

**SETTLEMENT AGREEMENT BETWEEN
THE UNITED STATES OF AMERICA
AND
USA NAILS, LLC
UNDER THE AMERICANS WITH DISABILITIES ACT
DJ # 202-48-374
USAO #2021V00705**

I. BACKGROUND

1. The parties to this Settlement Agreement are the United States of America and USA Nails, LLC located at 3242 Bridge Avenue, Point Pleasant, New Jersey (“USA Nails”).
2. The United States Attorney’s Office for the District of New Jersey, a component of the United States Department of Justice, opened an investigation of USA Nails pursuant to the Americans with Disabilities Act (“ADA”), 42 U.S.C. §§ 12181-12189. The investigation was initiated upon the receipt of a complaint from an individual (“Complainant”), a person with a disability who utilizes a wheelchair, who alleged that USA Nails denied her service on the basis of a disability.
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 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. The Complainant has a physical impairment that substantially limits one or more major life activities, in that, she uses a wheelchair. Accordingly, she is a person with a disability within the meaning of 42 U.S.C. § 12102 and 28 C.F.R. § 36.105.
6. USA Nails 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.
7. 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).

8. 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).
9. As a result of its investigation, the United States has determined the following:
 - a. The Complainant uses a wheelchair and cannot transfer from the wheelchair to a pedicure chair independently.
 - b. On May 26, 2021, she went to USA Nails with the intention of receiving nail services.
 - c. The Complainant has received nail services at other nail salons while remaining in her wheelchair.
 - d. USA Nails refused to provide nail services to the Complainant on that date because it would not provide Complainant pedicure services while she remained seated in her wheelchair.
 - e. The Complainant was unable to receive nail services at USA Nails and had to leave. This caused Complainant embarrassment and forced her to seek nail services elsewhere.
10. The United States has determined that USA Nails discriminated against the Complainant by refusing to perform nail services for her because of her physical disabilities in violation of 42 U.S.C. § 12182 and 28 C.F.R. § 36.201(a).
11. The Complainant is an aggrieved person pursuant to 42 U.S.C. § 12188(b)(2)(B).
12. USA Nails denies that it has discriminated in violation of Title III of the ADA.

III. ACTIONS TO BE TAKEN BY USA NAILS

13. USA Nails will not discriminate against any individual on the basis of disability, including individuals who use a wheelchair or otherwise have physical impairments, in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations offered at the current or any future USA Nails locations.

14. Within 30 days of the effective date of this Settlement Agreement, USA Nails will adopt the following policy:

USA Nails does not discriminate and provides services to persons with disabilities, including persons who use wheelchairs or otherwise have mobility impairments. USA Nails will reasonably modify its services as necessary to avoid discrimination to individuals with disabilities, unless the modification would fundamentally alter the nature of USA Nails' services.

15. USA Nails will maintain and enforce the non-discrimination policy for the duration of this Settlement Agreement. This policy statement will be conspicuously posted in the reception area of each current and future USA Nails facility.
16. Within 90 days of the effective date of this Settlement Agreement, and then again one year later, USA Nails will provide training on Title III of the ADA to all of its owners, employees, contractors, staff, and agents (collectively, "Staff"), including training about wheelchair users, persons with mobility impairments, physical impairments, and disability discrimination in general. Training shall be provided to each member of the Staff in the language(s) that they understand. Prior to providing such training, USA Nails shall submit the proposed training materials to the United States for review and approval. The proposed materials may be submitted to Senior Civil Rights Counsel Kelly Horan Florio at kelly.horan@usdoj.gov.
17. In addition, USA Nails will ensure that all new members of Staff receive the training referenced in Paragraph 15 prior to providing client services and no later than 30 days after beginning employment, contract work, or agency with USA Nails.
18. Within 14 days of any request from the United States, USA Nails shall provide certification in writing that the trainings required in Paragraphs 15 and 16 have been completed.
19. USA Nails shall maintain, for the duration of this Settlement Agreement, a record of each request for modification it receives from customers with disabilities. The record should identify the request for a modification, and any modification USA Nails provided. If USA Nails refused a request for a modification, it should list the basis for refusal. USA Nails agrees to make this record available to the United States upon request.
20. Within 14 days after receiving the Complainant's signed release (a blank release form is attached as **Exhibit A**), USA Nails will send a check for \$1,000 made out to the Complainant. This check 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 USA Nails' refusal to

provide services to Complainant because her disability prevented her from transferring from her wheelchair.

21. The check shall be mailed or hand-delivered to:

Kelly Horan Florio
Senior Civil Rights Counsel
Civil Rights Division
U.S. Attorney's Office for the District of New Jersey
970 Broad Street, Suite 700
Newark, New Jersey 07102

22. USA Nails will not withhold taxes from the monetary award, and USA Nails will issue to the Complainant an IRS Form 1099 reflecting the amount paid to her.
23. Within 7 days of receipt of any complaint related to any alleged violations of the ADA or related to an action which, if substantiated, would be disability-based discrimination, USA Nails 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 USA Nail's response, if any.
24. If any issues arise that affect the anticipated completion dates set forth in this document, USA Nails 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

25. In consideration for the Settlement Agreement set forth above, the United States will close its investigation of USA Nails and will not institute a civil action alleging discrimination based on the determinations set forth in Paragraph 9. However, the United States may review USA Nails' compliance with this Settlement Agreement or Title III of the ADA at any time. If the United States believes that Title III of the ADA, this Settlement 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 Settlement Agreement and/or Title III of the ADA.
26. Failure by the United States to enforce any provision of this Settlement Agreement is not a waiver of its right to enforce any provisions of the Settlement Agreement.
27. If any term of this Settlement Agreement is determined by any court to be unenforceable, the other terms of this Settlement 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 USA Nails

shall engage in good faith negotiations in order to adopt mutually agreeable amendments to this Settlement Agreement as may be necessary to restore the parties as closely as possible to the initially agreed upon relative rights and obligations.

- 28. This Settlement Agreement is binding on USA Nails, including all principals, owners, agents, executors, administrators, representatives, employees, successors in interest, beneficiaries, and assignees.
- 29. This Settlement Agreement constitutes the entire agreement between the United States and USA Nails 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 Settlement Agreement can only be modified by mutual written agreement of the parties.
- 30. This Settlement Agreement does not constitute a finding by the United States that USA Nails is in full compliance with the ADA. This Settlement Agreement is not intended to remedy any other potential violations of the ADA or any other law that is not specifically addressed in this Settlement Agreement, including any other claims for discrimination on the basis of disability. Nothing in this Settlement Agreement relieves USA Nails of its obligation to fully comply with the requirements of the ADA.
- 31. USA Nails shall not discriminate or retaliate against any person because of his or her participation in this matter.

V. EFFECTIVE DATE/TERMINATION DATE

- 32. The effective date of this Settlement Agreement is the date of the last signature below.
- 33. The duration of this Settlement Agreement will be two years from the effective date.

FOR USA NAILS, LLC
3242 Bridge Avenue
Point Pleasant, New Jersey 08742

By: _____



Dated: _____

1/6/23

**FOR THE UNITED STATES
OF AMERICA**

PHILIP R. SELLINGER
United States Attorney

By: _____

Kelly Horan Florio
KELLY HORAN FLORIO
Senior Civil Rights Counsel

Dated: _____

February 8, 2023