

**SETTLEMENT AGREEMENT BETWEEN MISSOURI BOARD OF COSMETOLOGY AND BARBER
EXAMINERS AND SALON AND SUITES AT THE HILLS, LLC**

Come now Salon and Suites at the Hills, LLC ("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 establishment 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 licenses, and, additionally, the right to a disciplinary hearing before the Board under § 621.110, RSMo 2000.

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 establishment license, numbered 2016029668 is subject to disciplinary action by the Board in accordance with the provisions of Chapters 621, 328, and 329, RSMo.

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¹ All statutory references are to Missouri Revised Statutes 2000, 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 was issued an establishment license by the Board on or about August 15, 2016, for Salon and Suites at the Hill, LLC, located at 4011 Seven Hills Drive, Florissant, Missouri 63033, license number 2016029668. The establishment license is active not expired. Marquello Anthonio Futrell, Sr. is the owner and operator of the licensed establishment. Marquello Anthonio Futrell, Sr. holds the establishment license for Salon and Suites at the Hill, LLC.
3. On or about December 30, 2016, the Board conducted a routine inspection at the Licensee establishment. The inspection revealed that Toleta Thomas, Brandee Brady, and Janet Davis were unlicensed renters working within the establishment. Brandee Brady's license expired on September 30, 2015. The inspection results indicated violations of 20 CSR 2085-7.040 and 20 CSR 2085-10.060. On or about January 25, 2017, the Board sent Licensee a violation notice following the December 30, 2016 inspection.
4. On or about April 20, 2017, the Board conducted a follow-up inspection at the Licensee establishment. The inspection revealed that Toleta Thomas, Brandee Brady, and Janet Davis were unlicensed renters working within the establishment. Brandee Brady's license expired on September 30, 2015. The inspection results indicated violations of 20 CSR 2085-7.040 and 20 CSR 2085-10.060. On or about May 12, 2017, the Board sent Licensee a violation notice following the April 20, 2017 inspection.
5. On or about July 20, 2017, the Board conducted a follow-up inspection at the Licensee establishment. The inspection revealed that Narita Hardy, Angela Jackson, and Rochelle Gregory were unlicensed renters working within the establishment, a violation of 20 CSR 2085-10.060. On or about August 3, 2017, the Board sent Licensee a violation notice following the July 20, 2017 inspection.
6. On or about September 27, 2018, the Board conducted a follow-up inspection at the Licensee establishment. The inspection revealed that Janet Davis was an unlicensed renter working within the establishment, a violation of 20 CSR 2085-10.060. On or about October 24, 2018, the Board sent Licensee a violation notice following the September 27, 2018 inspection.

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7. On or about November 6, 2018, the Board attempted to conduct a follow-up inspection at the Licensee establishment during normal working hours. The establishment was open for business, but the Inspector found the door to the establishment to be locked, and the operators would not let the Inspector into the establishment. The refusal to allow an establishment to be inspected is a violation of 20 CSR 2085-4.060.

8. Regulation 20 CSR 2085-4.060 states:

(1) Every establishment and school licensed by the board shall be open to inspection by members, representatives, or inspectors of the board during normal working hours or at reasonable times as requested by the board. It shall be the responsibility of the holder(s) of the establishment or school license to keep the board informed of the licensee's business hours and to make the establishment or school available for inspection by the board or its representative. Establishment or school licensees shall promptly respond to a request by the board for a list of times during which the establishment or school is open.

9. Regulation 20 CSR 2085-7.040 states, in relevant part:

(2) Renewals. Every two (2) years (biennially) the renewal application for active licensees must be completed, signed, accompanied by the appropriate renewal fee, and returned to the board office prior to the expiration date of the license. All licenses shall expire on September 30 of each odd-numbered year. Any application postmarked after September 30 will be returned and the applicant will be required to reinstate.

(A) Any cosmetologist whose license has expired who wishes to restore the License shall make application to the board by submitting the following within two (2) years of the license renewal date:

1. Reinstatement application for renewal of licensure; and
2. The current renewal fee and the late fee, as set forth in 20 CSR 2085-7.050.

10. Regulation 20 CSR 2085-10.060 states, in relevant part:

(1) Pursuant to Chapters 328 and 329, RSMo, no barber or cosmetology establishment owner, manager, or proprietor shall permit any person who does not hold a current Missouri barber or cosmetology license to practice as a barber or cosmetologist in the establishment. No license or permit issued by the board shall be posted in a licensed establishment unless the license or permit is current and active, and the licensee or permit holder is an employee of the establishment or holds a current and active renter establishment license issued by the board.

11. As a result of the violations, as described above in paragraphs 3 and 7, in violation of the statutes and regulations contained in paragraphs 8 through 10, Licensee violated lawful regulations adopted pursuant to Chapters 328 and/or 329, RSMo, for which the Board has cause to take disciplinary action against Licensee's establishment license.

12. Cause exists for the Board to take disciplinary action against Licensee's establishment license under § 329.140.2,(6) and (12), RSMo, which state 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:

13. The terms of discipline shall include that the establishment license, number 2016029668, be placed on **PROBATION** for a period of three (3) years ("disciplinary period"). During Licensee's probation, Licensee shall be entitled to operate an establishment under Chapters 328 and/or 329, RSMo, provided Licensee adhere to all of the terms of this Settlement Agreement.

I. GENERAL REQUIREMENTS

- A. Licensee shall correct all noted violations and come into compliance with the state regulations identified above within thirty (30) days of the effective date of this settlement agreement.
- B. 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 Chapters 328 and/or 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.

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- 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 license 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 Chapters 328 and/or 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 Chapters 328 and/or 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 and Examiners will maintain this Agreement as an open record of the Board as provided in Chapters 328, 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.

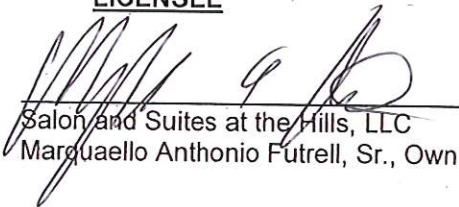
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17. If no contested case has been filed against Licensee, Licensee has the right, either at the time the settlement agreement is signed by all parties or within fifteen days thereafter, to submit the agreement to the Administrative Hearing Commission 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, United States Post Office Building, 131 W. High Street, P.O. Box 1557, Jefferson City, Missouri 65102-1557.


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 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


Salon and Suites at the Hills, LLC
Marquaello Anthonio Futrell, Sr., Owner

Date 4/18/19

BOARD


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

Date 4-23-19

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