

SETTLEMENT AGREEMENT BETWEEN MISSOURI BOARD OF COSMETOLOGY AND BARBER EXAMINERS AND EUSEBIO JO ORTIZ

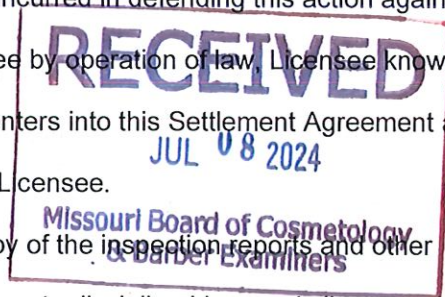
Come now Eusebio Jo Ortiz ("Licensee") and the Missouri Board of Cosmetology and Barber Examiners ("Board") and enter into this Settlement Agreement for the purpose of resolving the question of whether Licensee's "Class CH – hairdressing" license will be subject to discipline.

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 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 license, numbered 2012022747, is subject to disciplinary action by the Board in accordance with the provisions of Chapters 621 and 329, RSMo.



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

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 CH – hairdressing" operator, license number 2012022747, originally issued by the Board on July 5, 2012. The referenced license is active and has an expiration date of September 30, 2025.

3. On or about November 7, 2023, the Board conducted a routine inspection at the *Estilistas Unisex El Y Ella*, LLC. The inspection revealed sanitation rules were not posted, no prohibited practices flyer was posted and the establishment was unlicensed at the time of the inspection, in violation of 20 CSR 2085-10.040 (1) (B), 20 CSR 2085-11.020 (2) (L) and 20 CSR 2085-10.010 (1) (C). On or about December 19, 2023, the Board sent Licensee a violation notice following the November 7, 2023 inspection.

4. On or about January 25, 2024, the Board conducted a follow-up inspection at the *Estilistas Unisex El Y Ella*, LLC. The inspection revealed the establishment was unlicensed at the time of the inspection, in violation of 20 CSR 2085-10.010 (1) (C). On or about February 20, 2024, the Board sent Licensee a violation notice following the January 25, 2024 inspection.

5. On or about March 25, 2024, the Board conducted a follow-up inspection at the *Estilistas Unisex El Y Ella*, LLC. The inspection revealed the establishment was unlicensed at the time of the inspection, in violation of 20 CSR 2085-10.010 (1) (C). On or about April 4, 2024, the Board sent Licensee a violation notice following the March 25, 2024 inspection.

6. Section 329.045, RSMo, states:

1. 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.

2. A new license shall be obtained for a cosmetology establishment within forty-five days when the establishment changes ownership or location. The state inspector shall inspect the sanitary conditions required for licensure 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.

7. 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.

8. Regulation 20 CSR 2085-10.040 states, in relevant part:

(1) Barber establishment facilities shall consist of the following:

(B) Pursuant to section 328.060.2, RSMo, sanitary rules shall be posted in a conspicuous place in every barber establishment and barber school;

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

(2) Sanitation Requirements

(L) Prohibited Practices. To prevent the risk of injury or infection—

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 razor-type callus shavers are 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 and 5, in violation of the statutes and regulations contained in paragraphs 6 through 9, Licensee violated lawful regulations adopted pursuant to Chapter 329, RSMo, for which the Board has cause to take disciplinary action against Licensee's license.

11. Cause exists for the Board to take disciplinary action against Licensee's 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:

...

(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 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:

12. The terms of discipline shall include that the Licensee license, number 2012022747, be placed on **PROBATION** for a period of three (3) years ("disciplinary period"). During Licensee's probation, Licensee shall be entitled to engage in the practice of cosmetology under Chapter 329, RSMo, provided Licensee adhere to all of the terms of this Settlement Agreement.

I. SPECIFIC REQUIREMENTS

A. Licensee shall obtain an establishment license and correct all above-cited violations within thirty-(30) days of the effective date of this Order.

II. GENERAL REQUIREMENTS

A. Licensee shall correct all noted violations within thirty-(30) days of the effective date of this settlement agreement.

B. 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.

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.

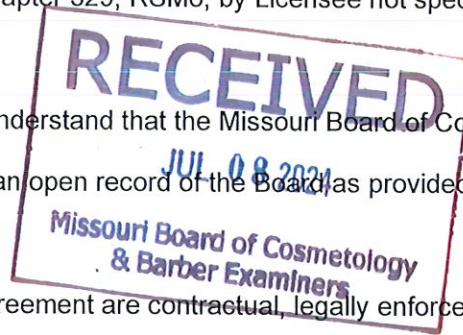
E. During the disciplinary period, Licensee shall timely renew Licensee's licenses and timely pay all fees required for licensing and comply with all other board requirements necessary to maintain Licensee's licenses in a current and active state.

F. If at any time during the disciplinary period, Licensee moves 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, 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.

13. 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.



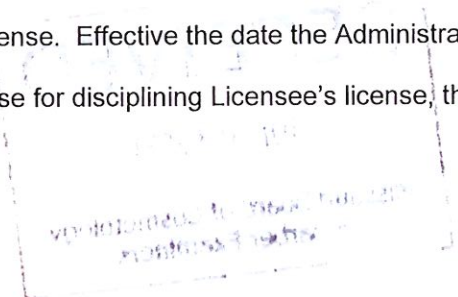
14. The terms of this Settlement Agreement are contractual, legally enforceable, and binding, not merely recital. Except as otherwise provided herein, neither this Settlement Agreement nor any of its provisions may be changed, waived, discharged, or terminated, except by an instrument in writing signed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

15. 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.

16. 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 Settlement 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, 131 W. High Street, P.O. Box 1557, Jefferson City, Missouri 65102-1557.**

14. 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

Eusebio Jo Ortiz
Eusebio Jo Ortiz

BOARD

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

Date 7-01-24

Date 7/17/2024