

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

MARTIN J. WALSH,¹ Secretary of Labor,
United States Department of Labor,

Plaintiff,

v.

NEW VIP NAIL SPA, INC., VIP NEO
NAILS, INC., and VIP SPA & NAILS, INC.
(collectively, d/b/a VIP Nails & Spa); their
successors, including VIP EMERALD NAILS,
INC., d/b/a VIP Nails & Spa, as successor to
VIP Spa & Nails, Inc.; and STEVEN XINGRI
CAO,

Defendants.

Civil Action No.
22-cv-00311-WES-LDA

CONSENT JUDGMENT AND ORDER

Plaintiff, the Secretary of Labor, United States Department of Labor (the “Secretary”), has filed a Complaint in this case against Defendants New VIP Nail Spa, Inc.; VIP Neo Nails, Inc.; VIP Spa & Nails, Inc.; VIP Emerald Nails, Inc (as successor to VIP Spa & Nails, Inc.); and Steven Xingri Cao (the “Defendants”) because they: (1) unlawfully discriminated against employees for exercising rights protected by the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 *et seq.* (the “OSH Act”) and the Fair Labor Standards Act of 1938, 29 U.S.C. § 201 *et seq.* (the “FLSA”); and (2) failed to compensate employees properly and record all hours employees worked and all compensation paid to employees, in violation of the FLSA.

¹ Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Acting Secretary of Labor Julie A. Su is automatically substituted as the proper Plaintiff in this case. For ease of reference, the Acting Secretary and her pertinent predecessors will be referred to herein as the “Secretary.”

Defendants have received a copy of the Complaint and waived service of process.

The Secretary and Defendants have agreed to resolve all matters in controversy in this case and consent to this Court's entry of this Consent Judgment and Order (the "Consent Judgment"). Defendants admit to the jurisdiction of this Court over them and further admit that this Court has the authority to enforce all orders entered in this case.

The Court concludes that it has jurisdiction to enter this Consent Judgment, and the Secretary and Defendants agree to its terms.

It is therefore, ORDERED, ADJUDGED, and DECREED, that:

Injunctive Relief

1. Defendants and their agents, servants, employees, and all persons in active concert or participation with them, or acting on their interest and behalf are hereby permanently enjoined and restrained from violating the provisions of Section 11(c)(1) of the OSH Act, 29 U.S.C. § 660(c)(1), and Section 15(a)(3) of the FLSA, 29 U.S.C. § 215(a)(3), including, without limitation, in any of the following manners:
 - a. Terminating or threatening to terminate any employee because the employee engaged in or is about to engage in protected activity under the OSH Act or FLSA;
 - b. Disciplining or threatening to discipline any employee because the employee engaged in or is about to engage in protected activity under the OSH Act or FLSA;
 - c. Making any employee's working conditions less favorable, including by reducing their hours of work or pay, because the employee engaged in or is about to engage in protected activity under the OSH Act or FLSA;
 - d. Threatening, harassing, coercing, or intimidating (or influencing any other person to threaten, harass, coerce, or intimidate) any employee, former employee, family

member of an employee or former employee, or any other person with a close or familial-type relationship with an employee or former employee, because the employee or former employee engaged in or is about to engage in protected activity under the OSH Act or FLSA;

e. Inflicting physical harm or verbal abuse on any employee or former employee, a family member of an employee or former employee, or any other person with a close or familial-type relationship with an employee or former employee, because the employee or former employee engaged in or is about to engage in protected activity under the OSH Act or FLSA;

f. Reporting or threatening to report any employee or former employee, family member of an employee or former employee, or any other person with a close or familial-type relationship with an employee or former employee, to immigration or law enforcement authorities, or to have the employee, former employee, family member, or any other person with a close or familial-type relationship with an employee or former employee, deported because the employee or former employee engaged in or is about to engage in protected activity under the OSH Act or FLSA;

