

**SETTLEMENT AGREEMENT
BETWEEN
THE UNITED STATES OF AMERICA
AND
MODERN HAIRSTYLING INSTITUTE, INC.
UNDER THE AMERICANS WITH DISABILITIES ACT**

[Press Release](#)

BACKGROUND

1. The parties to this Settlement Agreement (“Agreement”) are the United States of America and Modern Hairstyling Institute, Inc. (“Modern Hairstyling”).
2. This matter is based upon a complaint brought to the attention of the United States Department of Justice (“Department”), in which a complainant alleged that Modern Hairstyling 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, *et seq.* Specifically, the complainant alleges that Modern Hairstyling denied her enrollment for classes beginning on August 5, 2010, on account of her HIV status.
3. Modern Hairstyling denies such claim and alleges that it postponed the complainant’s enrollment in order to assess whether a reasonable accommodation was necessary. The United States does not believe that a

direct threat existed necessitating a modification of policies, practices, or procedures, or a postponement of enrollment.

4. The parties have reached agreement that it is in the parties' best interests, and the United States believes that it is in the public interest, to resolve this dispute without engaging in protracted litigation. The parties have therefore voluntarily entered into this Agreement, agreeing as follows:

TITLE III COVERAGE AND FINDING

5. The Attorney General is responsible for administering and 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.
6. An individual who is HIV-positive has a physical impairment that substantially limits one or more major life activities, including the functions of the immune system, which is a major bodily function, and is disabled within the meaning of 42 U.S.C. § 12102 and 28 C.F.R. § 36.104.
7. Modern Hairstyling is a private cosmetology school, with its principal location at Dr. Veve #57, Bayamón, Puerto Rico 00960.
8. Modern Hairstyling owns, leases (or leases to), or operates a place of public accommodation within the meaning of 42 U.S.C. § 12182(a); a private entity within the meaning of 42 U.S.C. § 12181(6); and is considering a place of public accommodation because it affects commerce and is a place of education within the meaning of 42 U.S.C. § 12181(7).
See also 28 C.F.R. § 36.104.

9. Under title III of the ADA, no person who owns, leases (or leases to), 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).
10. On July 16, 2010, the complainant submitted an application to be enrolled in the General Cosmetology Program offered by Modern Hairstyling. An enrollment contract was signed on July 30, 2010, with a scheduled start date of August 5, 2010. Modern Hairstyling also had the complainant review a list of “contagious diseases,” which included AIDS, and directed her to mark each applicable item. The complainant clarified on the form that the complainant was HIV-positive. The complainant’s enrollment was delayed at that time.
11. On August 2, 2010, the complainant met with Mr. Israel Berrios, President of Modern Hairstyling, during which Mr. Berrios outlined his many concerns about the complainant’s possible enrollment. This meeting with Mr. Berrios did not result in the complainant’s enrollment, and the complainant did not start the General Cosmetology Program on August 5, 2010.
12. On August 10, 2010, the American Civil Liberties Union of Puerto Rico National Chapter sent a letter on behalf of the complainant to Mr. Berrios, demanding the complainant be enrolled in the General Cosmetology Program within 24 hours.
13. On August 13, 2010, Modern Hairstyling filed a lawsuit for declaratory judgment against the complainant in the United States District Court for

the District of Puerto Rico, Civil Action No. 3:10-cv-01784 (the “Declaratory Judgment Action”).

14. September 15, 2010, Modern Hairstyling adopted an Exposure Control Plan.
15. Modern Hairstyling informed the complainant that she could start the General Cosmetology Program, and on September 16, 2010, Modern Hairstyling filed a notice of voluntary dismissal of the Declaratory Judgment Action.
16. By failing to enroll the complainant in the General Cosmetology Program because of her disability, the United States believes that Modern Hairstyling discriminated against the complainant by denying the complainant the opportunity to participate in or benefit from the goods, services, facilities, privileges, advantages, or accommodations of Modern Hairstyling in violation of 42 U.S.C. § 12182 and 28 C.F.R. § 36.201. Modern Hairstyling denies that it engaged in discrimination against the complainant.

ACTIONS TO BE TAKEN BY MODERN HAIRSTYLING

17. Modern Hairstyling will not exclude persons with disabilities from participation in or deny them the benefits of full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations in violation of section 302 of the ADA, 42 U.S.C. § 12182, and the relevant implementing regulations, 28 C.F.R. Part 36.

18. Modern Hairstyling will make an offer of enrollment to the complainant, care of her counsel, in the General Cosmetology Program to start as early as December 3, 2010, at the complainant's option.
19. As of the effective date of this Agreement, Modern Hairstyling will remove the designation of "AIDS" from its enrollment forms, and will not request this information from future applicants.
20. Within 30 days of the effective date of this Agreement, Modern Hairstyling will provide training on title III of the ADA to all Modern Hairstyling employees..
21. All training manuals or written materials dealing with Modern Hairstyling's policies and practices used in the training required in paragraph 20 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.
22. Modern Hairstyling will notify the United States when it has completed the actions described in paragraphs 18, 19, and 20.
23. Modern Hairstyling agrees to pay \$8,000 to the complainant to compensate her for the harm she has endured (including, but not limited to, emotional distress, pain and suffering, inconvenience, and other consequential injury) as a result of Modern Hairstyling's failure to accommodate her.
24. Within one business day of the effective date of this Agreement, Modern Hairstyling will send a copy, by overnight mail, of the signed Agreement, along with a letter and Release of All Claims (attached as Exhibits 1 and

2, respectively, provided in both English and Spanish), to the complainant, care of her counsel. In order to accept the relief offered by Modern Hairstyling, the complainant must execute and return the Release of All Claims (Exhibit 2) to Modern Hairstyling, care of its counsel, within 30 days of her receipt of Modern Hairstyling's letter (Exhibit 1).

