



4. Defendants have no information or knowledge of the circumstances of Plaintiff Stigers.

5. Admitted.

6. Admitted.

7. Defendants have no information or knowledge of the circumstances of Plaintiff Niang.

8. Defendants have no information or knowledge of the circumstances of Plaintiff Niang. Defendants admit that a salon by the name of Joba Hair Braiding at the stated address holds License No. 2002021464 as a cosmetology establishment, which was issued August 28, 2002.

9. Defendants admit that a salon by the name of Joba Hair Braiding at the stated address holds License No. 2002021464 as a cosmetology establishment, which was issued August 28, 2002. Defendants have no information or knowledge of the other allegations of Paragraph 9.

10. Defendants admit that no one but a person holding a Class CA or CH cosmetology license or a barber license is permitted to engage in arranging or dressing hair including braiding for compensation.

11. Defendants have no information or knowledge of the personal circumstances of Plaintiff Niang.

12. Defendants admit that Plaintiff Niang was enrolled in an apprenticeship program, but beyond that have no information or knowledge of the personal circumstances of Plaintiff Niang. Any allegations as to the general nature of cosmetology education are denied.

13. Defendants have no information or knowledge of the circumstances of Plaintiff Niang.

14. Defendants have no information or knowledge of the circumstances of Plaintiff Stigers.

15. Plaintiff Stigers is not a licensed cosmologist or barber. Defendants have no information or knowledge of the circumstances of Plaintiff Stigers.

16. Defendants have no information or knowledge of the allegations of Paragraph 16.

17. Defendants have no information or knowledge of the allegations of Paragraph 17. Specifically, defendants deny that Plaintiff Stigers does not intend to perform cosmetology services, as hair braiding service constitute “arranging or dressing hair” and therefore are cosmetology services. Defendants further note that Plaintiff Stigers could lawfully perform braiding services with a barber’s license under Section 328.080, RSMo.

18. Defendants admit that under current law Plaintiff Stigers will have to either obtain a cosmetology or barbering license or cease providing cosmetology or barbering services.

19. Defendants admit that the term “African-style hair braiding is used in the stated way in this Complaint.

20. Defendants admit the allegations of Paragraph 20.

21. Defendants admit that there are some unique aspects of African-style hair braiding to other hairdressing techniques, but deny that the nature of the practice is fundamentally different from other hair arranging and dressing techniques.

22. The allegations of Paragraph 22 are generalizations but are not disputed by Defendants.

23. It is admitted that the hair of people of African descent is often different from that of people of other ancestries, but Defendants deny that health and safety considerations for the arranging and dressing of such hair are different in kind from other hairdressing operations, and deny that such activities are “simply an aesthetic concern” as matters of health, safety, sanitation, disease recognition and prevention, infestation control, and other professional concerns are present in African-style hair braiding to the same extent they are in any other kind of hair arranging and dressing, and further

state that there are distinct health and safety issues presented by African-style braiding which are better addressed by one educated through the cosmetology and barbering curriculum.

24. Defendants deny that African-style hair braiding does not present the same health and safety concerns that other forms of hair arranging and dressing do, as well as additional issues particular to braiding. Health and safety concerns are not limited to the effect of chemicals.

25. Defendants deny that African-style hair braiding does not present the same health and safety concerns that other forms of hair arranging and dressing do. Even if chemicals are not used in hair arranging and dressing, there are concerns of sanitation, the effects of prior or parallel use of chemicals, instrument sterilization, disease recognition and control, long-term damage, and other health and safety concerns which are just as much involved in African-style hair braiding as in any other hair arranging and dressing technique.

26. Defendants deny that African-style hair braiding is always safe for the long-term health of hair, or that sanitation, sterilization, disease recognition and prevention, and other safety concerns are not involved in the practice, and further assert that the use of extensions poses health and safety issues itself.

27. While the Plaintiffs may rely on their own techniques and tools, Defendants they are subject to the same concerns with health and safety that practitioners of other hair care techniques must follow.