g. Using against any employee or former employee, a family member of an employee or former employee, or any other person with a close or familial-type relationship with an employee or former employee, their immigration status, citizenship, work authorization status, or lack of government documents (including a driver's license) because the employee or former employee engaged in or is about to engage in protected activity under the OSH Act or FLSA;

h. Disparaging or threatening to disparage any employee or former employee to other employers, or otherwise interfering with that employee or former employee's ability to

obtain other employment, because the employee or former employee engaged in or is about to engage in protected activity under the OSH Act or FLSA;

i. Instructing any employee or former employee not to speak to, or to provide false information to, the Secretary or the Monitor (as defined in Paragraph 12 of this Consent Judgment), or otherwise seeking to influence any employee or former employee with respect to their participation in any audit by the Monitor or any investigation conducted or legal proceeding brought by the Secretary;

j. Otherwise discriminating in any way against any employee or former employee because: (i) the employee or former employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to the OSH Act or the FLSA, has testified or is about to testify in any such proceeding, or has otherwise engaged in protected activity under the OSH Act or the FLSA; (ii) the employee or former employee has objected to or refused to participate in any activity, policy, or practice which the employee or former employee reasonably believes is in violation of the OSH Act or the FLSA; or (iii) Defendants believe the employee or former employee may engage in protected activity under the OSH Act or the FLSA in the future; or

k. Taking action that would chill, prevent, inhibit, or dissuade any employee or former employee from engaging in protected activity under the OSH Act or FLSA.

2. Defendants and their agents, servants, employees, and all persons in active concert or participation with them, or acting on their interest and behalf shall cooperate with the Secretary in any investigation conducted pursuant to Sections 8(a) or 11(c) of the OSH Act, 29 U.S.C. §§ 657(a) and 660(c), or Section 11(a) of the FLSA, 29 U.S.C. § 211(a). Defendants shall provide truthful responses and other information and documents to the Secretary. Defendants

shall provide the Secretary access to all records that are required to be maintained pursuant to the OSH Act, the FLSA, and the Secretary's regulations, and shall provide access to other information necessary for the Secretary to conduct a proper and complete investigation.

3. Defendants and their agents, servants, employees, and all persons in active concert or participation with them, or acting on their interest and behalf are hereby permanently enjoined and restrained from violating the provisions of the FLSA in any of the following manners:

a. Defendants shall not, contrary to Sections 6 and 15(a)(2) of the FLSA, 29 U.S.C. §§ 206 and 215(a)(2), pay any employees who, in any workweek, are engaged in commerce or in the production of goods for commerce, or who are employed in an enterprise engaged in commerce or in the production of goods for commerce, within the meaning of the FLSA, wages at rates less than the applicable minimum wage.

b. Defendants shall not, contrary to Sections 7 and 15(a)(2) of the FLSA, 29 U.S.C. §§ 207 and 215(a)(2), employ any employees who in any workweek are engaged in commerce or in the production of goods for commerce, or who are employed in an enterprise engaged in commerce or in the production of goods for commerce, within the meaning of the FLSA, for workweeks longer than forty hours, unless such employees receive compensation for their employment in excess of forty hours at a rate not less than one and one-half times the employees' regular rates of pay.

c. Defendants shall not fail to make, keep, and preserve records of employees and of the wages, hours, and other conditions and practices of employment maintained by Defendants as prescribed by the regulations issued, and from time to time amended, pursuant to Sections 11(c) and 15(a)(5) of the FLSA, 29 U.S.C. §§ 211(c) and

215(a)(5), and found in Title 29, Part 516 of the Code of Federal Regulations.

d. Defendants are restrained from withholding the back wages owed under this Consent Judgment pursuant to Section 17 of the FLSA, 29 U.S.C. § 217.

4. Defendants shall not, under any circumstances, solicit repayment of any amount paid to any employee in connection with this Consent Judgment. If any such amount is received from any employee, then Defendants shall immediately remit such amount to the United States Department of Labor, Wage and Hour Division, 135 High Street, Room 210, Hartford, CT 06103-1111, Attention: District Director.

