

**SETTLEMENT AGREEMENT BETWEEN  
THE UNITED STATES OF AMERICA  
AND  
ERIKA PEREZ DE PAZ AND CARLOS SANTOS  
UNDER THE AMERICANS WITH DISABILITIES ACT  
DJ# 202-11-435**

**I. BACKGROUND**

1. The parties to this Settlement Agreement are the United States of America and Erika Perez de Paz and Carlos Santos, who jointly own and operate a tattoo studio named Luna Tattoo Studio (“Luna Tattoo”),<sup>1</sup> located in San Jose, California.

2. This matter was initiated by a prospective customer, who filed a complaint with the United States Department of Justice, alleging that a tattoo artist at Luna Tattoo discriminated against her on the basis of her disability in violation of Title III of the Americans with Disabilities Act (“ADA”), 42 U.S.C. §§ 12181-12189. Specifically, the Complainant alleged that an artist at Luna Tattoo refused to provide requested tattoo services after the Complainant disclosed that she had tested positive for the human immunodeficiency virus (“HIV-positive”).

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, agreeing as follows:

**II. TITLE III COVERAGE DETERMINATIONS**

4. The Attorney General is responsible for enforcing Title III of the ADA, 42 U.S.C. §§ 12181-12189, and the relevant regulations implementing Title III, 28 C.F.R. Part 36.

5. The Complainant, an individual with HIV, has a physical impairment that substantially limits one or more major life activities, including the bodily functions of the immune system. Accordingly, she has a disability within the meaning of 42 U.S.C. § 12102 and 28 C.F.R. § 36.105.

6. Luna Tattoo is a fictitious business name for a tattoo studio co-owned and jointly operated by Perez and Santos. The Luna Tattoo facility is located at 860 S. 1<sup>st</sup> Street, Suite C, in San Jose, California, 95110. Luna Tattoo maintains six tattoo artists on site who provide tattoos to the public.

7. Luna Tattoo is a public accommodation within the meaning of 42 U.S.C. § 12181(7) because, among other things, the business affects commerce and its facility is a place of public accommodation because it is a service establishment. Luna Tattoo owns, leases, or

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<sup>1</sup> Any obligations of Luna Tattoo under this Agreement constitute personal obligations of Ms. Perez de Paz and Mr. Santos.

operates a place of public accommodation, the tattoo parlor facility, and is thus subject to Title III of the ADA. 28 C.F.R. § 36.105; 28 C.F.R. § 36.201(a).

8. Under Title III of the ADA, no person who owns, leases, or operates a place of public accommodation may discriminate against an individual on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation. 42 U.S.C. § 12182(a); 28 C.F.R. § 36.201(a).

9. Ensuring that service establishments 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).

10. As a result of its investigation, the United States has determined the following:

a. On August 9, 2020, the Complainant contacted a tattoo artist who works at Luna Tattoo via Instagram about obtaining a tattoo of personal significance matching her daughter's, and the tattoo artist asked the Complainant to visit Luna Tattoo to be measured for the tattoo.

b. On August 29, 2020, the Complainant visited Luna Tattoo, accompanied by her daughter, and was measured for the tattoo. The Complainant made an appointment to return to Luna Tattoo on September 11, 2020, to have the tattoo work performed.

c. On September 3, 2020, the Complainant sent the tattoo artist a message asking whether any paperwork needed to be completed in advance of her appointment. The artist responded in the negative. The Complainant then voluntarily disclosed that she was HIV-positive. The Luna Tattoo tattoo artist responded to the Complainant's disclosure of her HIV-positive status by indicating that she needed to speak with the owner about the situation.

d. On September 4, 2020, the Luna Tattoo tattoo artist further responded to the Complainant. The artist stated that the owner of Luna Tattoo suggested that the tattoo artist not perform tattoo services on the Complainant, and that the possibility of the tattoo artist performing tattoo services on the Complainant made other artists at Luna Tattoo "very uncomfortable." The tattoo artist canceled the Complainant's appointment.

e. The Complainant was saddened and discouraged by the tattoo artist's response, and as a result of her experience with Luna Tattoo the Complainant abandoned her plan to get matching tattoos with her daughter.

f. In addition to the Complainant, Santos has engaged in prior acts of discrimination against other people with disabilities by refusing to perform tattoo services on individuals based on their HIV-positive status.

11. The United States has determined that Luna Tattoo discriminated against the Complainant by denying her tattoo services because the Complainant is HIV-positive, in violation of 42 U.S.C. § 12182 and 28 C.F.R. § 36.201.

12. The Complainant is an aggrieved person pursuant to 42 U.S.C. § 12188(b)(2)(B).

### **III. ACTIONS TO BE TAKEN BY LUNA TATTOO**

13. Luna Tattoo and its owners, employees, contractors, staff, and agents, including but not limited to any tattoo artists or other personnel that provide services on Luna Tattoo's premises (collectively, "Staff") will not discriminate against any individual on the basis of disability, including HIV, in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations offered at Luna Tattoo facilities, consistent with Title III of the ADA, 42 U.S.C. § 12182, and its implementing regulations, 28 C.F.R. Part 36.

14. Luna Tattoo will adopt a non-discrimination policy stating that Luna Tattoo does not discriminate in the provision of services to persons with disabilities, including persons who have HIV, and that Luna Tattoo will not inquire about or turn away individuals with disabilities, including individuals with HIV. Luna Tattoo will maintain and enforce this non-discrimination policy for the duration of this Agreement. The policy statement will be conspicuously posted in the reception area of each current and future Luna Tattoo location and on the company's Facebook webpage, as well as on the homepage of any current or future Luna Tattoo website, for the duration of this Agreement.

