

In the District Court
of
Shawnee County, Kansas

**Jigisha Modi,
Jignesh Biscuitwala,
Jyotsna Biscuitwala, and
Shree, LLC**

Plaintiffs,

v.

**Kansas State Board of Cosmetology,
David Yocum, in his official capacity as
Chairperson of the Kansas State Board of
Cosmetology,
Nichole Hines,
Kelly Robbins,
Dave Tucker,
Christine “Tina” Burgardt,
Ashley Rangel,
Kimberley Mancuso,
Mary Blubaugh, in their official capacities
as members of the Kansas State Board of
Cosmetology,
Laura Gloeckner, in her official capacity as
Executive Director of the Kansas State
Board of Cosmetology, and
State of Kansas.**

Defendants.

Civil Action No.

Petition for Declaratory Judgment

Petition for Declaratory Judgment

Plaintiffs Jigisha Modi, Jignesh Biscuitwala, Jyotsna Biscuitwala, and Shree, LLC file this Petition for Declaratory Judgment to vindicate their rights to earn honest livings free from irrational, arbitrary, protectionist, and unreasonable government restrictions, as guaranteed by the Kansas Constitution. This Petition is brought against the Defendants, their officers, agents,

servants, employees, attorneys, and those persons in concert or participation with them, including their successors in office.

Introduction

1. This lawsuit seeks to vindicate Plaintiffs' rights to earn honest livings free from unreasonable government restrictions under the Kansas Constitution. In Kansas, it is a crime to practice unlicensed eyebrow threading, or hire, unlicensed eyebrow threaders. Eyebrow threading is a safe and simple technique that uses just a single strand of cotton – and nothing else – to remove unwanted hair. It does not usually involve skin-to-skin contact between the threading artist and customer, does not reuse the same tools on different customers, and does not involve the use of sharp implements, harsh chemicals, or heat. Threaders charge somewhere between \$10 and \$15 for their services.
2. Despite the simplicity and ease of threading, Kansas law requires eyebrow threaders to obtain an esthetician's license. This license requires a threader to complete at least 1,000 hours of instruction at an expensive esthetician school. Making matters worse, eyebrow threaders waste hundreds of hours of class time learning cosmetology methods that threaders do not use or need. It is estimated that .667% of the schooling is devoted to threading, if it is even taught at all. Defendants also require aspiring threaders to pass examinations even though threading does not appear to be a testing subject. As a result, threaders are required to endure hundreds of hours of irrelevant training, take irrelevant examinations, and spend tens of thousands of dollars on schooling, examinations, and fees just to be able to use a single piece of cotton thread to groom an eyebrow. In short, this licensing regime is not appropriately tailored to fit the practice of threading.
3. Kansas' threading regime deprives Plaintiffs and other threaders of their constitutional rights under the Kansas Constitution Bill of Rights sections 1, 2, and 18. This Court should declare Kansas' threading regime unconstitutional and permanently enjoin its enforcement.

Parties

4. Jigisha Modi is a licensed cosmetologist. Jigisha¹ operates two licensed esthetics establishments, one in Olathe, the other in Shawnee, Kansas, along with her husband Jignesh Biscuitwala. Both salons do business as “Miracle Eyebrows.” As a holder of a cosmetology license issued by the Kansas State Board of Cosmetology (Board), Jigisha falls under its jurisdiction and purview.
5. Jignesh Biscuitwala, along with Jigisha, is partial operator of both Miracle Eyebrows salons. The Olathe esthetics establishment license lists Jignesh as the owner and was issued as such by the Board. Jignesh falls under the Board’s jurisdiction and purview because he is listed as the Olathe owner.
6. Jyotsna Biscuitwala has almost thirty years’ threading experience. Jyotsna is Jignesh Biscuitwala’s mother and Jigisha Modi’s mother-in-law. Jyotsna desperately wants to thread in her family’s salons but cannot. Jyotsna does not have a threading license and is unable to obtain one. The licensing requirements are simply too expensive, too onerous, and esthetician schools do not readily provide courses in Jyotsna’s native language, Gujarati. The esthetics examinations are not offered in Jyotsna’s native language either. Regardless, it is the Defendants’ licensing regime that prevents Jyotsna from using a piece of cotton thread to groom eyebrows, rather than a lack of experience or real-life credentials.
7. Shree, LLC is a Kansas limited liability company in good standing. Its organizers are Plaintiff Jigisha Modi and Plaintiff Jignesh Biscuitwala, and both own 5% or more of its capital. The Board issued the Shawnee salon esthetics establishment in Shree, LLC’s name as the owner. As such, Shree, LLC falls under the jurisdiction and purview of the Board.

Defendant Kansas State Board of Cosmetology

8. Defendant Kansas State Board of Cosmetology (Board) is a State of Kansas board that was statutorily created to “regulate the practice of the profession of cosmetology in

¹ For simplicity’s sake, counsel refers to Plaintiffs’ by their first names. This is not meant to be disrespectful.

Kansas.” KSA § 74-2701(a). The Board oversees and regulates cosmetology, nail technology, esthetics, and electrology occupations.