28. Paragraph 28 sets forth conclusions of law to which no response is required, but Defendants admit that Chapter 329, RSMo, establishes the foundation for the licensing and regulation of cosmetology and barbering in Missouri.<sup>1</sup> Defendants further aver that hair care may be performed by those holding a barber's license, which is authorized in Chapter 328, RSMo.

29. Paragraph 29 sets forth conclusions of law to which no response is required, but Defendants admit that Section 329.150, RSMo, is the Board's foundational statute.

30. Admitted that the language quoted in Paragraph 30 part of the definition of cosmetology, denied that it is the definition. The quoted language is an excerpt from the definition of a Class CH hairdresser, which is one of the two categories in which a person would have to qualify to perform hair braiding services as a cosmetologist.

31. Defendants admit that the Board construes the practice of hair braiding for compensation as cosmetology, because it fits squarely within the definition of a Class CH hairdresser. Defendants deny that hair braiding is

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<sup>1</sup> Missouri statutes are correctly cited as Section \_\_\_\_, RSMo, rather than in the format used by Plaintiffs.

different from cosmetology or barbering, and aver to the contrary that it constitutes cosmetology as defined by Section 329.010(5)(a), RSMo, or barber services as defined by Section 328.010(1), RSMo.

32. Paragraph 32 sets forth conclusions of law to which no response is required, but the statute is accurately quoted.

33. Paragraph 33 sets forth conclusions of law to which no response is required, but does not accurately quote the statute. Sections 329.010(4) and (5), RSMo, provide that receipt of compensation is an element of the definitions of cosmetologist and cosmetology. The principle as stated in the allegation is a permissible inference from the language of the statute, but it is not what the statute states.

34. Paragraph 34 sets forth conclusions of law to which no response is required, but the statute is accurately quoted.

35. Admitted in part and denied in part. Defendants acknowledge that a few cases against African-style hair braiders have been pursued when brought to the Board's attention. All hair braiders who arrange or dress hair for compensation are practicing cosmetology or barbering.

36. Defendants deny the allegation of Paragraph 36 that hair braiding is not cosmetology, as it is clearly "arranging" or "dressing" hair within the definition of Section 329.010(5)(a) or barbering within the

definition of Section 328.010(1), RSMo. Since hair-braiding establishments are practicing cosmetology or barbering, they are required to comply with the statutes regarding licensure of cosmetology or barbering establishments.

37. Defendants deny the premise of Paragraph 37 that hair braiding establishments do not engage in the practice of cosmetology or barbering. The cited case is one in which the Board proceeded against a licensee who allowed unlicensed individuals to provide cosmetology or barbering services.

38. Defendants admit that the cited case is one in which the Board proceeded against a licensee who allowed unlicensed individuals to provide cosmetology or barbering services.

39. Paragraph 39 sets forth conclusions of law to which no response is required, but the statute is accurately quoted. Furthermore, Section 328.020, RSMo, states that “It shall be unlawful for any person to practice the occupation of a barber in this state, unless he or she shall have first obtained a license, as provided in this chapter.”

40. Paragraph 40 sets forth conclusions of law to which no response is required. Its summary of the statute is oversimplified somewhat but essentially accurate.

41. Paragraph 41 sets forth conclusions of law to which no response is required. Its summary of the statute is oversimplified somewhat but essentially accurate.

42. Paragraph 42 sets forth conclusions of law to which no response is required. Its summary of the statute and regulation is essentially accurate. The proper citation for the regulation is 20 CSR 2085-10.010.<sup>2</sup>

43. Paragraph 43 sets forth conclusions of law to which no response is required. Its summary of the statute and regulation is essentially accurate except for form of citation.

44. Paragraph 44 sets forth conclusions of law to which no response is required. Its summary of the regulation is essentially accurate except for form of citation.

45. Paragraph 45 sets forth conclusions of law to which no response is required. Its summary of the regulation is essentially accurate.