5. Except as explicitly provided in Section 9(f) of this Consent Judgment, until Defendants have fully satisfied their monetary obligations under this Consent Judgment, Defendants are restrained and enjoined from: (1) transferring their interest in, ownership of, or control of any entity in which they presently hold such interest, ownership, or control; (2) transferring or encumbering any real estate held by themselves individually or by entities otherwise owned or controlled by them; (3) authorizing, receiving, or making distributions or dividend payments from any entity owned or controlled by them; (4) increasing the salaries or other compensation paid to Defendant Steven Xingri Cao or Laura Li; (5) increasing the salaries or other compensation paid to any immediate family members of either Defendant Cao or Laura Li, other than in the ordinary course of business; and (6) making transfers of money, property, or assets among themselves or any entities owned or controlled by them except to the extent needed for Defendants' reasonable operational purposes or as shown to be normal and customary payments of salary or other compensation.

Payment of Monetary Damages Under the OSH Act and FLSA

6. The Court finds that certain of Defendants' current and former employees are due

back wages, liquidated damages, compensatory damages, emotional distress damages, and punitive damages totaling \$753,500.00, as described in greater detail below. The total damages of \$753,500.00 consist of: (1) \$191,500.00 in compensatory damages, emotional distress damages, and punitive damages under the OSH Act plus applicable interest (as described in Paragraph 7 of this Consent Judgment); and (2) \$562,000.00 in back wages, liquidated damages, and punitive damages under the FLSA plus applicable interest (as described in Paragraph 8 of this Consent Judgment).

Monetary Damages Under the OSH Act

7. The Court finds that the following individuals are due the following amounts as a result of Defendants' unlawful retaliation under Section 11(c) of the OSH Act: (1) Wing Ting Wong is due compensatory damages, emotional distress damages, and punitive damages in the total amount of \$168,000.00 plus 3% per annum interest on any unpaid balance; and (2) Meixue Lin is due punitive damages in the total amount of \$23,500.00 plus 3% per annum interest on any unpaid balance. Defendants shall satisfy the compensatory damages, emotional distress damages, and punitive damages provisions of this Paragraph 7 as follows:

a. Defendants shall pay the Secretary a total of \$168,000.00 plus 3% per annum interest on any unpaid balance for Wing Ting Wong. This payment is comprised of the following amounts: \$68,000.00 in compensatory damages plus 3% per annum interest on any unpaid balance, from which Defendants shall make deductions for Wong's share of social security and federal withholding taxes; \$50,000.00 in emotional distress damages plus 3% per annum interest on any unpaid balance, from which Defendants and the Secretary shall not make deductions; and \$50,000 in punitive damages plus 3% per annum interest on any unpaid balance, from which Defendants and the Secretary shall not make deductions.

B. Defendants shall pay to the Secretary a total of \$23,500.00 plus 3% per annum interest on any unpaid balance for Meixue Lin, from which Defendants and the Secretary shall not make deductions.

Monetary Damages Under the FLSA

8. The Court finds that Defendants' employees are due punitive damages in the amount of \$12,000.00 for Defendants' violations of Section 15(a)(3) of the Act, 29 U.S.C. § 215(a)(3), and that Defendants' employees are due overtime compensation under the FLSA in the amount of \$550,000.00 (inclusive of \$275,000.00 in back wages and \$275,000.00 in liquidated damages), as shown on the attached Exhibit A1, which is incorporated in and made a part of this Consent Judgment. Defendants are restrained from withholding said back wages and shall pay, jointly and severally, said back wages, punitive and liquidated damages, plus applicable interest, in accordance with the terms set forth herein.

a. Defendants represent that, to the best of their knowledge and following diligent review and inquiry, they have complied with the FLSA since August 22, 2023. In resolving the amount of back wages and liquidated damages in this Consent Judgment, the Secretary has relied on this representation and, accordingly, the back wage and liquidated damages provisions of this Consent Judgment shall have no effect upon any back wages and liquidated damages which may have accrued after August 22, 2023. If this representation is determined to be false, and Defendants are found to be in violation of the FLSA after August 22, 2023, civil money penalties may be owed, in addition to back wages, liquidated damages, and other damages as appropriate.