15. Within sixty (60) days of the effective date of this Agreement, and again one year later, Luna Tattoo will provide training on Title III of the ADA to all Staff including training about HIV and disability discrimination in general. Luna Tattoo will submit evidence to the United States that Luna Tattoo has successfully completed the training within 30 days of completion. Luna Tattoo will seek and obtain prior approval of the trainer from the United States before any Staff take the training.

16. In addition, Luna Tattoo will ensure that all new Staff receive the training referenced in paragraph 15 as a component of new employee training and orientation. Luna Tattoo shall provide the training to new employees, contractors, and agents within thirty (30) days of their start date.

17. All training manuals or written materials concerning Luna Tattoo's policies and practices used in the training required in paragraph 15 or revised or created after the effective date of this Agreement shall be consistent with the provisions of this Agreement, and approved in advance by the United States.

18. Luna Tattoo shall create and maintain an attendance log that documents the name of each individual who attends the trainings required in paragraph 15, his or her title, and the date he or she attended the training. Copies of such attendance sheets shall be provided to the United States within ten (10) days of any request for them.

19. Within ten (10) days after receiving the Complainant's signed release (a blank release form is attached as Exhibit A), Luna Tattoo will send a money order in the amount of

\$7,000 made out to the Complainant to the address set forth in paragraph 20. This payment is compensation to the Complainant pursuant to 42 U.S.C. § 12188(b)(2)(B) for the effects of the discrimination and the harm she has endured (including emotional distress and pain and suffering) as a result of Luna Tattoo's failure to provide tattoo services to her.

20. The payment shall be mailed or hand-delivered to:

David DeVito  
Assistant United States Attorney  
450 Golden Gate Avenue, 9<sup>th</sup> Floor  
San Francisco, California 94102

21. Luna Tattoo will not withhold taxes from the monetary award and the Complainant will accept responsibility for taxes due and owing, if any, on the monetary award. Luna Tattoo will issue to the Complainant an IRS form 1099 reflecting the amount paid to her.

22. Within seven (7) days of the receipt of any complaint related to any alleged violation of the ADA or related to an action which, if substantiated, would be disability-based discrimination, Luna Tattoo shall send written notification to 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 Luna Tattoo's response, if any.

23. For each potential client who is not accepted as a customer due to any physical or mental medical condition, Luna Tattoo will create a written file and will maintain the written file for at least two years from the date the potential client is not accepted. Each file must identify all persons involved in the determination not to accept the customer and must include written documentation supporting the basis for the determination. Copies of such files shall be provided to the United States within ten (10) days of any request for them.

24. Staff whose duties will involve the record-keeping provisions set forth in paragraph 23 shall be trained on how to implement those provisions.

25. Luna Tattoo will notify the United States in writing when it has completed the actions described in paragraphs 14-18. This notification need only be provided when Luna Tattoo and all of its Staff have completed the action required in the relevant paragraph(s). If any issues arise that affect the anticipated completion dates set forth in those paragraphs, Luna Tattoo will immediately notify the United States of the issue(s), and the parties will attempt to resolve those issues in good faith.

#### **IV. OTHER PROVISIONS**

26. In consideration for the Agreement set forth above, the United States will close its investigation of Luna Tattoo and will not institute a civil action at this time alleging discrimination based on the determinations set forth in paragraph 10. However, the United States may review Luna Tattoo'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.

27. 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.

28. 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 Luna Tattoo 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.

29. This Agreement is binding on Luna Tattoo, including all principals, owners, agents, executors, administrators, representatives, employees, successors in interest, beneficiaries, and assignees.

30. This Agreement constitutes the entire agreement between the United States and Luna Tattoo 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.

31. This Agreement does not constitute a finding by the United States that Luna Tattoo 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 HIV or AIDS. Nothing in this Agreement relieves Luna Tattoo of its obligation to fully comply with the requirements of the ADA.

32. Luna Tattoo shall not discriminate or retaliate against any person because of his or her participation in this matter.

33. Any written notification required by this Agreement shall be provided to counsel for the United States via electronic mail to the attention of david.devito@usdoj.gov (or such other person specified by the United States) or by overnight mail at the address set forth in paragraph 20.

## **V. EFFECTIVE DATE/TERMINATION DATE**

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

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

**FOR LUNA TATTOO STUDIO**

\_\_\_\_\_/s/\_\_\_\_\_  
Erika Perez de Paz  
Co-Owner, Luna Tattoo Studio  
860 S. 1<sup>st</sup> St., Suite C  
San Jose, CA 95110

\_\_5/31/22\_\_\_\_\_  
Date

\_\_\_\_\_/s/\_\_\_\_\_  
Carlos Santos  
Co-Owner, Luna Tattoo Studio  
860 S. 1<sup>st</sup> St., Suite C  
San Jose, CA 95110

\_\_\_\_5/31/22\_\_\_\_\_  
Date

**FOR THE UNITED STATES OF AMERICA**

Stephanie M. Hinds  
United States Attorney  
Northern District of California

\_\_\_\_\_/s/\_\_\_\_\_  
David M. DeVito  
Assistant U.S. Attorney  
Northern District of California  
U.S. Attorney's Office  
450 Golden Gate Avenue, 9<sup>th</sup> Floor  
San Francisco, CA 94102

\_\_5/31/22\_\_\_\_\_  
Date