46. Paragraph 46 sets forth conclusions of law to which no response is required. Its summary of the regulation is essentially accurate.

47. The allegations of Paragraph 47 are denied. On information and belief, some vocational programs for students not enrolled in secondary schools are available in Missouri as post-secondary programs.

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<sup>2</sup>The proper form for citing Missouri regulations is [Chapter] CSR [Division]-[Section].

48. Admitted.

49. Paragraph 49 sets forth conclusions of law to which no response is required, but the statute cited does address cosmetology school curriculum.

50. Paragraph 50 sets forth conclusions of law to which no response is required, but the statute is accurately quoted.

51. Defendants are without knowledge of the allegations of Paragraph 51.

52. Paragraph 52 sets forth conclusions of law to which no response is required, but the regulation cited does describe the apprenticeship curriculum.

53. Paragraph 53 sets forth conclusions of law to which no response is required, but the summary of the statute is essentially accurate.

54. Denied. The curriculum includes substantial time devoted to health and safety issues, hair biology, compliance with the law, and other issues which some braiders may not see as relevant to their work, but which the Missouri Legislature and the Board have determined to be appropriate and necessary for anyone working on the dressing and arrangement of human hair.

55. Denied. The curriculum includes substantial time devoted to health and safety issues, hair biology, compliance with the law, and other

issues which some braiders may deem irrelevant to their work, but which the Missouri Legislature and the Board have determined to be appropriate and necessary for anyone working on the dressing and arrangement of human hair.

56. Denied. The curriculum includes substantial time devoted to health and safety issues, hair biology, compliance with the law, and other issues which some braiders may deem irrelevant to their work, but which the Missouri Legislature and the Board have determined to be appropriate and necessary for anyone working on the dressing and arrangement of human hair.

57. Denied. Some cosmetology schools offer education specific to African hair braiding, and much of the curriculum, to the extent it addresses health, safety, and compliance issues of which hair braiders are not aware, is relevant to all practice of the arranging and dressing of human hair.

58. Chapter 328, RSMo, does set forth the regime for licensure of barbers.

59. Paragraph 59 accurately quotes the statute, except for form of citation.

60. Paragraph 60 accurately quotes the statute, except for form of citation.

61. Paragraph 61 accurately quotes the statute, except for form of citation.

62. It is admitted that the traditional understanding of barbering involves haircutting primarily for men, and that hair braiding has traditionally been understood to fall under the rubric of cosmetology. However, since braiding could be construed as “dressing” the hair, a person holding a barber’s license who performed hair braiding would not be considered engaged in unauthorized practice of cosmetology.

63. Admitted. As noted above, hair braiding is considered cosmetology, but a person holding a barber’s license who performed hair braiding would not be considered engaged in unauthorized practice of cosmetology.

64. Admitted.

65. Admitted.

66. Admitted.

67. Admitted that a person holding a barber’s license that performed hair braiding would not be considered engaged in unauthorized practice of cosmetology.

68. Paragraph 68 accurately quotes the statute, except for form of citation.

69. Paragraph 69 accurately summarizes the statute, except for form of citation.

70. Paragraph 70 accurately summarizes the statute and regulation, except for form of citation.

71. Paragraph 71 accurately quotes the statute, except for form of citation.

72. Paragraph 72 accurately quotes the statute and regulation, except for form of citation.

73. Admitted except for form of citation.

74. Admitted except for form of citation.

75. Paragraph 75 accurately summarizes the requirements of the statute.

76. Defendants are without knowledge of the allegations of Paragraph 76.

77. 20 CSR 2085-12.030 does describe the barbering apprenticeship program.

78. Paragraph 78 accurately summarizes the content of 20 CSR 2085-12.030 regarding the apprenticeship program.

79. Denied that the only part of the curriculum that is relevant to African-style braiding is sanitation and sterilization training. Numerous

other topics are relevant to understanding the nature of hair and techniques of hair styling and care. The State has a legitimate interest in assuring the qualification, competence and professionalism of hair care licensees and the provision of quality services to the public, so relevant training is not limited to health and safety issues.