9. The Board determines its own policies (KSA § 74-2702(a)) and is comprised of an executive director and individual members.
10. The Board is empowered to:
 - a. Establish rules and regulations. KSA § 74-2702a.
 - b. Impose cease and desist orders. KSA § 65-1902(d); KSA § 65-1908(b).
 - c. Assess fines. KSA § 65-1902(d).
 - d. Bring legal actions in its own name in a court of competent jurisdiction. KSA § 65-1909(c).
 - e. Prescribe rules and regulations for inspectors. KSA § 65-1908.
 - f. Conduct its own inspections. KAR § 69-13-2.
 - g. Conduct any business before it. KSA § 74-2702.
 - h. Keep records of its proceedings. KSA § 74-2702.
 - i. Keep a register of applicants for licenses. KSA § 74-2702.
 - j. Possess an official seal. KSA § 75-2702.
 - k. Administer oaths. KSA § 74-2702.
 - l. Grant and deny licenses to cosmetology schools. KSA § 65-1903.
 - m. Grant and deny licenses to cosmetologists and estheticians. KSA § 65-1904(c).
 - n. Grant and deny salon or clinic licenses. KSA § 65-1904a.
 - o. Refuse to issue or renew a license, or revoke, suspend, censure, limit or condition a license. KSA § 65-1908.
 - p. Issue permanent orders for the closing of any licensed establishment. KSA § 65-1908(c).
 - q. Hold examinations of applicants who have applied for licensure. KSA § 74-2703.
 - r. Establish a course of instruction and practice for cosmetology and esthetics schools. KSA § 65-1903.
 - s. Conduct inspections (KAR § 69-13-2(a)), authorize inspections (KAR § 69-13-2(e)), and investigate specific complaints. KAR § 69-13-3.

- t. Select a chairperson from its membership. KSA § 74-2701(b).
 - u. Approve the chairperson's appointment of inspectors. KSA § 74-2702(a).
11. The Board is capable of being sued for non-monetary, prospective equitable relief, based upon the allegations contained in this Petition, the relevant statutes, regulations, and caselaw, as well as other factual and good faith legal arguments developed throughout the pendency of this case.
 12. The Board is located in Topeka, Kansas, and may be served with process by serving the Kansas Attorney General at Memorial Hall, 2nd Floor, 120 SW 10th Avenue, Topeka, Kansas.

Defendants Members of the Board

13. The Board's individual members and executive director (Members) are responsible for overseeing, regulating, administering, and enforcing the cosmetology, nail technology, esthetics, and electrology laws, regulations, and policies.
14. David Yocum is Chair of the Kansas State Board of Cosmetology and sued in his official capacity.
15. Nichole Hines is a member of the Kansas State Board of Cosmetology and sued in her official capacity.
16. Kelly Robbins is a member of the Kansas State Board of Cosmetology and sued in her official capacity.
17. Dave Tucker is a member of the Kansas State Board of Cosmetology and sued in his official capacity.
18. Christine "Tina" Burgardt is a member of the Kansas State Board of Cosmetology and sued in her official capacity.
19. Ashley Rangel is a member of the Kansas State Board of Cosmetology and sued in her official capacity.
20. Kimberley Mancuso is a member of the Kansas State Board of Cosmetology and sued in her official capacity.

21. Mary Blubaugh is a member of the Kansas State Board of Cosmetology and sued in her official capacity.
22. Laura Gloeckner is the Executive Director of the Kansas State Board of Cosmetology and is sued in her official capacity. The executive director is appointed by the Governor to the Board and serves to regulate the practice of the profession of cosmetology. The Executive Director also serves as the Board's treasurer, keeps a record of Board proceedings, and performs such other duties as the Board directs. The executive director is empowered to conduct inspections (KAR § 69-13-2(d)), authorize inspections (KAR § 69-13-2(e)), investigate specific complaints (KAR § 69-13-3), collect fees and payments (KSA § 74-2704), remit all moneys received from fees, charges, or penalties to the state treasurer (KSA § 74-2704), impose fines, and issue warning letters, among other things.
23. The Members are sued for non-monetary, prospective relief.
24. The Members may be served with process by serving the Kansas Attorney General at Memorial Hall, 2nd Floor, 120 SW 10th Avenue, Topeka, Kansas.

Defendant State of Kansas

25. The State of Kansas is a state governmental entity, is sued for non-monetary, prospective relief, and may be served with process by serving the Kansas Attorney General at Memorial Hall, 2nd Floor, 120 SW 10th Avenue, Topeka, Kansas.
26. Additionally, the Attorney General will be served with a copy of the proceedings pursuant to KSA § 75-764.

Jurisdiction and Venue

27. Plaintiffs seek to vindicate their rights under Sections 1, 2, and 18 of Kansas Constitution Bill of Rights, under the Kansas Declaratory Judgment Act, KSA § 60-1701, et seq. and the Kansas Injunctive Relief Act, KSA § 60-901, et seq.
28. Plaintiffs seek prospective declaratory and injunctive relief from Kansas' irrational, arbitrary, and protectionist licensing regime involving eyebrow threading. As more fully developed below, the licensing regime unconstitutionally prohibits persons from

employing or allowing any unlicensed threader to “engage in any activity for which a license is required” KSA § 65-1909(a)(1), and the licensing regime unconstitutionally prohibits qualified, but unlicensed, threaders from practicing their occupation. Again, as more fully developed later, Plaintiffs seek 1) a judgment declaring this licensing regime unconstitutional; and 2) a permanent injunction preventing the enforcement of the licensing regime involving eyebrow threading.

