

**SETTLEMENT AGREEMENT BETWEEN
THE UNITED STATES OF AMERICA
AND
HAPPY FEET NAILS AND SPA
UNDER THE AMERICANS WITH DISABILITIES ACT
DJ # 202-08-359
USAO No. 2022V00471**

I. BACKGROUND

1. The parties to this Settlement Agreement are the United States of America and Happy Feet Nails & Spa By An LLC (“Happy Feet”).
2. This matter was initiated by a complainant (“Complainant”), who filed a complaint with the United States Department of Justice, alleging that Happy Feet discriminated against her friend who was an individual in a wheelchair (“Customer”), on the basis of her disability, in violation of Title III of the Americans with Disabilities Act of 1990, as amended (“ADA”), 42 U.S.C. §§ 12181-12189. Specifically, Complainant alleges that Happy Feet did not provide Customer full and equal access to the nail services they offer.
3. The parties agree that it is in their best interest, and the United States believes that it is in the public interest, to resolve this dispute. The parties have therefore voluntarily entered into this Settlement Agreement, agreeing as follows:

II. TITLE III COVERAGE AND DETERMINATIONS

4. The Attorney General is responsible for enforcing Title III of the ADA, 42 U.S.C. §§ 12181-12189, and the relevant regulation implementing Title III, 28 C.F.R. Part 36.
5. Customer had a physical impairment that substantially limited one or more major life activities. Specifically, Customer had paraplegia, used a wheelchair, and had a brace to help control hand function. Accordingly, she was a person with a disability within the meaning of 42 U.S.C. § 12102 and 28 C.F.R. § 36.105.
6. Happy Feet is located at 40930 N. Ironwood Drive, #101, San Tan Valley, Arizona 85140.
7. Happy Feet is a public accommodation within the meaning of the ADA, 42 U.S.C. § 12182(a), 28 C.F.R. § 36.104, because it owns, leases, leases to, or operates a place of public accommodation, specifically, a nail salon. *See* 42 U.S.C. § 12181(7); 28 C.F.R. § 36.104(6). It is therefore subject to Title III of the ADA, 42 U.S.C. §§ 12181-12189, and its implementing regulation, 28 C.F.R. Part 36.
8. Under Title III of the ADA, no individual shall be discriminated against on the basis of disability, in the full and equal enjoyment of the goods, services, facilities, privileges, and

accommodations of any place of public accommodation by any person who owns, operates, leases, or leases to a place of public accommodation. 42 U.S.C. § 12182(a); 28 C.F.R. § 36.201(a).

9. Under Title III of the ADA, it is discriminatory to exclude or otherwise deny equal goods, services, facilities, privileges, advantages, accommodations, or opportunities to an individual or entity because of the known disability of an individual with whom the individual or entity is known to have a relationship or association. 42 U.S.C. § 12182(b)(1)(E); 28 C.F.R. § 36.205.
10. Ensuring that nail salons do not discriminate on the basis of disability is an issue of general public importance. The United States is authorized to investigate alleged violations of Title III of the ADA and to bring a civil action in federal court in any case that involves a pattern or practice of discrimination or that raises an issue of general public importance. 42 U.S.C. § 12188(b).
11. As a result of its investigation, the United States has determined the following:
 - a. Customer used a motorized wheelchair and a hand brace to help control hand function.
 - b. On or about February 17, 2022, after Complainant had called Happy Feet to make sure the business was accessible for Customer, Customer and Complainant visited Happy Feet, where Customer requested a manicure and Complainant requested a manicure and a pedicure.
 - c. During the investigation of this matter, Customer and Complainant alleged that Happy Feet did not provide Customer a full manicure service because of her disability. Customer and Complainant further alleged that Happy Feet instructed Customer to wait outside after her manicure, where she sat for approximately 1.5 hours while Happy Feet completed Complainant's manicure and pedicure. Meanwhile, Customer and Complainant alleged, the spot Customer occupied in her wheelchair inside the salon remained vacant the entire time she waited outside. During Complainant's remaining treatment, staff continuously asked Complainant if she was going to pay for Customer's treatment. Complainant did pay for both her own and Customer's treatments.
12. The United States has determined that Happy Feet discriminated against Customer by denying her a full manicure service because she used a wheelchair and did not have complete hand function, in violation of 42 U.S.C. § 12182 and 28 C.F.R. § 36.201(a).
13. The United States has determined that Happy Feet discriminated against Complainant by denying her equal goods, services, facilities, privileges, advantages, or opportunities

because of the known disability of Customer with whom Complainant was known to have a relationship or association, in violation of 42 U.S.C. § 12182(b)(1)(E) and 28 C.F.R. § 36.205.

14. Complainant is an aggrieved person pursuant to 42 U.S.C. § 12188(b)(2)(B).
15. The United States has unfortunately learned that Customer passed away on or about April 16, 2023.
16. By entering into this Settlement Agreement, Happy Feet does not admit any allegation made by the United States; nor does Happy Feet admit liability, wrongdoing, or violation of the ADA.
17. The United States and Happy Feet agree that this Settlement Agreement has been negotiated by the Parties in good faith, that settlement of this matter will avoid litigation between the Parties, and that this Settlement Agreement is fair, reasonable, and in the public interest.

