

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

Jackson Division

DIPA BHATTARAI; and TYLER)	
BARKER,)	
)	
<i>Plaintiffs,</i>)	
)	
vs.)	Civil Action No. <u>3:19-CV-560-DPJ-FKB</u>
)	
JIM HOOD, in his official capacity as)	
Attorney General for the State of)	
Mississippi; DOROTHY ENNIS;)	
DARLENE SMITH; HILDA BILLS;)	
DEBORAH COKER and FRANCES)	
ROBERTSON, all in their official)	
capacities as Members of the)	
Mississippi State Board of)	
Cosmetology; and SHARON CLARK)	
in her official capacity as Executive)	
Director of the Mississippi State)	
Board of Cosmetology,)	
)	
<i>Defendants.</i>)	

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

COME NOW THE PLAINTIFFS, DIPA BHATTARAI and TYLER BARKER, through their undersigned counsel, and file this Complaint for Declaratory and Injunctive Relief against Defendants Mississippi Attorney General Jim Hood, Dorothy Ennis, Darlene Smith, Hilda Bills, Deborah Coker, Frances Robertson, and Sharon Clark, in their respective official capacities, and would show unto the Court the following:

INTRODUCTION

1. This constitutional challenge seeks to vindicate the right of two entrepreneurs to earn an honest living free from arbitrary and irrational government regulation – a right protected by the United States Constitution and the Mississippi Constitution.

2. Plaintiffs want to engage in the business of eyebrow threading. They do not want to perform any of the services performed by estheticians or cosmetologists.

3. Eyebrow threading is a safe and sanitary practice.

4. Eyebrow threading is an all-natural, ancient grooming technique that has been widely practiced for centuries in South Asian and Middle Eastern communities.

5. In countries such as Nepal, where Plaintiff Bhattarai was born, people often learn how to eyebrow thread at young age and are taught by family and friends.

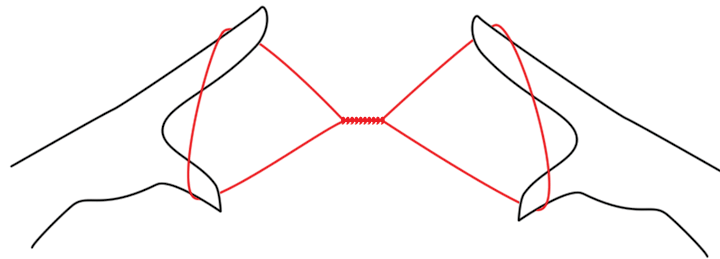
6. “Threading,” as it is commonly known, is a simple practice that involves the removal of facial hair, most commonly around the eyebrows, by using a single strand of cotton thread – and nothing else – to lift unwanted hair from its follicle.

7. Threading has become increasingly popular in Mississippi and is increasingly being practiced for compensation in Mississippi.

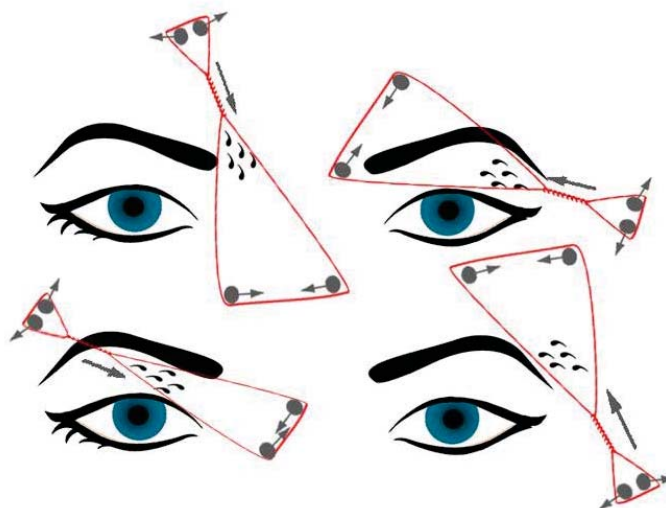
8. Threaders take a single strand of cotton thread and tie its ends together to form a large loop, as illustrated below¹:



9. Threaders twist the loop several times to form an hourglass shaped “shuttle” and then draw the shuttle taut between the fingers, as illustrated below:



10. Threaders place the shuttle along the brow and move the center of the shuttle along the surface of the skin by opening and closing opposite sides of the shuttle, entwining unwanted hair and lifting it from its follicles, as illustrated below:



¹ Illustrations available at: <https://skinvac.blogspot.com/2014/01/how-to-thread-eyebrows-and-remove.html>, last accessed August 12, 2019.

11. Safely performing this technique in a public setting simply requires threaders to sanitize their hands between each customer, to use a fresh, sanitary strand of thread for each customer, and to maintain a clean work area.