b. The punitive damages, back wages, and liquidated damages provisions of this Paragraph 8 of the Consent Judgment shall be deemed satisfied when Defendants pay to the

Secretary: (1) \$12,000.00 in punitive damages plus 3% per annum interest on any unpaid balance, from which Defendants and the Secretary shall not make deductions; (2) \$275,000.00 in gross back wages plus 3% per annum interest on any unpaid balance, from which deductions for Defendants' employees' share of social security and federal withholding taxes will be made by the Secretary; and (3) \$275,000.00 in liquidated damages plus 3% per annum on any unpaid balance, from which Defendants and the Secretary shall not make deductions.

c. Defendants, jointly and severally, shall further pay the employers' share of FICA to the appropriate authorities for the back wages paid pursuant to this Consent Judgment.

d. Within ten days after the parties fully execute this Consent Judgment, Defendants shall deliver to the United States Department of Labor, Wage and Hour Division at the address set forth in Paragraph 9(d) of this Consent Judgment a statement showing the following: Defendants' Federal tax ID numbers, the name of each employee listed in Exhibit A1, and each employee's current address and social security number (only to the extent currently known by Defendants).

e. When recovered wages or liquidated damages have not been claimed by an employee within three years, because of inability to locate the employee or because of the employee's refusal to accept those sums, the Secretary shall deposit the wages or liquidated damages into the United States Treasury as miscellaneous receipts under 29 U.S.C. § 216(c).

Payment Procedures

9. Defendants shall pay the monetary damages due under this Consent Judgment in two installments as follows: (1) Defendants shall pay \$520,000.00 to the Secretary within 14 days after entry of this Consent Judgment; and (2) Defendants shall pay \$233,500.00 plus accrued interest to the Secretary on or before the Second Installment Due Date (as defined in

Paragraph 9(f)(v) of this Consent Judgment).

a. Defendants shall pay the installments due under this Paragraph 9 of this Consent Judgment by delivering the following payments to the Occupational Safety and Health Administration (“OSHA”) and Wage and Hour Division (“WHD”):

i. Defendants shall pay the first installment by delivering a payment of \$191,500.00 to OSHA and a payment of \$328,500.00 to WHD [$191,500.00 + 328,500.00 = 520,000.00$] within 14 days after entry of this Consent Judgment.

ii. Defendants shall pay the second installment by delivering a payment of \$233,500.00 to WHD on or before the Second Installment Due Date.

b. The payments received by the Secretary under this Consent Judgment will first be allocated to punitive damages plus applicable interest, second to emotional distress damages plus applicable interest, third to liquidated damages plus applicable interest, fourth to compensatory damages plus applicable interest, and fifth to back wages plus applicable interest.

c. Defendants shall make all payments due to OSHA under this Consent Judgment by sending the applicable checks, IRS W-2 form, and IRS 1099 forms to the United States Department of Labor, Occupational Safety and Health Administration, Attn: Kristen Rubino, J1530 Atwood Ave., P.O. Box 19760, Johnston, RI 02919. Defendants will comply with all applicable tax laws in making such payments. The Secretary will provide the checks and forms to Wing Ting Wong and Meixue Lin. The Secretary will not provide any tax advice to Wing Ting Wong and Meixue Lin, but the Secretary will instruct them that they should comply with the applicable tax laws.

d. Defendants shall make all payments due to WHD under this Consent Judgment online by ACH transfer, credit card, debit card, or digital wallet by going to

<https://pay.gov/public/form/start/77689032> or by going to <http://www.pay.gov> and searching for WHDBWNE. Alternatively, payments may be made in the form of certified checks made payable to “Wage and Hour Division—Labor” and delivered to the United States Department of Labor, Wage and Hour Division, The Curtis Center, Suite 850 West, 170 South Independence Mall West, Philadelphia, PA 19106-3317.

