come now Kendal Mercurio and Noggins, LLC, Kendal Mercurio, 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 Class CA- hairdressing and manicuring and cosmetology establishment licenses 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 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 Class CA – hairdressing and manicuring license, numbered 2021044574 and Licensee's cosmetology establishment license, numbered

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

2012045011 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 Class CA -- hairdressing and manicuring license issued by the Board, license number 2021044574. Licensee's Class CA license is current and active. Licensee also holds a cosmetology establishment license issued by the Board, license number 2021045011 for Noggins, LLC. Noggins, LLC is located at 319 SW Market Street, Lees Summit, Missouri. Licensee's Missouri cosmetology establishment license is current and active.

3. On or about November 23, 2022, the Board's inspector conducted an inspection of Noggins, LLC. The shop was open and offering services at the time of the inspection. The Board's inspection revealed the following violations: there was no photo attached to an operators' licenses in violation of 20 CSR 2085-10.010(3); an operator's license was not posted at the time of inspection in violation of 20 CSR 2085-10.010(3); and there was no employee reporting form available in violation of 20 CSR 2085-10.030(1). On January 13, 2023, the Board sent Licensee a violation notice regarding the November 23, 2022 inspection.

4. On or about February 16, 2023, the Board's inspector conducted an inspection of Noggins, LLC. The shop was open and offering services at the time of the inspection. The Board's inspection revealed the following violations: there was no photo attached to an operators' licenses in violation of 20 CSR 2085-10.010(3); an operator's license was not posted at the time of inspection in violation of 20 CSR 2085-10.010(3); and there was no employee reporting form available in violation of 20 CSR 2085-10.030(1). On February 27, 2023, the Board sent Licensee a violation notice regarding the February 16, 2023 inspection.

5. On or about April 7, 2023, the Board's inspector conducted an inspection of Noggins, LLC. The shop was open and offering services at the time of the inspection. The Board's inspection revealed the following violations: there were barber operators operating under the cosmetology license in violation of section 328.1115.1, RSMo; there was no photo attached to an operator's license in violation of 20 CSR 2085-10.010(3); workstations were dirty in violation of 20 CSR 2085-11.020(1)(B); and there was no employee reporting form

available in violation of 20 CSR 2085-10.030(1). On April 17, 2023, the Board sent Licensee a violation notice regarding the April 7, 2023 inspection.

6. On or about June 13, 2023, the Board's inspector conducted an inspection of Noggins, LLC. The shop was open and offering services at the time of the inspection. The Board's inspection revealed the following violations: there were barber operators operating under the cosmetology license in violation of section 328.1115.1, RSMo; there was no photo attached to an operator's license in violation of 20 CSR 2085-10.010(3); and workstations were dirty in violation of 20 CSR 2085-11.020(1)(B). On June 20, 2023, the Board sent Licensee a violation notice regarding the June 13, 2023 inspection.

7. Section 328.115.1, RSMo, states:

The owner of every establishment in which the occupation of barbering is practiced shall obtain a license for such establishment issued by the board before barbering is practiced therein. A new license shall be obtained for a barber establishment within forty-five days when the establishment changes ownership or location. The state inspector shall inspect the sanitary conditions required for licensure, established under subsection 2 of this section, for an establishment that has changed ownership or location without requiring the owner to close business or deviate in any way from the establishment's regular hours of operation.

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

...
(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.

(B).A two inch square (2" x 2") photograph taken within the last five (5) years shall be attached to operator licenses. A two inch square (2" x 2") photograph shall be attached to apprentice licenses and student temporary permits.

9. Regulation 20 CSR 2085-10.030(1) states, in relevant part:

(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 deferral 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 Boar and Industrial Relations. Records verifying an employment relationship shall be produced to the board within ten (10) days of the request by the boards, its inspector or other designee.

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

(1) 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(2) of the establishment license to submit written notification to the board along with the fee for each additional operator.

11. Regulation 20 CSR 2085-11.020(1)(B) states:

(1) Physical Facilities.

...

(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. Commercial-type carpet may be used.

12. As a result of the violations, as described above in paragraphs 3 through 6, Licensee violated chapter 329, RSMo, and lawful regulations adopted pursuant to chapter 329, RSMo, as described above in

paragraphs 7 through 11 for which the Board has cause to take disciplinary action against Licensee's Class CA and establishment licenses.

13. Cause exists for the Board to take disciplinary action against Licensee's Class CA and establishment licenses under § 329.140.2(6), 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:

...

(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[.]

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:

14. The terms of discipline shall include that the Class CA – hairdressing and manicuring license, license number 2021044574 and cosmetology establishment license, license number 2021045011, 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. SPECIFIC REQUIREMENTS

A. Licensee shall correct all violations indicated in the Findings of Fact and Conclusions of Law above. Licensee shall provide the Board written notification of Licensee's within thirty (30) days of the effective date of this Order.

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 January 1, 2024.

- 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 Chapters 328 and 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 licenses in a current and active state.
- F. 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.
- G. 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).
- H. 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.

15. 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.

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

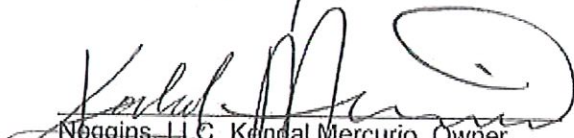
survives in perpetuity even in the event that any court of law deems this settlement agreement or any portion thereof to be void or unenforceable.

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, United States Post Office Building, P.O. Box 1557, 131 West High St., Jefferson City, MO 65102-1557.

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 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


Kendal Mercurio


Neggins, LLC, Kendal Mercurio, Owner

Date 8/29/23

BOARD


Karla Johansen, Executive Director
Missouri Board of Cosmetology and Barber Examiners

Date 8/30/2023