12. Threading requires fewer sanitary precautions than other cosmetology techniques because it does not involve skin-to-skin contact between the threader and customer, does not reuse the same tools on different customers, and does not involve sharp implements, dangerous chemicals, wax, or heat.

13. It only takes a few minutes to teach a novice how to begin safely practicing the simple technique of eyebrow threading. With practice, some beginners can become skilled threaders.

14. To practice this simple technique in Mississippi, the state forces eyebrow threaders to obtain an esthetician's license, for which they must complete 600 hours of instruction extended over a period of not less than 15 weeks at a school licensed to teach the practice of esthetics ("beauty school") and pass two licensing examinations. 600 hours is roughly equivalent to a semester of full-time instruction at a four-year university.

15. By comparison, Emergency Medical Technicians (EMTs), who literally hold lives in their hands, are only required to complete 165 hours of training

under Mississippi law. This is approximately one-fourth of the hours required to thread.

16. Not one of the 600 required hours for an esthetician's license covers eyebrow threading.

17. Threading is not included in the mandatory curriculum that the Defendant members of the Mississippi State Board of Cosmetology ("the Board Defendants") require their approved beauty schools to follow.

18. The Board Defendants do not test any licensing applicant's competency in threading.

19. Instead, the Board Defendants test esthetician license applicants' competency in removing unwanted eyebrow hair by tweezing and waxing. The Board Defendants also test applicants' knowledge and competency in an assortment of other topics and techniques that Plaintiffs do not want to practice.

20. In beauty school, Plaintiffs would receive instruction in a host of irrelevant or unnecessary topics, such as facial massage, makeup, sales and marketing, money management, resume writing, salon planning and design, salon management, salon marketing, basic chemistry and electricity, anatomy and physiology, and skin science.

21. Beauty school is prohibitively expensive, costing up to \$12,000 to obtain an esthetician's license.

22. The Board Defendants require threaders to satisfy the requirements for an esthetician's license, even though threading is not taught or tested as a condition of licensure. As a result, Plaintiffs are required to pay for and endure hundreds of hours of irrelevant training and two irrelevant examinations before the Board Defendants will license them to do their jobs.

23. It is irrational to force people to spend thousands of dollars and hundreds of hours on classes that teach everything they do not want to do but nothing they actually want to do.

24. Because they are not rationally related to any public health or safety objectives, the only effect of the state's eyebrow threading laws and regulations is to protect licensed estheticians and cosmetologists from competition from threaders.

25. Mississippi's neighboring states – Alabama, Tennessee, and Louisiana – do not require a license or any government-approved training to thread. What is safe in those states does not suddenly become dangerous in Mississippi.

26. Plaintiffs are constitutionally entitled to economic liberty – the right to work in the occupation of their choice free from unreasonable government interference.

27. The eyebrow threading laws interfere with Plaintiffs' economic liberty and violate the due process, equal protection, and privileges or immunities guarantees afforded them by the United States and Mississippi constitutions.

PARTIES

28. Plaintiff Dipa Bhattarai is an adult resident of Oxford, Lafayette County, Mississippi. She is an expert eyebrow threader, has threaded since her early teenage years, and has a private beautician certification in Nepal. She does not have an esthetician's license in Mississippi. She applied for a Mississippi esthetician's license by reciprocity, and the Board denied her application. She also personally appeared before the Board and requested that she be allowed to engage in the limited practice of eyebrow threading without an esthetician's license, and the Board unanimously voted to deny her request. She also applied to sit for the esthetician licensure examinations and her application was denied by the Board.

29. Plaintiff Tyler Barker is an adult resident of Germantown, Shelby County, Tennessee. He is a young entrepreneur who wants to partner with Ms. Bhattarai to start a threading business in Mississippi and employ Mississippians. He does not have an esthetician's license in Mississippi. He applied to sit for the esthetician licensure examinations and his application was denied by the Board.

30. Defendant Jim Hood is the Attorney General for the State of Mississippi ("Attorney General Hood"). He is responsible for enforcing the state's cosmetology laws and regulations by bringing legal actions for court orders enjoining violations of the state's cosmetology laws and regulations or for orders enforcing compliance with the state's cosmetology laws and regulations. Miss.

Code Ann. § 73-7-37. As Attorney General, he is also responsible for defending the constitutionality of the challenged laws. *Id.* at § 7-5-1. He is being sued in his official capacity only.

31. The members of the Mississippi State Board of Cosmetology, namely Dorothy Ennis, Darlene Smith, Hilda Bills, Deborah Coker, and Frances Robertson (“the Board Defendants”) have the authority to promulgate regulations for the administration of the state’s cosmetology laws, and are the agents ultimately responsible for administering and enforcing the state’s cosmetology laws. *Id.* at § 73-7-7. They are being sued in their in their official capacity only.