e. Any such checks shall have Case Number 1922096 written on the face of the checks.

f. Defendant Cao agrees to sell the Property (as defined below) as a source of funds for Defendants’ second installment payment due under this Consent Judgment. Defendant Cao shall sell the Property in an arms-length transaction for a monetary amount that is at least equal to the fair market value of the Property.

i. The “Property” means the real property located at 1605 Douglas Ave, Unit 1, North Providence, RI, 02904 (North Providence, RI Map/Lot 22-1333-A-TH1), including all land, structures, fixtures, improvements, appurtenances, parking spaces, easements, interests in limited common elements and common elements, and all other property interests currently associated with the Property.

ii. Within 10 days after entry of this Consent Judgment, Defendant Cao shall begin to actively list and market the Property for sale and continue to do so from that time until the date that he closes on a sale of the Property (the “Closing Date”). Defendant Cao agrees to use all diligent and reasonable efforts to close the sale of the Property on or before the date that is 120 days after the date of entry of this Consent Judgment. The Secretary has relied on Defendant Cao’s representations in this Paragraph 9(f)(ii) as a material inducement to enter into this Consent Judgment.

iii. Within one day after executing any purchase and sale agreement for the Property, Defendant Cao shall deliver a copy of the purchase and sale agreement by email to the following recipients at the U.S. Department of Labor: Miller.Scott.M@dol.gov; and bos-sol-ecf@dol.gov.

iv. Within one day after the Closing Date, Defendant Cao shall deliver to the Secretary the final settlement statement for the Property at closing, which shall include all customary entries found on a standard HUD-1 settlement statement and shall be sufficient to identify all closing costs, adjustments, and proceeds. Defendant Cao shall deliver the settlement statement to the Secretary by email to the following recipients: Miller.Scott.M@dol.gov; and bos-sol-ecf@dol.gov.

v. The date for Defendants to make the second installment payment to the Secretary under this Consent Judgment (the “Second Installment Due Date”) shall be the earlier of the following: (1) the date that is 180 days after entry of this Consent Judgment; and (2) the date that is five days after the Closing Date.

Additional Provisions

10. Until Defendants have finished making all payments due under this Consent Judgment, Defendants shall post complete copies of this Consent Judgment, and the notices attached as Exhibits A2, A3, and A4 to this Consent Judgment (explaining employees’ rights under the OSH Act and the FLSA in English, Spanish, and Korean) at each of Defendants’ places of business in a location where other labor and employment law notices are posted or in a prominent location at the worksite. Within 30 days after the execution of this Consent Judgment, Defendants shall notify the Secretary in writing at the address set forth in Paragraph 4 of this Consent Judgment that these postings have been made.

11. Defendants shall immediately and permanently remove from any files, including personnel files, all references to any adverse action that was taken against Wing Ting Wong and/or Meixue Lin in this matter.

12. Within 30 days after entry of this Consent Judgment, Defendants shall engage and retain at their expense an independent payroll monitor (the “Monitor”) acceptable to the Secretary. The Monitor shall have expertise in compliance with the FLSA. Defendants shall retain the Monitor for two years or until Defendants have finished making all payments in accordance with this Consent Judgment, whichever is later (the “Monitor’s Term”).

a. The Monitor shall audit Defendants’ payroll records and wage and hour practices to evaluate Defendants’ compliance with the FLSA and this Consent Judgment. As part of the audits, the Monitor shall have authority to review Defendants’ time, payment, and other records, conduct confidential interviews with employees, and inspect Defendants’ Nail Salons (as defined in Paragraph 13 of this Consent Judgment) without notice during regular business hours. Defendants shall produce all time, payment, and other records as may be requested by the Monitor within 72 hours after the Monitor’s request.

b. Defendants shall not seek to determine whether employees have communicated with the Monitor or to discover the content of any such communications. Employees shall have the right to speak with the Monitor confidentially.