III. ACTIONS TO BE TAKEN BY HAPPY FEET

18. Happy Feet will not discriminate against any individual on the basis of disability, including individuals who use a wheelchair or other assistive device, in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations offered at the current or any future Happy Feet locations, consistent with Title III of the ADA, 42 U.S.C. § 12182, and its implementing regulation, 28 C.F.R. Part 36.
19. Within 30 days of the effective date of this Agreement, Happy Feet will adopt the following policy:

Happy Feet does not discriminate and provides services to persons with disabilities, including persons who use wheelchairs and who don't have complete hand or feet function. Happy Feet will modify its services as necessary to accommodate individuals with disabilities unless the modification is unreasonable and would fundamentally alter the nature of Happy Feet's services.
20. Happy Feet will maintain and enforce the non-discrimination policy for the duration of this Agreement. This policy statement will be conspicuously posted in the reception area of each current and future Happy Feet facility and on the company's webpage, currently located at <https://placejuice.com/happy-feet-nails-and-spa-pg8jioo>, for the duration of this Agreement.

21. Within 90 days of the effective date of this Agreement, and then again one year later, Happy Feet will provide the nondiscrimination policy to each employee, contractor, staff, and agent (collectively, "Staff"), and discuss with them wheelchair users and disability discrimination in general, in the language(s) that Staff understand. Prior to providing such training, Happy Feet shall submit the proposed training materials to the United States for review and approval. The proposed materials may be submitted to Assistant United States Attorney Bill Solomon at william.solomon@usdoj.gov.
22. In addition, Happy Feet will ensure that all new employees, contractors, and agents receive the nondiscrimination policy in paragraph 19 and have it explained to them within 30 days of their start date.
23. Happy Feet shall maintain, for the duration of this Agreement, a record of each request for modification it receives from customers with disabilities where Happy Feet declines to provide the requested modification, along with the basis for refusal. Happy Feet agrees to make this record available to the United States upon request.
24. Within 14 days after receiving Complainant's signed release (a blank release form is attached as **Exhibit A**), Happy Feet will send a check as follows:
 - a. A check for \$1,000.00 made out to Complainant. This check compensates Complainant pursuant to 42 U.S.C. § 12188(b)(2)(B) for the effects of the associational discrimination she has endured because of Happy Feet's discriminatory action.
25. The check shall be mailed or hand-delivered to:

Assistant United States Attorney Bill C. Solomon
40 N. Central Avenue, Suite 1800
Phoenix, Arizona 85004
26. Happy Feet will not withhold taxes from the monetary award, and Complainant will accept responsibility for taxes due and owing, if any, on the monetary award. Happy Feet will issue to Complainant an IRS Form 1099 reflecting the amount paid to her.
27. Within seven days of receipt of any future complaint related to any alleged violation of the ADA or related to an action which, if substantiated, would be disability-based discrimination, Happy Feet shall send written notification to counsel for the United States with a copy of any such complaint (or, if an oral complaint was made, a description of the complaint) and a complete copy of Happy Feet's response, if any.
28. If any issue arises that affects the anticipated completion dates set forth in paragraphs 19, 21, 24, or 27, Happy Feet will immediately notify the United States of the issue, and the parties will attempt to resolve the issue in good faith.

IV. OTHER PROVISIONS

29. In consideration for the Agreement set forth above, the United States will close its investigation of Happy Feet and will not institute a civil action at this time alleging discrimination based on the determinations set forth in paragraphs 12 and 13. However, the United States may review Happy Feet's compliance with this Agreement or Title III of the ADA at any time. If the United States believes that Title III of the ADA, this Agreement, or any portion of it has been violated, it may commence a civil action in the appropriate U.S. District Court to enforce this Agreement and/or Title III of the ADA.
30. Failure by the United States to enforce any provision of this Agreement is not a waiver of its right to enforce any provisions of this Agreement.
31. If any term of this Agreement is determined by any court to be unenforceable, the other terms of this Agreement shall nonetheless remain in full force and effect, provided, however, that if the severance of any such provision materially alters the rights or obligations of the parties, the United States and Happy Feet shall engage in good faith negotiations in order to adopt mutually agreeable amendments to this Agreement as may be necessary to restore the parties as closely as possible to the initially agreed upon relative rights and obligations.
32. This Agreement is binding on Happy Feet, including all principals, owners, agents, executors, administrators, representatives, employees, successors in interest, beneficiaries, and assignees.
33. This Agreement constitutes the entire agreement between the United States and Happy Feet on the matters raised herein, and no prior or contemporaneous statement, promise, or agreement, either written or oral, made by any party or agents of any party, that is not contained in this written agreement, including any attachments, is enforceable. This Agreement can only be modified by mutual written agreement of the parties.
34. This Agreement does not constitute a finding by the United States that Happy Feet is in full compliance with the ADA. This Agreement is not intended to remedy any other potential violations of the ADA or any other law that is not specifically addressed in this Agreement, including any other claims for discrimination on the basis of the use of a wheelchair or the use of a hand brace. Nothing in this Agreement relieves Happy Feet of its obligation to fully comply with the requirements of the ADA.
35. Happy Feet shall not discriminate or retaliate against any person because of his or her participation in this matter.

V. EFFECTIVE DATE/TERMINATION DATE

36. The effective date of this Agreement is the date of the last signature below.

37. The duration of this Agreement will be two years from the effective date.

FOR HAPPY FEET

FOR THE UNITED STATES OF AMERICA

GARY M. RESTAINO

United States Attorney

District of Arizona

/s/

Kevin Vu
Co-Owner
22297 E. Via Del Oro
Queen Creek, AZ 85142

/s/

Bill C. Solomon
Assistant U.S. Attorney
Attorneys for the United States

June 22, 2023

Date

2023.06.28

Date

/s/

Truc Pham
Co-Owner
22297 E. Via Del Oro
Queen Creek, AZ 85142

June 22, 2023

Date