29. This Court has jurisdiction pursuant to KSA § 60-1701, et seq., KSA § 60-901 et seq., Sections 1, 2, and 18 of the Kansas Constitution Bill of Rights, and KSA § 20-301.
30. Venue is proper in Shawnee County, Kansas by virtue of the Defendants’ office locations.

Facts

The Art of Eyebrow Threading

31. Eyebrow threading is an all-natural grooming practice that involves the removal and shaping of eyebrow hair with a single strand of cotton thread and nothing else.
32. The art of eyebrow threading involves tightly winding a single strand of cotton thread and tying the ends together to form a large loop.²
33. Threaders twist the loop several times to form an hourglass shaped “shuttle” and then draw the shuttle taut between the fingers.
34. Threaders place the shuttle along the brow and move the center of the shuttle along the surface of the skin by opening and closing the opposite sides of the shuttle. As the threader moves the loop along the brow, hair is trapped in the loop, and removed.
35. Threading is a precise method for removing narrow bands of hair, making it ideal for shaping eyebrow hair.
36. In the South Asian and Middle Eastern communities to which Plaintiffs belong, threaders frequently learn their art at a young age from family or friends.

² Illustrations available at: <https://skinvac.blogspot.com/2014/01/how-to-thread-eyebrows-and-remove.html> (last accessed Nov. 16, 2020).

The Benefit of Eyebrow Threading

37. Americans' awareness of the benefits of threading, as compared to waxing and other Western epilatory practices, is increasing.
38. Threading is all-natural, non-invasive, and safe.
39. Threading does not involve the use of heat, chemicals, or sharp objects.
40. Threading does not usually involve skin-to-skin contact between the threader and customer.
41. Each customer is serviced using a fresh, sanitary piece of thread.
42. Threading can cause a slight pricking or scraping sensation but is painless relative to other forms of eyebrow hair removal.
43. Unlike waxing, threading does not risk burning or removing a customer's skin.
44. Threading is inexpensive and less time consuming than other forms of hair removal—shaping eyebrows seldom costs more than \$15 or takes longer than five to seven minutes.
45. Some threaders apply over-the-counter astringents, such as witch hazel, or over-the-counter soothing powders, such as baby powder, to clean or numb hair follicles before or after threading.
46. The low cost of threading—for both threading businesses and their customers—creates vibrant competition with other epilatory practices, which in turn keeps prices low for consumers of all forms of commercial eyebrow shaping.

Kansas' Cosmetology and Esthetics Licensing Regime

47. State law prohibits owning or operating a salon where cosmetology or esthetics is practiced unless the person holds a valid salon license issued by the Board. KSA § 65-1902(a)(10). Among other penalties and potential consequences, operating a salon without a license is a class C misdemeanor. KSA § 65-1902(e).
48. State law prohibits persons from “engag[ing] in [the] practice of cosmetology [or] esthetics ... unless the person holds a valid license, issued by the [cosmetology] board[.]” KSA § 65-1902(a)(1). Among other penalties and potential consequences,

practicing cosmetology or esthetics without a license is a class C misdemeanor. KSA § 65-1902(e).

49. State law prohibits a person from employing or allowing an individual to “engage in any activity for which a license is required ... unless such individual holds a currently valid license issued to such individual[.]” KSA § 65-1909(a)(1). Among other penalties and potential consequences, doing so is a misdemeanor. KSA 65-1909(b).
50. Cosmetology means the occupation of, among other things, the “temporary hair removal from the face ... by use of the hands or mechanical or electrical devices other than electric needles[.]” KSA § 65-1901(d)(1)(C).
51. “Esthetics” is not defined but an “esthetician” is: a “person who, for compensation, practices ... cosmetology only to the following extent: (1) Eyebrow and eyelash services, cleansing, stimulating or performing any other noninvasive beautifying process on any skin surface by means of hands or mechanical or electrical appliances, other than electric needles, provided for esthetic rather than medical purposes; (2) temporary hair removal from the face or any part of the body by use of the hands or mechanical or electrical appliances other than electric needles[.]” KSA § 65-1901(e)(1-2).
52. Eyebrow threading falls within the definition of KSA § 65-1901(e)(1-2).
53. Hair braiding is specifically exempted from the cosmetology definition. KSA § 65-1901(d)(2) (“Cosmetology shall not include a service that results in tension on hair strands or roots by twisting, wrapping, weaving, extending, locking, or braiding by hand or mechanical device so long as the service does not include the application of dyes, reactive chemicals or other preparations to alter the color of the hair or to straighten, curl or alter the structure of the hair and so long as the requirements of K.S.A. 65-1928, and amendments thereto, are met. Nothing in this paragraph shall be construed to preclude a licensed cosmetologist from performing the service described in this paragraph.”)