32. Defendant Sharon Clark is the Executive Director of the Mississippi State Board of Cosmetology. She is responsible for performing any duties as may be prescribed by the Board for the proper administration of the cosmetology laws. *Id.* at § 73-7-3. She is being sued in her official capacity only.

JURISDICTION AND VENUE

33. Plaintiffs bring this civil rights lawsuit pursuant to the Fourteenth Amendment to the United States Constitution, the Civil Rights Act of 1871, 42 U.S.C. § 1983, and the Declaratory Judgment Act, 28 U.S.C. §§ 2201–02, for violations of the Fourteenth Amendment to the United States Constitution.

34. Plaintiffs seek declaratory and injunctive relief against the enforcement of Mississippi’s cosmetology licensing regime – Miss. Code Ann. §§ 73-7-1 *et seq.*,

its implementing rules and regulations, 30 Miss. Admin. Code Pt. 2101 R. 1 *et seq.*, and the policies and practices of the Mississippi State Board of Cosmetology – as it is applied to restrict persons who practice the safe, sanitary, and simple technique of eyebrow threading, including Plaintiffs.

35. This Court has subject-matter jurisdiction under 28 U.S.C. §§ 1331 and 1343, as Plaintiffs’ claims arise under the Constitution of the United States.

36. This Court has supplemental jurisdiction over claims arising under the Mississippi Constitution pursuant to 28 U.S.C. § 1367(a) because those claims are so related to claims within this Court’s original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.

37. Venue lies in this Court pursuant to 28 U.S.C. § 1391(b)(1) and (2) because a Defendant resides in this Court’s District and all Defendants are residents of the state, and because a substantial part of the events giving rise to Plaintiffs’ claims occurred in this Court’s District.

FACTS

PLAINTIFF DIPA BHATTARAI

38. Plaintiffs incorporate and re-allege all the allegations set forth above as if fully set forth herein.

39. Plaintiff Dipa Bhattarai is originally from Kathmandu, Nepal. She is an expert eyebrow threader, is passionate about threading and has always enjoyed

sharing the technique with others. She came to Mississippi in 2013 to pursue the American Dream. She has lived in Mississippi since then and considers Mississippi home. She received a scholarship to attend Mississippi University for Women, where she obtained an undergraduate degree in Accounting. She is currently a graduate student at the University of Mississippi where she is pursuing a Master's degree in taxation and data analytics.

40. When she was in her early teenage years, Ms. Bhattarai began threading for friends and family. She later began threading at her Aunt's salon in Nepal.

41. Nepal does not require a license to thread eyebrows for compensation.

42. Ms. Bhattarai obtained a voluntary beautician's certification offered by a private organization in Nepal, which required training in several practices, including threading.

43. While Ms. Bhattarai was attending college at the Mississippi University for Women, she saw friends of hers in the dormitory tweezing and waxing their eyebrows. She told them there was a better way, and began threading eyebrows as a favor for her friends who wanted to try it.

44. Soon all of Ms. Bhattarai's friends were asking her to thread their eyebrows and sending their own friends to Ms. Bhattarai.

45. As more and more people came to Ms. Bhattarai for her expert threading skills, many of her friends began commenting that she should start a business.

46. Ms. Bhattarai soon realized there was a need for threading services in Mississippi and dreamed of opening her own threading business.

47. Eventually, Ms. Bhattarai's dream was realized when she opened a threading business with her brother with locations in Columbus, Mississippi and Starkville, Mississippi. Ms. Bhattarai does not have a Mississippi esthetician's license, and initially did not realize that an esthetician's license was required to thread in Mississippi. She personally threaded for customers at the Columbus location of her business. She also hired and trained four employees in threading, and those employees threaded for customers at both locations of her business. Ms. Bhattarai's employees did not have Mississippi estheticians' licenses.

48. In February 2018, an inspector with the Mississippi State Board of Cosmetology came to Ms. Bhattarai's business, issued citations with administrative fines to Ms. Bhattarai and one of her employees, and demanded that Ms. Bhattarai shut down her business.

49. Ms. Bhattarai was forced to shut down her business.

50. Ms. Bhattarai applied to the Board for an esthetician's license by reciprocity, based on her voluntary beautician certification from a private organization in Nepal.

51. The Board denied Ms. Bhattarai's application for an esthetician's license by reciprocity.

52. Ms. Bhattarai requested to speak at a Board meeting, to request that the Board eliminate or reduce its regulations on threaders. Ms. Bhattarai was placed on the agenda for the next Board meeting, but the day before the meeting, she received an email from an employee of the Board, stating she would not be able to speak after all, because state law required threaders to have a license.

53. Ms. Bhattarai drove from her home in Oxford, Mississippi, to the Board meeting in Jackson, Mississippi, anyway and requested to speak to the Board. At the meeting, she was told she would not be allowed to speak and returned home.