25. Modern Hairstyling will send counsel for the United States a copy of Exhibits 1 and 2 by electronic mail when they are sent to the complainant, care of her counsel.

26. Modern Hairstyling will pay the complainant the \$8,000 sum within 15 days of the receipt of her signed Release of All Claims.

27. Within 30 days of the effective date of this Agreement, Modern Hairstyling shall pay a civil penalty in the amount of \$5,000 as authorized by 42 U.S.C. § 12188(b)(2)(C) and 28 C.F.R. § 36.504(a)(3), as amended, in order to vindicate the public interest.

OTHER PROVISIONS

28. In consideration for the Agreement, set forth above, the United States will not institute any civil action alleging discrimination based on the allegations raised in DJ #202-65-13. The United States reserves the right to bring a separate investigation and further action on behalf of the individuals identified in paragraph 32.

29. In addition to the consideration for the Agreement, set forth above, Modern Hairstyling will, within five days of the effective date of this Agreement, in cooperation with the complainant's counsel, seek a

protective order from the United States District Court for the District of Puerto Rico to remove the complainant's name from all records related to the Declaratory Judgment Action (in which she is captioned as a "Defendant"), including, but not limited to, PACER and any other electronic files. The complainant's name shall be substituted in all records related to the Declaratory Judgment Action as "Jane Doe."

30. The terms and existence of this Agreement will remain confidential among the parties until after such point as the United States District Court for the District of Puerto Rico has substituted the name "Jane Doe" in all court records related to the Declaratory Judgment Action as discussed in the immediately preceding paragraph of this Agreement, except that the parties will continue to maintain the confidentiality of, and will never make public, Exhibits 1 and 2.
31. To the extent that Modern Hairstyling's filing of the Declaratory Judgment Action using the complainant's true name results in the complainant's HIV status or health condition being made public on any source other than on the PACER system for the United States District Court for the District of Puerto Rico, Modern Hairstyling, through counsel, will work immediately to remedy such other public disclosures of this sensitive information. This includes (but is not limited to) working in good faith to promptly have such information removed from websites or any other sources on which it has been disclosed. Modern Hairstyling will report to the United States on all such efforts undertaken.
32. Within 15 days of the effective date of this Agreement, Modern Hairstyling will provide to the United States the full names and contact

information (including last known addresses and telephone numbers) of all individuals in addition to the complainant who have, at any time, been denied admission to or disenrolled from any of the educational programs offered by Modern Hairstyling due to their HIV status, and/or who have otherwise been denied the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of Modern Hairstyling. Modern Hairstyling will provide the United States with information regarding the circumstances of each individual's interaction with Modern Hairstyling. The United States will attempt to make contact with those individuals to ascertain each such individual's interest in affiliating/reaffiliating with Modern Hairstyling and to inform them of Modern Hairstyling's obligations under title III of the ADA.

33. The United States may review Modern Hairstyling's compliance with this Agreement or title III of the ADA at any time. If the United States believes that this Agreement or any portion of it has been violated, it will raise its concerns with Modern Hairstyling and the parties will attempt to resolve the concerns in good faith. The United States will give Modern Hairstyling thirty days from the date it notifies Modern Hairstyling of any breach of this Agreement to cure that breach before instituting an enforcement action. If the United States is unable to reach a satisfactory resolution of the issue or issues raised within thirty days of the date it provides notice to Modern Hairstyling, it may institute a civil action in the appropriate United States District Court to enforce this Agreement or title III of the ADA.

34. Failure by the United States to enforce this entire Agreement or any of its provisions shall not be construed as a waiver of its right to do so with regard to other provisions of this Agreement.
35. A signatory to this document in a representative capacity for either party represents that he or she is authorized to bind that party to this Agreement.
36. This Agreement constitutes the entire agreement between the United States and Modern Hairstyling on the matters raised herein and no other 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, shall be enforceable.
37. 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. Nothing in this Agreement changes Modern Hairstyling's obligation to otherwise comply with the requirements of the ADA.

EFFECTIVE DATE/TERMINATION DATE

38. The effective date of this Agreement is the date of the last signature below.
39. The duration of this Agreement will be three years from the effective date.

AGREED AND CONSENTED TO:

ISRAEL N. BERRIOS
Modern Hairstyling Institute, Inc.
Dr. Veve #57

THOMAS E. PEREZ
Assistant Attorney General
Civil Rights Division

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SAMUEL BAGENSTOS
Deputy Assistant Attorney General
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Date 11/29/2010

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Date 12/2/2010

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