What does it Take to Become a Licensed Threader? Kansas' Mandatory Apprenticeship and Schooling

54. Aspiring threaders must graduate from a Board approved esthetician school. KAR § 69-1-1.
55. Fifteen days after enrolling in the Board approved school, aspiring threaders must apply and pay for an apprentice license. KSA § 65-1912. While in esthetician school, the aspiring threader must complete 1,000 hours as an apprentice. KSA § 65-1912(b)(2)(B). KAR § 69-1-1.
56. Esthetician school itself consists of “not less than” 1,000 hours of a “course of instruction and practice.” KSA § 65-1903(a)(2)(F)(2). The Board determines the “course of instruction and practice.” KSA § 65-1903(a)(2)(F)(5).
57. The Board adopted the esthetician curriculum by reference in KAR § 69-3-8. The esthetics curriculum (Exhibit A):

Esthetics Training	Theory Instruction	Practical Hours	Minimum Procedures	Esthetics Training cont.	Theory Instruction	Practical Hours	Minimum Procedures
(1) Infection Control	10	50		(5) Body treatments	20	20	10
(a) Public Health				(a) Back and chest			
Sanitation				(b) Body wrap			
Disinfection				(c) Body exfoliation			
Sterilization				(d) Hydrotherapy – (theory only)			
(b) Universal precautions				(6) Advanced skin treatments	80	60	45
Cross contamination				(a) Advanced exfoliation			
Blood borne pathogens				(b) Extractions using a lancet			
(2) Skin anatomy and physiology	200			(c) Microdermabrasion			
(a) Structure and function of the				(d) LED			
body systems and nerves				(e) Chemical exfoliation			
(b) Dermatology				Gessner's			
(c) Cosmetic chemistry				AHA's			
(d) Pharmacology				(f) Microcurrent and other electrical			
(e) Nutrition				treatments			
(3) Skin analysis and consultation	80	40		(g) Equipment for advanced skin			
(a) Skin types and conditions				treatments			
(b) Contraindications				Microdermabrasion			
(c) Health screening				Microcurrent			
(d) Consultation, post				LED			
consultation and home care				Mechanical			
(e) Skin analysis equipment				(7) Temporary hair removal	10	30	40 facial waxes 10 body waxes
(4) Skin treatments	120	120	80 facials	(a) Tweezing			
(a) Cleansing techniques				(b) Waxing			
(b) Exfoliation				(c) Depilatories			
Mechanical				(d) Sugaring			
Chemical (enzymes,				(e) Threading			
hydro-aphroxy)				(f) Contraindications and safety			
(c) Extraction				(8) Make up	20	40	25
Without lancet				(a) Purpose and effects			
(d) Conditioning				(b) Eyebrow and eyelash			
(e) Masque therapy				Services			
(f) Protection				(c) Corrective			
(g) Massage				(d) Camouflage			
(h) Basic facial equipment				(9) Business Practices	30		
and safety				(a) Business planning			
Steamer				(b) Client records			
Brush machine				(10) State law	20		
				(a) Rules and regulations			
				(11) Student specific needs	50		
				Total Hours	1000		

58. Nearly every minute of esthetician school is spent on matters non-specific to threading. In fact, a significant portion of time is spent on topics a threader will never use under any circumstances.

59. Of the 1,000 hours required to become a licensed esthetician, only 40 hours are devoted to an entire category of hair removal. Assuming each hair removal topic was evenly taught, only 1.667 hours would be devoted to threading theory, and only 5.0 hours would be devoted to the practice of threading. Therefore, of the mandatory 1,000 hours, esthetician school spends 99.333% teaching non-threading-specific information, which means threading-specific information totals .6667% of the esthetics curriculum. This assumes threading is being taught, which is highly unlikely.
60. It would take an aspiring threader 25 weeks to complete the irrelevant course of instruction, if the threader attended school for 40 hours per week, every week.
61. Esthetician school is prohibitively expensive for most threaders. A popular esthetics school in the Midwest charges more than \$12,000 for their program.

**What does it Take to Become a Licensed Threader?
Kansas' Mandatory Licensing Exam and Licensing Application Process**

62. After completing an approved esthetics school, aspiring threaders must pass a written examination and a practical examination. KSA § 65-1904(c); KSA § 65-1905(a); KAR § 69-1-1(a). The written and practical examination fees are \$75 each.
 - a. To take the test, aspiring threaders must be “referred” by an esthetician school, an apprenticeship program, or by the Board. Exhibit B, page 4.³ The aspiring threader must be at least 17 years old, be a graduate of an accredited high school or equivalent, and have served as an apprentice. *See* KSA § 65-1905(b).
63. The licensure examinations are developed and administered by the Board, or by a Board-approved examination provider. KSA § 65-1905(a); KAR § 69-1-4(c).
64. The written examination is two hours long.

³ Exhibit B contains select pages. The full document is accessible here: <https://s3-us-west-2.amazonaws.com/ergontn-public/cos-ks/handbooks/esthetician-2020-07-01.pdf> (last accessed Nov. 16, 2020). It should be noted the Cosmetology Candidate Information Bulletin was revised October 1, 2020, but not the Esthetician Candidate Information Bulletin. *See* <https://www.cosmetologykansas.com/handbooks.cfm> (last accessed Nov. 16, 2020).