54. Ms. Bhattarai continued to request to speak to the Board. She was finally allowed on the agenda for the June 25, 2018 Board meeting.

55. At that meeting, she made a presentation to the Board, complete with self-prepared handouts she distributed to the Board members regarding the safety of threading, the irrelevance and inapplicability of the required esthetician licensing curriculum to threaders, and the economic harm and barriers to entrepreneurship caused by the licensing regime.

56. The Board only allowed Ms. Bhattarai approximately two minutes to make her presentation.

57. The Board unanimously denied Ms. Bhattarai's request, stating the rationale for its decision was that Miss. Code Ann. § 73-7-2 requires a person to have a cosmetologist's or esthetician's license in order to thread.

58. Ms. Bhattarai also began taking classes at a privately operated, government-approved beauty school in order to qualify for an esthetician's license. However, Ms. Bhattarai cannot afford to take additional time and money away from her graduate school studies at the University of Mississippi to obtain largely irrelevant esthetician training.

59. On January 23, 2019, Ms. Bhattarai applied to sit for the esthetician licensure examinations.

60. On June 6, 2019, Defendant Sharon Clark, who is the Executive Director of the Board, sent a letter to Ms. Bhattarai, informing her that the Board had denied her request.

61. Defendant Clark's letter stated that the rationale for the Board's decision was that the Board's regulations (30 Miss. Admin. Code Pt. 2101 R. 2.8.A.1.d) require a minimum of 600 hours of training in order to be eligible for an esthetician's license, and Ms. Bhattarai has not completed 600 hours of training.

62. The reason Ms. Bhattarai's request to sit for the esthetician licensure examinations was denied was because she has not completed 600 hours of approved training at a beauty school.

63. The Board Defendants will not allow Ms. Bhattarai to sit for the esthetician licensure examinations until she has completed 600 hours of approved training at a beauty school.

64. There are no circumstances under which the Board Defendants would license Ms. Bhattarai to thread without her completing 600 hours of approved training at a beauty school.

65. In the 2019 Regular Session of the Mississippi Legislature, a bill was introduced that would have exempted persons engaged in threading from the licensure requirements.

66. The Board appointed Defendant Dorothy Ennis, who is a member of the Board and its current President, as a "political liaison" to discuss the bill with the legislature.

67. The Board opposed the bill, and it died in committee.

68. If Ms. Bhattarai did not have to obtain an esthetician's license, she would reopen her threading business after completing her graduate studies, she would employ other threaders in Mississippi, and she would have increased financial security and stability.

69. Defendants' enforcement of the state's licensing laws against threading businesses and threaders prevents Ms. Bhattarai from pursuing a trade of her choice and business opportunity.

PLAINTIFF TYLER BARKER

70. Plaintiff Tyler Barker is a young entrepreneur who wants to partner with Ms. Bhattarai to start a new eyebrow threading business in Mississippi and employ threaders in Mississippi.

71. Mr. Barker does not have an esthetician's license in Mississippi.

72. Mr. Barker has not taken any classes in esthetics.

73. Mr. Barker learned how to eyebrow thread from Ms. Bhattarai so that he can personally fill in for threading employees of the business, as needed.

74. Mr. Barker is unable to obtain an esthetician's license, as he cannot afford to take time away from work and spend thousands of dollars to obtain largely irrelevant esthetician training.

75. On June 12, 2019, Mr. Barker applied to sit for the esthetician licensure examinations.

76. On July 10, 2019, the Board, through its counsel, Special Assistant Attorney General Ken Walley, sent a letter to Mr. Barker informing him that the Board had denied his request.

77. The Board's letter stated that the rationale for the Board's decision was that the Board's regulations (30 Miss. Admin. Code Pt. 2101 R. 2.8.A.1.d) require a minimum of 600 hours of training in order to be eligible for an esthetician's license, and Mr. Barker has not completed 600 hours of training.

78. The reason Mr. Barker's request to sit for the esthetician licensure examinations was denied was because he has not completed 600 hours of approved training at a beauty school.

79. The Board Defendants will not allow Mr. Barker to sit for the esthetician licensure examinations until he has completed 600 hours of approved training at a beauty school.

80. There are no circumstances under which the Board Defendants would license Mr. Barker to thread without him completing 600 hours of approved training at a beauty school.

81. If Mr. Barker did not have to obtain an esthetician's license, he would partner with Ms. Bhattarai to open a threading business in Mississippi, he would employ other threaders in Mississippi, and he would have increased financial security and stability. If Ms. Bhattarai were unable to partner with him, he would open a threading business on his own.

82. Defendant's enforcement of the state's licensing laws against threading businesses and threaders prevents Mr. Barker from pursuing a trade of his choice and business opportunity.