c. The Monitor shall audit Defendants in accordance with this Consent Judgment for the period from August 1, 2023 through the end of calendar quarter that precedes the end of the Monitor’s Term. The Monitor shall audit Defendants’ practices at least quarterly. Except for the first audit, each audit shall cover Defendants practices for the immediately preceding calendar quarter. The Monitor’s first audit and written report shall cover the period

from August 1, 2023 through the end of the fourth quarter of calendar year 2023 (i.e., December 31, 2023).

d. Following each audit, the Monitor shall deliver a written report of its audit findings to Defendants. The Monitor shall deliver each audit report to Defendants no later than the first day of the second month following the end of each quarter. For example, the Monitor shall deliver its first audit report to Defendants on February 1, 2024, deliver its second audit report (for the first quarter of calendar year 2024—i.e., January 1 to March 31, 2024) to Defendants no later than May 1, 2024, deliver its third audit report (for the second quarter of calendar year 2024—i.e., April 1 to June 30, 2024) to Defendants no later than August 1, 2024, and so on.

e. In each report, the Monitor shall: (1) detail any areas in which Defendants have failed to comply with the FLSA; (2) compute any back wages due; and (3) recommend any other actions that Defendants must take to remedy their lack of compliance, if any, and ensure their future compliance with the FLSA. If back wages are due, the Defendants and the Monitor shall ensure that back wage checks are issued to the affected employees.

f. Defendants and the Monitor shall provide copies of the Monitor's reports to the Secretary upon the Secretary's request. At the completion of the Monitor's Term, Defendants shall provide notice to the Secretary at the address set forth in Paragraph 4 of this Consent Judgment that all audits have been completed in accordance with the provisions of this agreement.

g. Defendants agree that the Monitor and the Secretary may discuss matters concerning Defendants compliance with the FLSA at any time. The Monitor shall share Defendants' pay and time records with the Secretary upon the Secretary's request within five

days after any such request.

13. Within 30 days after entry of this Consent Judgment, Defendants shall engage the Rhode Island Department of Health, Work Safer Health & Safety Consultation Program, at 3 Capitol Hill, Providence, RI 02908, phone number (401) 222-5960, or an equivalent independent safety and health consultant (the “S&H Consultant”), to perform a comprehensive safety and health audit at each of Defendants’ Nail Salons. For purposes of this Consent Judgment, “Nail Salons” means nail salons or spas that are under the ownership, management, or control of one or more of the Defendants, including, but not limited to, the nail salon (VIP Nails & Spa) located at 545 Main Street, East Greenwich, Rhode Island.

a. As part of each safety and health audit, the S&H Consultant shall: (1) perform a comprehensive (i.e., wall-to-wall) walk-through inspection of the Nail Salons to evaluate potential safety and health hazards to employees; and (2) evaluate the effectiveness (with regard to content and implementation) of Defendants’ safety and health programs (including, without limitation, with respect to hazardous chemicals) at each Nail Salon.

b. After completing each safety and health audit, the S&H Consultant shall prepare a detailed written report of the S&H Consultant’s findings and recommended actions concerning potential safety and health hazards that the S&H Consultant identified, which reports shall, upon completion, be provided to Defendants. Defendants shall implement the S&H Consultant’s safety and health recommendations at the Nail Salons within 30 days after Defendants receive the S&H Consultant’s written report; provided, however, that Defendants shall abate any imminent danger identified by the S&H Consultant as soon as possible. As part of this implementation, Defendants shall ensure all employees receive hazard communication training on the chemicals used at the Nail Salons. Defendants shall also provide hazard

communication training to future employees at the inception of their employment.

c. Defendants shall ensure that the S&H Consultant: (i) completes the safety and health audits of all Nail Salons within 90 days after entry of this Consent Judgment; and (ii) completes and delivers their written report of their safety and health findings and recommendations to Defendants within 120 days after entry of this Consent Judgment. Defendants shall provide copies of the S&H Consultant's written audit report(s) to the Occupational Safety and Health Administration ("OSHA") upon request.