65. The aspiring threader must score an average of at least 75% on the practical examination, must attain a score of at least 75% on the client protection section and attain at least 75% on the written examination. KAR § 69-1-4.
66. The written examination does not appear to specifically test threading. *See* Exhibit B.
67. Instead, the written examination tests the following subjects (Exhibit B, pages 12-13):

<p>Kansas State General Laws, Rules and Regulations - 25%</p> <p>Safety, Sanitation & Infection Control - 40% Prohibited practices Types of bacteria Immunity Viruses Parasites First Aid: <ul style="list-style-type: none"> • Blood exposure procedures • Bodily fluids contact procedures • Methods of infection control: • Sanitation • Antiseptics • Disinfection • Sterilization • Solutions and formulations Products and chemicals use and storage: <ul style="list-style-type: none"> • Labeling • Removal from containers Hazardous waste disposal</p>	<p>Product Knowledge & Chemistry - 6% Water pH and the pH scale Skin care products: <ul style="list-style-type: none"> • Toners, astringents and Refresheners • Humectants and emollients • Masks and packs • Sunscreen • Aromatherapy • Exfoliants • Make-up Anatomy & Physiology - 2% Histology of the skin <ul style="list-style-type: none"> • Structure of the skin • Skin disorders • Primary and secondary lesions • Melanin • Skin cancer </p>
<p>Implements, Tools & Equipment - 6% Paraffin wax machines Cosmetic pencil sharpeners Facial steam machines Facial rotary brushes Make-up LED equipment Tweezers Use and manipulation Prohibited implements Care and maintenance Microdermabrasion equipment</p>	<p>Skin Care & Services - 21% Skin analysis Skin care services: <ul style="list-style-type: none"> • Draping • Clean-up facial • Deep facial with moist heat & massage • Massage movements Hair removal Client records Make-up application Microdermabrasion LED Chemical exfoliation Microcurrent & other electrical treatments</p>

68. The practical examination does not appear to specifically test threading either.⁴

⁴ Again, accessible here: <https://s3-us-west-2.amazonaws.com/ergontn-public/cos-ks/handbooks/esthetician-2020-07-01.pdf> (Accessed Nov. 16, 2020).

69. Instead, the practical examination tests the following (Exhibit B, page 22):

SERVICES PERFORMED DURING THE PRACTICAL EXAM				
Practical exam instructions are presented during the exam. (See scripts at www.cosmetologykansas.com .)				
Order of exam components is shown below. On the following pages, tasks for each service are described.				
Evaluators will rate your ability to demonstrate each task in a safe, sanitary and legal manner, utilizing all tools and implements safely and maintaining safe and sanitary conditions. Technique is not graded. You should use techniques you were taught or that you prefer. You will be evaluated at all times.				
	Service	Setup Time	Timed Service	Percent of Overall Score
Blood Exposure	Blood Exposure Procedure Demonstration	5 Minutes	10 Minutes	Pass/Fail
Initial Setup	Sanitize and Setup	10 Minutes	-	7%
Service 1	Facial	2 minutes	15 Minutes	19%
Service 2	Facial Mask	2 minutes	10 Minutes	12%
Service 3	Manual Extraction	2 minutes	10 Minutes	19%
Service 4	Tweezing and Waxing	2 minutes	20 Minutes	19% each
Cleanup	Sanitize and Cleanup	Unlimited	Unlimited	5%

70. Even though a threader must pass two examinations to become licensed, it does not appear that threading is tested.

Penalties for Violating the Licensing Regime

71. Using a piece of cotton thread to remove an eyebrow hair, without first obtaining a Board issued license, is a class C misdemeanor. KSA §§ 65-1902(a)(1) and (e). The Board may issue a cease and desist order, assess a fine, or do both, for threading without a license. KSA § 65-1902(a)(1) and (d).

72. It is a misdemeanor for a person to employ or allow any unlicensed threader to “engage in any activity for which a license is required[.]” KSA §§ 65-1909(a)(1) and (b).

73. It is a misdemeanor for a person to violate any order or ruling of the Board. KSA §§ 65-1909(a)(2) and (b).

74. It is a misdemeanor for a person to fail or refuse to comply with rules and regulations prescribed by the Board. KSA §§ 65-1909(a)(3) and (b).

75. It is a misdemeanor for a person to violate any of the provisions of Article 19 of Chapter 65 of the Kansas Statutes Annotated. KSA §§ 65-1909(a)(4) and (b).

76. Violations of the licensing regime at issue in this case empowers the Board to refuse to issue or renew a license, or revoke, suspend, censure, limit or condition a license. KSA § 65-1908(a)(2).
77. The Board may refuse to issue or renew a license, or revoke, suspend, censure, limit or condition a license for a failure to comply with any provision of the licensing regime. KSA § 65-1908(a)(2).
78. The Board may refuse to issue or renew a license, or revoke, suspend, censure, limit or condition a license for a failure to comply with the rules and regulations promulgated by the Board. KSA § 65-1908(a)(2).
79. The Board may refuse to issue or renew a license, or revoke, suspend, censure, limit or condition a license for a failure to comply with any order issued by the Board. KSA § 65-1908(a)(2).
80. The Board may order the remedying of any violations of rules and regulations of the Board or any provision of licensing regime, and the Board may issue a cease and desist order upon Board determination that the holder of a license or any person has violated any order of the Board, any rules and regulations of the Board or any provision of the licensing regime at issue. KSA § 65-1908(b).
81. In addition to the Board's authority to refuse licensure or impose discipline, the Board shall have the authority to assess a fine not in excess of \$1,000 against a licensee for each of the reasons specified in KSA § 65-1908(a)(1-9). KSA § 65-1908(d).
82. In short, threading without a license is punishable by the Board and so is allowing threading without a license.

Enforcement by Defendants

83. Defendants, to include the Board and its Members, have sent inspectors to search for unlicensed threaders and salons that employ unlicensed threaders.
84. Defendants, to include the Board and its Members, have issued citations and fines to threading businesses and threaders based on the unlicensed practice of threading.