THE TECHNIQUE OF EYEBROW THREADING

83. "Threading," as it is commonly known, is a simple practice that involves the removal of facial hair, most commonly around the eyebrows, by using a single strand of cotton thread – and nothing else – to lift unwanted hair from its follicle.

84. The art of threading involves taking a single strand of cotton thread and tying its ends together to form a large loop, twisting the loop several times to form an hourglass shaped "shuttle," and drawing the shuttle taut between the fingers. The shuttle is then placed along the customer's brow and the center of the shuttle is moved along the surface of the skin by opening and closing opposite sides of the shuttle, entwining unwanted hair and lifting it from its follicles.

85. Threading is a precise method for removing narrow bands of hair, making it ideal for shaping eyebrow hair.

86. In countries such as Nepal, where Plaintiff Bhattarai was born, people often learn how to eyebrow thread at young age and are taught by family and friends.

87. In Mississippi, skilled threaders are often not licensed estheticians, and licensed estheticians are often not skilled threaders.

THE BENEFITS OF EYEBROW THREADING

88. Americans' awareness of the benefits of threading, as compared to waxing and other Western epilatory practices, is increasing.

89. Threading is all-natural, non-invasive, and safe.

90. Threading does not involve the use of sharp implements, chemicals, wax, or heat.

91. Threading does not involve skin-to-skin contact between the threader and customer.

92. Each customer is serviced using a fresh, sanitary piece of thread.

93. Threading can cause a slight pricking or scraping sensation, but is relatively painless compared to other forms of eyebrow hair removal, and becomes less and less painful with repeated use.

94. Threading does not irritate the skin like other eyebrow hair removal techniques, such as waxing and tweezing.

95. Threading does not cause skin redness or swelling like other hair removal techniques, such as waxing and tweezing.

96. Unlike waxing, threading does not risk burning or removing a customer's skin.

97. Threading is more effective at removing hair than other hair removal techniques, such as waxing and tweezing.

98. Threading is inexpensive and less time consuming than other forms of hair removal. Threading eyebrows rarely costs more than \$15 or takes longer than five minutes.

99. 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.

100. The low cost of threading – for both threading businesses and their customers – creates vibrant competition with other epilatory practices, which keeps prices low for consumers of all forms of commercial eyebrow shaping.

MISSISSIPPI’S COSMETOLOGY LICENSING REGIME

101. Mississippi’s cosmetology laws are found at Miss. Code Ann. §§ 73-7-1 *et seq.* Mississippi’s cosmetology regulations can be found at 30 Miss. Admin. Code Pt. 2101 R. 1 *et seq.*

102. Before 2013, threaders did not need an esthetician’s license in the state.

103. In 2013, the Mississippi legislature amended the state’s definition of esthetics to include “threading.” *See* 2013 Miss. Laws Ch. 523 (H.B. 1164) § 2, effective July 1, 2013.

104. No person may practice esthetics without an esthetician’s license. Miss. Code Ann. § 73-7-9.

105. However, those who perform cosmetology and esthetic services in the home for friends or family without charge are exempt from the state's cosmetology licensing laws. *Id.* at § 73-7-31.

106. Additionally, those who perform cosmetology and esthetic services without charge in connection with the sale, or attempted sale, of a cosmetology product are also exempt from the state's cosmetology licensing laws. *Id.* at § 73-7-31.

107. To qualify for an esthetician's license, an applicant must satisfy the following requirements:

- a) Be at least seventeen (17) years of age;
- b) Be able to read, write, and speak English;
- c) Have a high school education or its equivalent;
- d) Have successfully completed a course of training in esthetics of not less than six hundred (600) hours in an accredited school in which the practice of esthetics is taught, including not less than one hundred (100) hours of theory and five hundred (500) hours of skill practice;
- e) Pass two examinations administered by a testing service that has contracted with the Board to conduct examinations to determine the applicant's fitness for licensure;
- f) Pay the appropriate fees required by law; which include at least \$50 for an initial license; \$195 for the practical examination; \$90 for the theory examination; and fees for continuing education. Miss. Code Ann. § 73-7-18; 30 Miss. Admin. Code Pt. 2101 Rs. 2.8; 1.13.