80. Denied that “nearly all” of the hours of training required to become a barber are irrelevant to African-style hair braiding.

81. Admitted that the barbering curriculum includes instruction in the use of heat and chemicals to relax, straighten, soften, or otherwise alter the texture of hair, and further averred that these are subjects in which persons performing African-style braiding should be educated.

82. Denied that the barbering curriculum does not include African-style braiding techniques or styles, and averred to the contrary that such material is included in the curriculum and is taught by some barbering schools, although it is not mandatory.

83. Defendants admit that the mandatory curriculum does not require that schools teach African-style braiding, but they do teach health and safety practices which are as applicable to African-style hair braiders as to any person engaged in the arranging and dressing of human hair. It is not relevant that the teaching of such techniques is not mandatory, as not all

aspiring barbers need such education, and those who do seek to perform African-style braiding can select educational opportunities that offer such education. Such opportunities exist in Missouri programs.

84. Denied. Some cosmetology schools do have curriculum specific to African-style hair braiding. They also have substantial curriculum relating to health and safety, general hair and scalp anatomy, practice considerations, and hairstyling competence, which subjects are as applicable to African-style hair braiders as to any person otherwise engaged in the arranging and dressing of human hair.

85. Admitted in part. Missouri's testing is based on the national the National-Interstate Council of State Boards of Cosmetology (NIC) format. Missouri does not select or control the content of that examination.

86. Admitted in part. Missouri's testing is based on the National-Interstate Council of State Boards of Cosmetology (NIC) format. Missouri does not select or control the content of that examination. Knowledge of the nature of hair, good hair care practices, and the foundations of professional hair care are relevant to the practice of African-style hair braiding as a profession.

87. Under Missouri law, any person engaged in "arranging, dressing, curling, singeing, waving, permanent waving, cleansing, cutting, bleaching,

tinting, coloring or similar work upon the hair of any person by any means” for compensation must hold a Class CH or CA Hairdresser cosmetology license or a barber’s license.

88. Persons with a Class CH or Class CA Hairdresser cosmetology license are permitted to perform any form of hair arranging or dressing, subject to Section 329.140.2(5), which prohibits a licensee to engage in incompetence. A person holding a barber’s license is subject to Section 328.150.2(5), which also provides for discipline of barbers who perform with incompetence. A licensee who undertook a hairdressing assignment in which that licensee had not been trained and was not qualified would be engaged in incompetence for which that person’s license may be subject to discipline under these sections.

89. Denied. Missouri law allows the Legislature to define activities which can only be performed by licensed professionals, and does not violate constitutional law because it does not allow exemption from the law for individuals who only desire to practice a subset of the activities of a licensed profession.

90. Denied. African-style hair braiding is not a distinct profession, but an included subset of the licensed professions of barbering and cosmetology.

91. Denied. African-style hair braiding is not a distinct profession, but an included subset of the licensed professions of barbering and cosmetology.

92. Denied. The limitation of licensing statutes to the performance of professional services for compensation, as opposed to those performed gratis, is a legitimate distinction which has been upheld by the Missouri courts.

93. Denied. A “cartel” is “a combination of independent commercial or industrial enterprises designed to limit competition or fix prices.” Merriam-Webster Collegiate Dictionary, 11<sup>th</sup> Edition. The determination of an elected state legislature that the public health and safety requires licensure of a profession, and the creation of a board appointed by the Governor, confirmed by the Senate, carrying out public business under the terms of statutes passed by the legislature and regulations promulgated in strict compliance with administrative procedure, consistent with open meetings and records laws, subject to administrative and judicial review and legislative oversight, is not a “cartel.”

94. Denied. African-style hair braiders have the same opportunity as anyone else to qualify for a profession they seek to perform.