85. Defendants, to include the Board and its Members, continue to threaten punishment for unlicensed threaders and threading businesses that employ unlicensed threaders.
86. Defendants' enforcement of the licensing requirements threatens the current and future success of these threading businesses.
87. Unlicensed threaders who provide their services to the public risk harsh penalties, including criminal convictions and fines, and losing their livelihoods.
88. The threat of punishment has the effect of deterring many businesses from hiring unlicensed threaders, preventing unlicensed threaders from earning a living and providing their services to consumers.

Jigisha Modi, Jignesh Biscuitwala, and Shree, LLC

89. Jigisha Modi immigrated to the United States in 1997, and Jignesh Biscuitwala immigrated to the United States in 2003, both from Gujarat, India. Jigisha received her cosmetology and esthetics license in 2010. She graduated from "B" Street Design esthetician school in 2010, and Paul Mitchell cosmetology school in 2014. She incurred significant student loans, the likes of which she is still paying off.
90. Jigisha and Jignesh started an eyebrow threading salon in Columbia, Missouri, but closed it because the drive from Olathe was just too much for them to handle, and because they had difficulty finding licensed threaders. So, Jigisha and Jignesh opened "Miracle Eyebrows" in Olathe and Shawnee, Kansas. The stores are located inside the Olathe and Shawnee Walmarts.
91. Jignesh is the named owner of the Olathe licensed salon and manages the salon. Jignesh and Jigisha prepare and submit paperwork to the Board to maintain the salons' licenses. The Olathe esthetics establishment license is issued in Jignesh's name. The Shawnee esthetics establishment license was issued in Shree, LLC's name.
92. Jigisha runs the day-to-day operations of the salons. The salons offer primarily threading services. She makes managerial decisions with her husband, Jignesh, including hiring decisions. It is extremely difficult for Jignesh and Jigisha to find

licensed estheticians who are willing and interested in performing eyebrow threading services.

93. In June 2019, an unlicensed threader was cited by the Board for performing unlicensed services while working at the Olathe salon. That threader no longer works at the salon.
94. Shree, LLC is a Kansas limited liability company in good standing. Its organizers are Plaintiff Jigisha Modi and Plaintiff Jignesh Biscuitwala, and both own 5% or more of its capital. The Board issued the Shawnee salon in Shree, LLC's name as its owner. As the named holder of the Shawnee esthetics establishment license, Shree, LLC falls under the jurisdiction and purview of the Board.
95. Jigisha, Jignesh, and/or Shree, LLC would immediately hire Jyotsna if the irrational licensing regime were not in place.

Jyotsna Biscuitwala

96. Jyotsna began threading in 1992 in India. Jyotsna owned and operated a threading salon in Surat where she hired and trained hundreds of employees in threading. During that time, Jyotsna estimates she skillfully and competently performed thousands of threadings.
97. In 2004, Jyotsna immigrated to the United States. She attempted esthetician school in Kansas but she was unable to successfully complete the program. She tried again in 2008 without success.
98. Jyotsna is an accomplished threader. She even taught Jigisha and Jignesh the art, as is common in their community.
99. Because of the government's licensing regime, Jigisha and Jignesh and/or Shree, LLC cannot hire Jyotsna. Likewise, Jyotsna cannot practice threading in her family's salon. This is a significant economic and emotional burden on Jigisha, Jignesh and Jyotsna.
100. Jyotsna would immediately accept employment and engage in the occupation of threading in Jigisha and Jignesh's salon, if the irrational licensing regime were not in place.

The Irrational Licensing Regime Causes Injuries to the Plaintiffs

101. Plaintiffs reallege and incorporate by reference all the preceding paragraphs.
102. Although Defendants require eyebrow threaders to obtain a license, Defendants' licensing requirements are not devised for eyebrow threaders.
103. Under Defendants' licensing regime, eyebrow threaders are required to obtain a license even though the licensing requirements have nothing to do, or very little to do, with eyebrow threading.
104. Defendants' application of Kansas' licensing regime precludes those who are specially and specifically skilled in eyebrow threading from lawfully offering their services to the public for compensation, and prevents others from hiring those specially and specifically skilled threaders.
105. Defendants' licensing regime creates a barrier for eyebrow threaders to offer their services for compensation and creates a barrier for others to hire skilled eyebrow threaders.
106. Defendants' licensing regime unreasonably, arbitrarily, and unfairly limits threading and the employment of threaders.
107. Defendants' licensing regime prevents threaders from earning honest livings, prevents expansion of businesses, and causes great and irreparable harm.
108. Defendants' licensing regime is not appropriately tailored to fit the practice of threading.
109. Jigisha, Jignesh, and/or Shree, LLC would immediately hire Jyotsna, but for the licensing regime.
110. Because of the licensing regime, Jigisha, Jignesh, and/or Shree, LCL have refrained from employing Jyotsna.
111. Plaintiffs have suffered lost income because of the regime.
112. Plaintiffs fear criminal, civil, and administrative prosecution or adverse administrative action if they were to employ Jyotsna as an unlicensed threader in the licensed salon.
113. If the licensing regime were declared unconstitutional, Plaintiffs would have peace of mind and emotional security.