108. The Board Defendants have enacted and enforced regulations that require that applicants for an esthetician's license to complete 600 hours of instruction in the following areas:

- a) Mississippi Board of Cosmetology Laws, Rules and Regulations;
- b) Professional Image, Ethics and Conduct;
- c) General Sciences;
 - i. Infection Control, Prevention and Safety Precautions;
 - ii. Anatomy and Physiology;
 - iii. Basic Chemistry and Electricity;
- d) Business Skills;
 - i. Personal/Individual;
 - 1. Resume;
 - 2. Interviewing;
 - 3. Sales and Marketing;
 - 4. Money Management;
 - ii. Salon;
 - 1. Planning and Design;
 - 2. Management;
 - 3. Marketing;
- e) Skin Science;
- f) Skin Treatment/Services;
 - i. Facial Treatments;
 - ii. Facial Massage;
 - iii. Facial Machines;
 - iv. Hair Removal;
 - v. Makeup;

vi. Advanced Topics and Treatments;

g) Any Other Related Theory/Skill Subjects. 30 Miss. Admin. Code Pt. 2101 R. 5.18

109. The Board maintains a list of all licensed cosmetology schools on the Mississippi State Board of Cosmetology website. *See* <https://www.msbc.ms.gov/Pages/School-List.aspx>. The Board's list of beauty schools includes fourteen (14) beauty schools which offer a Board-approved esthetics program.

110. Although state law requires threaders to attend beauty school, the Board Defendants do not require beauty schools to teach threading.

111. Not one hour of required esthetics instruction in beauty school is on threading.

112. Nearly every hour of esthetics instruction in beauty school does not relate, even indirectly, to the practice of threading. The Board Defendants therefore require threaders to pay thousands of dollars to complete hundreds of hours that are completely irrelevant to threading.

113. To the extent any licensed beauty schools provide instruction that indirectly relates to threading, such as general hair removal or sanitation training, this instruction makes up only a small fraction of the 600 hours required, and students do not learn how to thread in the process. Still, it would take a threader at

least 15 weeks to complete this irrelevant course of instruction, even if he or she attended beauty school for 40 hours per week, every week.

114. Beauty school is also prohibitively expensive for threaders, who are often people of modest means. Tuition to complete an esthetics course in Mississippi costs approximately \$3,500 to \$12,000, depending on which school the threaders can attend.

MISSISSIPPI'S ESTHETICS LICENSING EXAMS

115. After completing an approved esthetics program, applicants for an esthetician's license are also required to pass two licensing examinations: a practical examination and a theory examination.

116. The Board Defendants are responsible for contracting with a testing service to conduct examinations for estheticians. Miss. Code Ann. § 73-7-12.

117. The Board Defendants have contracted with NCS Pearson, Inc. ("Pearson VUE") to conduct examinations for estheticians.

118. Just as the Board Defendants do not require the state's beauty schools to teach threading, the esthetician's licensing examinations do not test threading.

119. The esthetician theory examination tests the following subjects:

- a) Rules, Regulations, and Safety;
 - i. Safety;
 1. Draping;
 2. Sanitation;
 3. Procedures;

- ii. Prevention of salon accidents;
 - 1. Maintaining safe working conditions;
 - 2. Labeling;
 - 3. Storing chemical products;
 - 4. MSDS;
 - 5. Thermal/electrical appliances;
- iii. First aid/OSHA;
 - 1. Handling blood-contaminated tools;
 - 2. Disposing of blood-contaminated objects;
- iv. Sanitation and disinfection;
 - 1. Personal hygiene;
 - 2. Sanitation and disinfection of implements and tools;
 - 3. Single use items;
 - 4. Product application;
 - 5. Sanitation and disinfection of work surfaces;
- v. Predisposition/Patch Tests;
- vi. Client contact;
 - 1. Ethics;
 - 2. Communication;
 - 3. Record keeping;

b) Esthetic Science and Skin Analysis;

- i. Skin structure and anatomy;
- ii. Purpose of skin analysis;
- iii. Skin conditions that benefit from services;
- iv. Skin conditions that preclude skin services;
- v. Skin disorders and diseases;

c) Facials;

- i. Application, removal, and purpose of products;
- ii. Lotions and creams;
- iii. Exfoliants;
- iv. Masks/packs;
- v. Tools, implements, materials, and equipment;
- vi. Facial procedures;
- vii. Special considerations;
- viii. Microdermabrasion;
- ix. Chemical peel;

- x. Disincrustation;
- xi. Aromatherapy;
- xii. Massage/Anatomy;

d) Hair Removal;

- i. Tweezing;
- ii. Waxing;
- iii. Tools, implements, materials, and equipment;

e) Makeup;

- i. Purpose;
- ii. Types of cosmetics;
- iii. Brushes and other implements, tools, and materials;
- iv. Color theory;
- v. Application and removal procedures;
- vi. Corrective makeup;
- vii. Application and removal of artificial eyelashes;

f) Electricity and Electrotherapy;

- i. Galvanic current;
- ii. High frequency current;
- iii. Light therapy.

120. The esthetician theory examination does not test threading.

121. The esthetician practical examination tests the following subjects:

- a) Infection Control & Safety;
- b) Facials;
- c) Skin Analysis;
- d) Manipulation;
- e) Masque;

- f) Hair Removal (eyebrow tweezing; eyebrow waxing; upper lip waxing; chin waxing;
- g) Makeup Application.