95. Denied. Defendants are without knowledge as to measures some individuals have taken to avoid complying with the law governing a profession in which they seek to make a living.

96. Defendants are without knowledge of the allegations of Paragraph 96. There are many views on the economic effects of the requirements of Missouri law as to licensing of a profession impacting the public health and safety.

97. Defendants are without knowledge of the allegations of Paragraph 97. There are many views on the economic effects of the requirements of Missouri law as to licensing of a profession impacting the public health and safety.

98. Defendants are without knowledge of the effect on Plaintiff Niang of her failure to qualify for a professional license required of persons performing hairdressing services for compensation.

99. Defendants are without knowledge of the effect on Plaintiff Niang of her failure to qualify for a professional license required of persons performing hairdressing.

100. Defendants are without knowledge of Plaintiff Niang's personal circumstances.

101. Admitted that to qualify for a barbering or cosmetology license, one must acquire the training and experience required to obtain one.

Defendants are without knowledge of Plaintiff Niang's personal circumstances.

102. Defendants are without knowledge of Plaintiff Niang's personal circumstances. Defendants deny that qualification for a license to perform hairdressing is irrelevant to Plaintiff's intention to perform hairdressing.

103. Defendants admit that the cosmetology curriculum would require Plaintiff Niang to learn about chemicals commonly used in hair care. Even if she does not choose to use such chemicals in her own practice, knowledge of the effects and consequences of the use of such chemicals is relevant to the practice of arranging and dressing hair. Plaintiffs have the option of pursuing a barbering license which places less emphasis on chemical treatments, although knowledge of the chemistry of hair is essential for all persons performing hairdressing services, even if they do not plan to use chemicals.

104. Defendants admit that the stated penalties are provided by law although they are rarely applied.

105. Denied. The Board has brought a few proceedings regarding unauthorized practice of cosmetology as it refers to African-style hair

braiders, all on complaints filed with the Board. Defendants have no knowledge of Plaintiff Niang's personal relationships, but African-style hair braiding has not been pursued on a large scale.

106. Defendants are without knowledge of Plaintiff Niang's intentions and motivations. Defendants deny that enforcement of Missouri law regarding cosmetology licenses has been arbitrary as that term is defined by law.

107. If Plaintiff Niang is performing barbering or cosmetology services including arranging and dressing hair for compensation without a license, she may be subject to the penalties and remedies provided by law.

108. Paragraph 108 is rhetoric with no factual averment or legally significant argument to admit or deny, and the allegations of Paragraph 108 are therefore denied.

109. Denied. Plaintiff Stigers has not qualified for a license to provide barbering or cosmetology services and suffers no loss when she is not permitted to do so.

110. Admitted that Plaintiff Stigers cannot legally perform barbering or cosmetology services unless she takes the steps necessary to qualify for a license to do so.

111. The Board is without knowledge of Plaintiff Stigers' personal circumstances.

112. Admitted that to qualify for a barbering or cosmetology license, one must acquire the training and experience required to obtain one. The Board is without knowledge of Plaintiff Stigers' personal circumstances.

113. The Board is without knowledge of Plaintiff Stigers' personal circumstances. Training in barbering or cosmetology is not irrelevant to the practice of arranging and dressing hair.

114. Defendants admit that the barbering and cosmetology curriculum would require Plaintiff Stigers to learn about chemicals commonly used in hair care. Even if she does not choose to use such chemicals in her own practice, knowledge of the effects and consequences of the use of such chemicals is relevant to the practice of arranging and dressing hair.

115. Defendants admit that if Plaintiff Stigers practices barbering or cosmetology without a license, she may experience the legal consequences of that action.

116. Paragraph 116 consists largely of speculation and opinions rather than averments of fact, and accordingly is denied.

117. Paragraph 117 consists largely of rhetoric and speculation rather than averments of fact, and accordingly is denied.