114. Jigisha, Jignesh, and/or Shree, LLC will hire Jyotsna the same day this licensing regime is nullified, or as soon thereafter as reasonably possible.
115. Likewise, Jyotsna will accept employment with Jigisha, Jignesh, and/or Shree, LLC the same day this licensing regime is nullified, or as soon thereafter as reasonably possible.
116. The licensing regime is ongoing, as is the violation of state law.
117. The licensing regime is an ongoing, continuous violation of the Plaintiffs' rights under the Kansas Constitution Bill of Rights.

Declaratory Judgment and Injunctive Relief

118. Plaintiffs reallege and incorporate by reference all the preceding paragraphs.
119. An actual controversy has arisen and now exists between Plaintiffs and Defendants concerning Plaintiffs' rights under the Kansas Constitution Bill of Rights. A judicial declaration is necessary and appropriate at this time. Plaintiffs' injuries result from Defendants' licensing regime and are caused by Defendants' licensing regime. Plaintiffs injuries are concrete, particularized, and cognizable.
120. Plaintiffs desire a judicial determination of their rights against Defendants as they pertain to the licensing regime at issue in this matter.
121. It is appropriate and proper that a declaratory judgment be issued under the Kansas Declaratory Judgment Act, KSA § 60-1701, et seq., declaring unconstitutional all relevant portions of licensing regime at issue in this case.
122. Pursuant to the Kansas Injunctive Relief Act, KSA § 60-901, et seq., it is appropriate and requested that this Court issue permanent, prospective relief prohibiting enforcement of the licensing regime at issue in this case.

Claim One:

Violation of the Kansas Constitution Bill of Rights, Section 1: the Life, Liberty, and Pursuit of Happiness Clause

123. Plaintiffs reallege and incorporate by reference all the preceding paragraphs.
124. Kansas Constitution Bill of Rights section 1 guarantees that “[a]ll men are possessed of equal and inalienable natural rights, among which are life, liberty, and the pursuit of happiness.”

125. Kansas Constitution Bill of Rights section 1 protects the right to earn an honest living, to conduct business free from unreasonable governmental interference, and to be free from unreasonable government restrictions.
126. Kansas' cosmetology and esthetician laws, regulations, and policies, as applied to Plaintiffs, violates Kansas Constitution Bill of Rights section 1.
127. Kansas' cosmetology and esthetician laws, regulations, and policies, as applied to Plaintiffs, are not appropriately tailored to any sufficiently important government interest; and do not directly or materially advance any sufficiently important government interest.
128. Plaintiffs have no other legal, administrative, or other remedy by which to prevent or minimize the continuing irreparable harm to their constitutional rights that is a direct and proximate result of Defendants' application and enforcement of Kansas' threading licensing regime. Unless Defendants are enjoined from committing the above-described violations of Kansas Constitution Bill of Rights section 1, Plaintiffs, and others similarly situated, will continue to suffer great and irreparable harm.
129. Unless the cosmetology and esthetician regime set forth under Kansas statutes, regulations, and policies as applied to Plaintiffs and others who are similarly situated is declared unconstitutional and permanently enjoined, Plaintiffs and others who are similarly situated will continue to suffer great and irreparable harm.

**Claim Two:
Violation of the Kansas Constitution Bill of Rights, Section 18:
the Due Course Clause**

130. Plaintiffs reallege and incorporate by reference all the preceding paragraphs.
131. Section 18 states, in pertinent part: "All persons, for injuries suffered in person, reputation or property, shall have remedy by due course of law[.]"
132. Kansas Constitution Bill of Rights section 18 protects the right to earn an honest living, to conduct business free from unreasonable governmental interference, and to be free from unreasonable government restrictions, and guarantees a remedy by course of law.

133. Kansas' cosmetology and esthetician laws, regulations, and policies, as applied to Plaintiffs, violates Kansas Constitution Bill of Rights section 18.
134. Kansas' cosmetology and esthetician laws, regulations, and policies, as applied to Plaintiffs, are not appropriately tailored to any sufficiently important government interest; and do not directly or materially advance any sufficiently important government interest.
135. Plaintiffs have no other legal, administrative, or other remedy by which to prevent or minimize the continuing irreparable harm to their constitutional rights that is a direct and proximate result of Defendants' application and enforcement of Kansas' threading licensing regime. Unless Defendants are enjoined from committing the above-described violations of Kansas Constitution Bill of Rights section 18, Plaintiffs, and others similarly situated will continue to suffer great and irreparable harm.
136. Unless the cosmetology and esthetician regime set forth under Kansas statutes and regulations as applied to Plaintiffs and others who are similarly situated is declared unconstitutional and permanently enjoined, Plaintiffs and others who are similarly situated will continue to suffer great and irreparable harm.

**Claim Three:
Violation of the Kansas Constitution Bill of Rights Section 1,
Equal Protection**

137. Plaintiffs reallege and incorporate by reference all the preceding paragraphs.
138. Kansas Constitution Bill of Rights section 1 guarantees the equal protection of rights.
139. Kansas Constitution Bill of Rights section 1 protects the right to earn an honest living, to conduct business free from unreasonable governmental interference, to be free from unreasonable government restrictions, and to protect against unequal treatment. This clause protects not just similarly situated people from being treated differently, but also, protects against differently situated people from being treated the same.
140. Kansas' cosmetology and esthetician laws, regulations, and policies unconstitutionally treat threaders the same as estheticians, even though the services they provide are different.