122. The esthetician practical examination does not test threading.

123. Both of the required esthetician examinations are irrelevant to threading because they require no knowledge of threading.

PENALTIES AND ENFORCEMENT

124. The Board Defendants are responsible for administering and enforcing the state's cosmetology laws and regulations. Miss Code Ann. § 73-7-7. Defendants can inspect licensed establishments to ensure compliance; issue citations and fines; revoke, suspend, or refuse to issue or renew licenses; and otherwise discipline licensees and cosmetology students. Miss. Code Ann. §73-7-27; 30 Miss. Admin. Code Pt. 2101 R. 1.8; 8.5.

125. The violation of any provision of the cosmetology laws or regulations is a misdemeanor criminal offense, punishable upon conviction by a fine of up to \$500.00. Miss Code Ann. §73-7-37; 30 Miss. Admin. Code Pt. 2101 R. 8.5.

126. Separately from such criminal fines, the Board Defendants are authorized to issue administrative fines of up to \$400.00 for violations of the cosmetology laws or regulations.

127. The Board Defendants may file a lawsuit against a licensed or

unlicensed individual to enforce compliance with the state's cosmetology laws and regulations and seek an injunction. In an action for an order enforcing compliance or for an injunction, the Board Defendants may recover attorney's fees, court costs, and investigation costs from a person who has violated the cosmetology laws or regulations. Miss. Code Ann. § 73-7-37.

128. Attorney General Hood is responsible for representing the Board Defendants in an action for an order enforcing compliance or for an injunction. *Id.* at § 73-7-37.

129. The Board Defendants have sent inspectors to search for unlicensed threaders.

130. The Board Defendants issue citations and fines to threading businesses and threaders based on the unlicensed practice of threading.

131. Defendants continue to threaten punishment for unlicensed threaders and threading businesses that employ unlicensed threaders.

132. Defendants' enforcement of the state's licensing requirements against threading businesses threatens the current and future success of these businesses.

133. Unlicensed threaders who provide their services to the public risk harsh penalties, including criminal convictions and fines, and losing their livelihoods.

134. 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.

INJURY TO PLAINTIFFS

135. Plaintiffs incorporate and re-allege all the allegations set forth above as if fully set forth herein.

136. Defendants' actions threaten Plaintiffs' economic liberty – their right to provide commercial threading services free from unreasonable governmental interference.

INJURY TO PLAINTIFF DIPA BHATTARAI

137. Defendants' actions have caused and will continue to cause real, substantial and irreparable harm to Ms. Bhattarai.

138. Defendants, through their agents and employees, forced Ms. Bhattarai to shut down her business.

139. Defendants, through their agents and employees, issued citations to Ms. Bhattarai.

140. Defendants, through their agents and employees, threatened the imposition of administrative fines against Ms. Bhattarai.

141. Although Ms. Bhattarai is fully proficient in the art of threading and has devoted substantial time and effort to developing her trade, Defendants require Ms. Bhattarai to obtain an esthetician's license to legally thread eyebrows.

142. To attend beauty school, Ms. Bhattarai would have to take time away

from her graduate school studies and her employment as a graduate assistant at the University of Mississippi and spend thousands of dollars.

143. Ms. Bhattarai cannot afford to take time away from her graduate studies and employment and cannot afford to spend thousands of dollars to attend a beauty school to learn skills that are irrelevant to threading.

144. To obtain a license, Ms. Bhattarai would also have to pay fees, costs for continuing education, and subject herself to the Board's jurisdiction.

145. Because of Defendants actions, Ms. Bhattarai can no longer work as a threader.

146. Ms. Bhattarai has lost significant income due to Mississippi's threading laws and regulations and Defendants' enforcement of those laws and regulations.

147. But for Defendant's enforcement of the state's cosmetology laws regarding threading, Ms. Bhattarai would personally work as a threader and would enjoy increased financial stability and security.

148. Defendants' enforcement of the state's cosmetology laws and regulations against Ms. Bhattarai forced her to shut down her business and terminate her four employees, who had had become skilled threaders under Ms. Bhattarai's instruction.

INJURY TO PLAINTIFF TYLER BARKER

149. Defendants' actions have caused and will continue to cause real,

substantial and irreparable harm to Mr. Barker.

150. Although Mr. Barker has learned to thread from Ms. Bhattarai, who is an expert threader, Defendants require Mr. Barker to spend hundreds of hours and thousands of dollars to obtain an esthetician's license to legally thread eyebrows.

151. To attend beauty school, Mr. Barker would have to take time away from his full-time employment and spend thousands of dollars.

152. Mr. Barker cannot afford to take time away from his employment and cannot afford to spend thousands of dollars to attend a beauty school to learn skills that are irrelevant to threading.