118. Defendants incorporate all answers to Paragraphs 1 through 117.

119. Paragraph 119 sets forth legal conclusions to which no response is required. To the extent response is required, Defendants deny that Paragraph 94 is an accurate statement of the law.

120. Paragraph 120 sets forth legal conclusions to which no response is required. To the extent response is required, Defendants deny that Paragraph 120 sets forth accurate statements of the law.

121. Paragraph 1 sets forth legal conclusions to which no response is required. To the extent response is required, Missouri law provides that the legislature may define a licensed profession and require applicants to qualify for all duties of that profession, and does not allow a person who seeks to practice only a subset of the profession's duties to practice that profession without meeting all qualifications. Such requirements bear a rational relationship to legitimate government interests, including protecting the health and safety of the public, assuring that professionals offering services to the public are competent, honest, and qualified, preventing consumer fraud and harm, and others, which Missouri courts have recognized with

regard to the barbering and hairdressing professions for more than one hundred years.

122. Paragraph 122 sets forth legal conclusions to which no response is required. To the extent response is required, Defendants deny that Paragraph 122 is an accurate statement of the law. Plaintiffs and other hair braiders have a full panoply of rights to defend themselves in state court proceedings, but the Missouri state courts have consistently over the course of more than a century rejected the very arguments Plaintiffs advance here.

123. Defendants incorporate all answers to Paragraphs 1 through 122.

124. Paragraph 124 sets forth legal conclusions to which no response is required. To the extent response is required, Defendants deny that Paragraph 124 sets forth accurate statements of the law. Missouri law provides that the legislature may define a licensed profession and require applicants to qualify for all duties of that profession, and does not allow a person who seeks to practice only a subset of the profession's duties to practice that profession without meeting all qualifications. Braiding hair is "arranging" or "dressing" hair within the meaning of Section 329.010(5)(a), or Section 328.010(1), and Plaintiffs are therefore practicing cosmetology or barbering within the meaning of the law. Missouri courts have held for more than 100 years that the barbering and hairdressing involve significant public

health and safety interests and other legitimate state interests, and thus that state regulation of that profession bears a rational relationship to a legitimate state interest.

125. The allegations of Paragraph 125 are denied. African hair braiding is barbering or cosmetology as defined under Missouri law, and the action of state law in requiring persons who practice barbering or cosmetology, and specifically hair dressing, to qualify in all aspects of that profession is rational and reasonable and does not violation the right to equal protection.

126. The allegations of Paragraph 126 are denied. The Missouri courts have long held that it is not unconstitutional for the legislature to condition a requirement of licensure on the receipt of compensation, and have rejected arguments that a licensing law violates equal protection because individuals could perform the same services without compensation.

127. Paragraph 127 sets forth speculations and legal conclusions to which no response is required. To the extent response is required, Defendants deny the allegations of Paragraph 127. Plaintiffs and other hair braiders have a full panoply of rights to defend themselves in state court proceedings, but the Missouri state courts have consistently over the course of more than a century rejected the very arguments Plaintiffs advance here.

128. Defendants incorporate all answers to Paragraphs 1 through 127.

129. Paragraph 129 sets forth legal conclusions to which no response is required. To the extent response is required, Defendants deny the allegations of Paragraph 129.

130. Paragraph 130 sets forth legal conclusions to which no response is required. To the extent response is required, Defendants deny the allegations of Paragraph 130.

131. Paragraph 131 sets forth speculations and legal conclusions to which no response is required. To the extent response is required, Defendants deny the allegations of Paragraph 131. Plaintiffs and other hair braiders have a full panoply of rights to defend themselves in state court proceedings, but the Missouri state courts have consistently over the course of more than a century rejected the very arguments Plaintiffs advance here.

For these reasons, Defendants pray that the Complaint be dismissed.

Respectfully submitted,

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### **CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_ day of May, 2015, I electronically filed the foregoing with the Clerk of the Court to be served by operation of the Court's electronic filing system upon all CM/ECF participants.

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