

**SETTLEMENT AGREEMENT BETWEEN THE UNITED STATES OF
AMERICA AND TWEETIE NAILS, LLC d/b/a DIVA NAILS
DJ # 202-54M-91**

I. Background

1. The parties to this Settlement Agreement are the United States of America and Tweetie Nails, LLC d/b/a Diva Nails (“Diva Nails”).

2. This matter was initiated by a Diva Nails customer, who filed a complaint with the United States Department of Justice, alleging that Diva Nails discriminated against him on the basis of his disability in violation of Title III of the Americans with Disabilities Act (“ADA”), 42 U.S.C. §§ 12181-12189. Specifically, the Complainant alleged that the owner of Diva Nails informed him that he could not return to Diva Nails for future services after another customer (known to Complainant) disclosed that Complainant 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. Jurisdiction

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, 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, he has a disability within the meaning of 42 U.S.C. § 12102 and 28 C.F.R. § 36.105.

6. Tweetie Nails, LLC is a North Carolina corporation doing business as Diva Nails and is located at 3825 S. Roxboro Street, Suite 126 in Durham, North Carolina, 27712. Diva Nails provides nail care services, including manicures and pedicures.

7. Diva Nails 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. Diva Nails owns, leases or operates a place of public accommodation, the nail salon, 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 May 24, 2019, the Complainant visited Diva Nails in order to receive a pedicure. He received a pedicure and proceeded to pay his bill. As he was paying his bill, another customer, who Complainant knew from church, loudly asked if the salon “knew about his condition.”
- b. The owner of Diva Nails followed the Complainant outside, allegedly told him that the owner knew the Complainant had “AIDS,” and told the Complainant not to come back to the salon. Diva Nails denies that it refused the Complainant future services, but admits that its manager asked the Complainant whether he was HIV-positive, and requested a doctor’s note or other documentation regarding the condition.
- c. According to the Complainant, he became embarrassed and anxious by what he believes was discriminatory treatment on the basis of his HIV status.
- d. The Complainant lives near Diva Nails and does not drive, limiting his ability to obtain pedicure services elsewhere. He has not been back to Diva Nails since the events alleged.

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

12. The United States has further determined that it would have been inappropriate for Diva Nails to request a doctor’s note or other documentation regarding HIV. Diva Nails has not shown that treating the complainant would have posed a direct threat to the health or safety of others. A determination that an individual poses a direct threat to the health or safety of others must be made through an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence, not on generalization or stereotypes. 42 U.S.C. §12182(b)(3); 28 C.F.R. § 36.208(b). According to the Centers for Disease Control, a person can only acquire HIV by a) having sex with an individual who has HIV, b) by direct exposure (such as through an injection or open wound, exposure of mucous membranes, or transplantation) to blood, blood products, organs, or other tissues of an individual with HIV, and c) through transmission from a mother with HIV to an infant during pregnancy, birth, or breast

feeding.¹ HIV cannot be transmitted through day-to-day, casual contact, and occupational HIV transition is extremely rare.²

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

III. Actions to Be Taken by Diva Nails

13. Diva Nails and its owners, employees, contractors, staff, and agents (collectively, “Staff”), will not discriminate against any individual on the basis of disability, including HIV or AIDS, in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations offered at Diva Nails, consistent with Title III of the ADA, 42 U.S.C. § 12182, and its implementing regulation, 28 C.F.R. Part 36.

14. Within thirty (30) days of the effective date of this Agreement, Diva Nails will submit a non-discrimination policy to the United States for its review and approval. The non-discrimination policy will state that Diva Nails does not discriminate in the provision of services to persons with disabilities, including persons who have HIV or AIDS. Once it has been approved by the United States, Diva Nails will adopt, 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 Diva Nails location and on the company’s Facebook webpage currently located at <https://www.facebook.com/Diva-Nails-152281798138135/>, as well as on the homepage of any current or future Diva Nails website, for the duration of this Agreement.

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

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

¹ See Ways HIV Can Be Transmitted (Centers for Disease Control (“CDC”) publication), *available at* <https://www.cdc.gov/hiv/basics/hiv-transmission/ways-people-get-hiv.html> (last visited March 30, 2021).

² See HIV and Occupational Exposure (CDC publication), *available at* <https://www.cdc.gov/hiv/workplace/healthcareworkers.html> (last visited March 30, 2021); Surveillance of Occupationally Acquired HIV/AIDS in Healthcare Personnel, as of December 2010 (CDC publication, May 2011), *available at* <https://www.cdc.gov/hai/organisms/hiv/surveillance-occupationally-acquired-hiv-aids.html> (last visited March 30, 2021).

17. All training manuals or written materials concerning Diva Nails' 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 counsel for the United States.

18. Diva Nails 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**), Diva Nails will send a check as follows: \$7,500 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 he has endured (including emotional distress and pain and suffering) as a result of Diva Nails' discrimination.

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

[redacted]

21. Diva Nails 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. Diva Nails will issue to the Complainant an IRS form 1099 reflecting the amount paid to him.

22. Within seven (7) days of 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, Diva 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 Diva Nails' response, if any.

23. Diva Nails 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 Diva Nails 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, Diva Nails will immediately notify the United States of the issue(s), and the parties will attempt to resolve those issues in good faith.

IV. Implementation and Enforcement

26. In consideration for the Agreement set forth above, the United States will close its investigation of Diva Nails 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 Diva Nails' 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 Diva Nails 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 Diva Nails, including all principals, owners, agents, executors, administrators, representatives, employees, successors in interest, beneficiaries, and assignees. The person signing this Agreement on behalf of Diva Nails represents that he is authorized to bind Diva Nails to this Agreement.

30. This Agreement constitutes the entire agreement between the United States and Diva 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 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 Diva Nails 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 Diva Nails of its obligation to fully comply with the requirements of the ADA.

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

V. Effective Date/Termination Date

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

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

FOR DIVA NAILS

/s/

Tuan Ahn Trang, Member-Owner
Tweetie Nails, LLC d/b/a Diva Nails
3825 S. Roxboro Street, Suite 126
Durham, NC 27712

Date: 6/12/2021

FOR THE UNITED STATES OF AMERICA

Sandra J. Hairston

Acting United States Attorney

Middle District of North Carolina

/s/

Cassie L. Crawford

Assistant U.S. Attorney

Middle District of North Carolina

101 South Edgeworth St., Fourth Floor

Greensboro, NC 27410

Date: 6/16/2021