14. Within 30 days after entry of this Consent Judgment, Defendant Steven Xingri Cao shall write separate letters of full apology to Wing Ting Wong and Meixue Lin.

15. Defendants shall arrange for Defendants and other nail salon owners, principal, and managers to attend in-person presentations by representatives of the Secretary concerning compliance with the OSH Act and FLSA.

a. At the meeting, OSHA and WHD shall have the opportunity to present information on the requirements of the OSH Act and FLSA, distribute compliance assistance materials, and answer questions. OSHA and WHD shall present on employers' obligations under the OSH Act and FLSA and remedies available to the Secretary and employees under the OSH Act and FLSA, including but not limited to the anti-retaliation requirements of those statutes. Defendants agree that OSHA and WHD may also discuss the details of the Secretary's investigations, lawsuit, and Consent Judgment with Defendants in this case and as part of their presentations.

b. Within 30 days after entry of this Consent Judgment, Defendants shall: (i) invite nail salon owners, principals, and managers from at least seven different nail salons (in addition to the Nail Salons) to the meeting; and (ii) provide written notice to the Secretary (at the

address set forth in Paragraph 9(c) of this Consent Judgment) of the names of the individuals whom Defendants invited to the meeting, as well as the names and addresses of the nail salons that those individuals own, manage, or represent. Defendants shall use diligent efforts to ensure that the meeting occurs within 60 days of the entry of this Consent Judgment or, if that is not possible, as soon as practicable thereafter. Defendant Steven Xingri Cao and the owners of the corporate Defendants in this case shall be required to attend the meeting.

c. Defendants shall cooperate with the Secretary and the other nail salon owners concerning the location, timing, and logistics of the meeting and to maximize attendance at the meeting.

d. The Secretary shall have the right to reschedule the meeting if it appears that it will not be attend by, or is not attended by, the owners of at least five nail salons in addition to Defendants.

16. Defendants will provide at least three hours of training on the requirements of Section 11(c) of the OSH Act and Section 15(a)(3) of the FLSA to each of their principals, managers, and all other supervisory employees (“Anti-Retaliation Training”). Defendants shall complete the Anti-Retaliation Training required by this Paragraph 16 of the Consent Judgment within 90 days after entry of this Consent Judgment.

a. The Anti-Retaliation Training shall include instruction on at least the following topics as they relate to Section 11(c) of the OSH Act and Section 15(a)(3) of the FLSA: the text and purposes of the statutory provisions; the obligations and requirements on employers and other persons and the protections afforded to employees and former employees under the statutory provisions; and the legal elements of unlawful retaliation under Section 11(c) of the OSH Act and Section 15(a)(3) of the FLSA with examples that may constitute unlawful

retaliation. With regard to the Section 11(c) of the OSH Act, the Anti-Retaliation Training shall include instruction on justified work refusals as protected activity, the requirements of 29 C.F.R. Part 1977, and all topics included in the OSHA 11(c) Desk Aid, which may be found at <https://www.osha.gov/sites/default/files/11cDeskAid.pdf>.

b. The Anti-Retaliation Training shall be conducted by a person/entity knowledgeable about the requirements of Section 11(c) of the OSH Act and Section 15(a)(3) of the FLSA.

c. Within 15 after completing the Anti-Retaliation Training for all required individuals, Defendants shall provide copies of the training materials and attendance sheets with signatures of all individuals who attended to the Secretary at the address set forth in Paragraph 9(c) of this Consent Judgment.