141. Kansas' cosmetology and esthetician laws, regulations, and policies unconstitutionally treats threaders differently from hair braiders, even though the services they provide are similar.
142. Kansas' cosmetology and esthetician laws, regulations, and policies, as applied to Plaintiffs, violates Kansas Constitution Bill of Rights section 1.
143. Kansas' cosmetology and esthetician laws, regulations, and policies, as applied to Plaintiffs, are not appropriately tailored to any sufficiently important government interest; and does not directly or materially advance any sufficiently important government interest.
144. Plaintiffs have no other legal, administrative, or other remedy by which to prevent or minimize the continuing irreparable harm to their constitutional rights that is a direct and proximate result of Defendants' application and enforcement of Kansas' threading licensing regime. Unless Defendants are enjoined from committing the above-described violations of Kansas Constitution Bill of Rights section 1, Plaintiffs, and others similarly situated, will continue to suffer great and irreparable harm.
145. Unless the cosmetology and esthetician regime set forth under Kansas statutes and regulations as applied to Plaintiffs and others who are similarly situated is declared unconstitutional and permanently enjoined, Plaintiffs and others who are similarly situated will continue to suffer great and irreparable harm.

**Claim Four:
Violation of the Kansas Constitution Bill of Rights Section 2,
the Equal Protection of Rights Clause**

146. Plaintiffs reallege and incorporate by reference all the preceding paragraphs.
147. Kansas Constitution Bill of Rights section 2 guarantees that “[a]ll political power is inherent in the people, and all free governments are founded on their authority, and are instituted for their equal protection and benefit.”
148. Kansas Constitution Bill of Rights section 2 protects the right to earn an honest living, to conduct business free from unreasonable governmental interference, to be free from unreasonable government restrictions, and to protect against unequal treatment. This

clause protects not just similarly situated people from being treated differently, but also, protects against differently situated people from being treated the same.

149. Kansas' cosmetology and esthetician laws, regulations, and policies unconstitutionally treat threaders the same as estheticians, even though the services they provide are different.
150. Kansas' cosmetology and esthetician laws, regulations, and policies unconstitutionally treat threaders differently from hair braiders, even though the services they provide are similar.
151. Kansas' cosmetology and esthetician laws, regulations, and policies, as applied to Plaintiffs, violates Kansas Constitution Bill of Rights section 2.
152. Kansas' cosmetology and esthetician laws, regulations, and policies, as applied to Plaintiffs, are not appropriately tailored to any sufficiently important government interest; and do not directly or materially advance any sufficiently important government interest.
153. Plaintiffs have no other legal, administrative, or other remedy by which to prevent or minimize the continuing irreparable harm to their constitutional rights that is a direct and proximate result of Defendants' application and enforcement of Kansas' threading and licensing regime. Unless Defendants are enjoined from committing the above-described violations of Kansas Constitution Bill of Rights section 2, Plaintiffs, and others similarly situated, will continue to suffer great and irreparable harm.
154. Unless the cosmetology and esthetician regime set forth under Kansas statutes and regulations as applied to Plaintiffs and others who are similarly situated is declared unconstitutional and permanently enjoined, Plaintiffs and others who are similarly situated will continue to suffer great and irreparable harm.

Request for Relief

Plaintiffs respectfully request the Court grant the following relief:

155. Plaintiffs reallege and incorporate by reference all the preceding paragraphs.

156. Declaratory judgment that the Kansas' cosmetology and esthetician statutes, regulations, and policies are unconstitutional under Kansas Constitution Bill of Rights Sections 1, 2, and/or 18, when applied to Plaintiffs and others who are similarly situated, involving threading, the practice of threading, and the hiring, employment, or allowance of threading, without a license; a judgment declaring the licensing regime unconstitutional under Kansas Constitution Bill of Rights Sections 1, 2, and/or 18 in that the regime unconstitutionally requires a license for threaders and those who engage in the practice of threading; a judgment declaring the licensing regime unconstitutional under Kansas Constitution Bill of Rights Sections 1, 2, and/or 18 in that it prohibits employing, hiring, or allowing unlicensed threaders or the unlicensed practice of threading; and more specifically, that the licensing regime unconstitutionally prevents Plaintiffs Jigisha, Jignesh, and/or Shree, LLC from employing an experienced but unlicensed threader of their choosing and growing their business; that it unconstitutionally prevents Plaintiff Jyotsna from earning an honest living in an occupation of her choice, one in which she is otherwise capable, experienced, and qualified; that the regime is unreasonable, arbitrary, applies unequally, that is not appropriately tailored to any sufficiently important government interest, that it does not directly or materially advance any sufficiently important government interest, and that it deprives Plaintiffs of their right to earn honest livings free from unreasonable restrictions.
157. For entry of permanent, prospective injunctive relief enjoining Defendants and their successors, agents, servants, employees and attorneys, and upon those persons acting in concert or participation with such agents, servants, employees, and attorneys, from enforcing or directing enforcement of the licensing regime, or any provision related to the licensing regime, against Plaintiffs and others similarly situated, as it relates to threading, the practice of threading, and the employment of threaders, without a license.
158. Reasonable costs and attorney's fees, to the extent recoverable; and
159. Such other legal or equitable relief as this Court deems appropriate and just.

Jury Demand

160. Plaintiffs demand a jury trial on all issues so triable.

Kansas Justice Institute
By: Samuel G. MacRoberts, 22781

Dated: November 16, 2020

/s/ Samuel G. MacRoberts
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