17. In agreeing to the monetary terms of this Consent Judgment, the Secretary has relied on the financial documents and information that Defendants have provided to the Secretary, including financial declarations, tax returns, and bank statements. All the responses, documents, and information that Defendants have provided to the Secretary concerning Defendants' finances, and lack of responses to the Secretary's requests for financial documents and information (including, without limitation, those provided through Defendants' counsel) are collectively referred to herein as "Defendants' Financial Representations." Defendants acknowledge that the Secretary has relied on the accuracy and authenticity of Defendants' Financial Representations in agreeing to the monetary provisions of this Consent Judgment. By email to Defendants' counsel on January 18, 2024, the Secretary provided Defendants a statement of the total amount of back wages, liquidated damages, punitive damages, compensatory damages, and emotional distress damages calculated by the Secretary as due in

this litigation for the period up to and including August 22, 2023 (this total amount is referred to herein as the “Calculated Amount”). The Secretary and Defendants agree that if at any future time there is a judicial determination that Defendants’ Financial Representations are materially inaccurate or false, and that Defendants knew or should have known before executing this Consent Judgment that the Defendants’ Financial Representations were inaccurate or false, the monetary damages due shall be amended by operation of this Consent Judgment from \$753,500.00 plus applicable interest to the full Calculated Amount plus applicable interest, and the full Calculated Amount plus applicable interest shall become immediately due and payable to the Secretary. Defendants agree that upon the Secretary’s reasonable belief that Defendants’ Financial Representations were materially false or inaccurate, the Secretary has the right to seek a determination from this Court as to the inaccuracy or falsity of Defendants’ Financial Representations, Defendants’ knowledge and constructive knowledge thereof, and the materiality or the inaccuracy or falsity of those representations. Defendants further agree that the United States District Court for the District of Rhode Island has jurisdiction, and that venue is proper in that judicial district for any litigation concerning the provisions of this Paragraph 17 of the Consent Judgment. Defendants further waive any statute of limitations defense that may otherwise bar the Secretary’s ability to obtain relief under this Paragraph 17 of the Consent Judgment. For the purposes of this Paragraph 17 of the Consent Judgment, Defendants waive any challenge to the merits of the Calculated Amount, and agree that the inquiry before the Court under this Paragraph 17 of the Consent Judgment shall be limited to whether Defendants’ Financial Representations were inaccurate or false, their knowledge and constructive knowledge thereof, and the materiality of the inaccuracy or falsity of the representations. Defendants agree that the provisions of this Paragraph 17 of the Consent Judgment do not limit the ability of the

United States, including any of its agencies or departments, to seek any other relief, or to seek relief in another court or venue, concerning any inaccuracy or falsity in Defendants' Financial Representations.

18. In the event Defendants fail to make any payment required by this Consent Judgment within 10 days after it is due, and are not otherwise up-to-date on the total owed under this Consent Judgment, then Defendants consent to the entry of a Writ of Execution, pursuant to Federal Rule of Civil Procedure 69, to enforce the monetary terms of this Consent Judgment. The Secretary may seek such a writ at any time after the entry of this Consent Judgment and may represent in filing for such a writ that Defendants consent to its issuance. Upon request from the Secretary, Defendants agree to furnish a complete and accurate list of their real, personal, and business property, including bank accounts and account numbers, with an estimated value of \$2,000.00 or more and the locations of such property for purposes of the Secretary seeking a Writ of Execution in accordance with this Paragraph 18 of the Consent Judgment.

19. If Defendants fail to comply with any of the non-monetary terms of this Consent Judgment, and do not completely cure such failure within 10 days after receipt of written notice from the Secretary, any such failure shall cause the total amount due under the Consent Judgment, less any amounts paid, to be immediately due and payable. This provision is in addition to, and not in place of, any additional back wages, liquidated damages, civil money penalties, and any other appropriate relief that may be owed for any future violations of the OSH Act and/or FLSA by Defendants.

20. Each party shall bear its own costs and expenses, including attorneys' fees, arising in connection with any stage of this civil action.

21. Nothing in this Consent Judgment is binding on any governmental agency or

claimant other than the Secretary.

22. Nothing in this Consent Judgment abrogates Defendants' rights under the United States Constitution.

23. Nothing in this Consent Judgment precludes the Secretary from using evidence discovered in the investigation that led to the Complaint in this case in any future investigation, enforcement action, or legal action.

SO ORDERED, this 22 day of February, 2024.



Honorable William E. Smith
United States District Judge
District of Rhode Island

Respectfully submitted,

For the Secretary:

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