153. To obtain a license, Ms. Barker would also have to pay fees, costs for continuing education, and subject himself to the Board's jurisdiction.

154. But for Defendant's enforcement of the state's cosmetology laws regarding threading, Mr. Barker would partner with Ms. Bhattarai to open a threading business in Mississippi, he would personally work as a threader to fill in for employees of the business, and he would enjoy increased financial stability and security.

INJURY TO PLAINTIFFS DIPA BHATTARAI AND TYLER BARKER

155. Plaintiffs face the imminent threat of administrative and criminal enforcement if they begin threading for compensation in Mississippi.

156. Defendants' enforcement of the state's cosmetology laws and

regulations prevent Plaintiffs from employing competent, experienced, and skilled threaders.

157. Even if Plaintiffs obtained esthetician's licenses, they would be forced to hire other licensed estheticians who lack any training in threading, and expend considerable resources finding those licensed estheticians to thread in their business and teaching them how to thread.

158. Defendants' actions threaten Plaintiffs' ability to run a successful business and effectively operate their business. Plaintiffs will be unable to run a business that reliably offers threading services to customers without employing unlicensed threaders. Plaintiffs will also be unable to expand their business to multiple locations without employing unlicensed threaders, as it is difficult and needlessly expensive to find and hire qualified estheticians.

159. But for Defendants' actions, Plaintiffs would hire unlicensed, highly skilled threaders, as well as unlicensed beginners who could be trained in threading. By hiring unlicensed employees, Plaintiffs would be able to reliably offer threading services to consumers at multiple locations. Plaintiffs would also be able to provide employment and entrepreneurial opportunities for others.

CAUSES OF ACTION

COUNT 1

FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION – SUBSTANTIVE DUE PROCESS

160. Plaintiffs incorporate and re-allege all the allegations set forth above as if fully set forth herein.

161. The Due Process Clause of the Fourteenth Amendment to the United States Constitution protects the right to earn an honest living in the occupation of one's choice free from unreasonable government regulation.

162. Mississippi's cosmetology laws and regulations, as applied to threaders, including Plaintiffs, by Defendants, their agents and employees, acting under color of state law, arbitrarily and unreasonably prohibits Plaintiffs from pursuing their chosen livelihood by forcing them to obtain licenses that are irrelevant to their profession and by subjecting them to criminal and administrative penalties and fines, thus threatening the existence, profitability, and potential growth of their business. The arbitrary restrictions of Plaintiffs' economic liberty by the enforcement of these laws and regulations deprives them of due process as guaranteed by the Fourteenth Amendment to the United States Constitution and protected by 42 U.S.C. § 1983.

163. Requiring threaders to undergo 600 hours of irrelevant training, which does not teach or involve threading, is not rationally related to any legitimate government interest.

164. The laws and regulations governing cosmetology and esthetics far exceed any legitimate rational public health and safety concerns, as applied to

threaders and threading.

165. As a direct and proximate cause of Defendants' enforcement of the cosmetology licensing regime against threaders, including Plaintiffs, threaders have no other adequate legal, administrative, or other remedy by which to prevent or minimize the continuing irreparable harm to their constitutional rights. Unless Defendants are enjoined from committing the above-described constitutional violations of the Due Process Clause of the Fourteenth Amendment to the United States Constitution, threaders, including Plaintiffs, will continue to suffer great and irreparable harm.

COUNT 2

ARTICLE 3, SECTION 14 OF THE MISSISSIPPI CONSTITUTION – DUE PROCESS OF LAW

166. Plaintiffs incorporate and re-allege all the allegations set forth above as if fully set forth herein.

167. The Due Process of Law Clause of Article 3, Section 14 of the Mississippi Constitution protects the right to earn right to earn an honest living in the occupation of one's choice free from arbitrary or capricious government regulation.

168. Mississippi's cosmetology laws and regulations, as applied to threaders, including Plaintiffs, by Defendants, their agents and employees, arbitrarily and capriciously prohibits Plaintiffs from pursuing their chosen livelihood

by forcing them to obtain licenses that are irrelevant to their profession and by subjecting them to criminal and administrative penalties and fines, thus threatening the existence, profitability, and potential growth of their business. The arbitrary restriction of Plaintiffs' economic liberty by the enforcement of these laws and regulations deprives them of due process of law as guaranteed by Article 3, Section 14 of the Mississippi Constitution.

169. Requiring threaders to undergo 600 hours of irrelevant training, which does not teach or involve threading, has no reasonable relationship to any proper governmental purpose, or is so far beyond the necessity of the case as to be an arbitrary exercise of governmental power.

170. The laws and regulations governing cosmetology and esthetics far exceed any legitimate rational public health and safety concerns, as applied to threaders and threading.

171. As a direct and proximate cause of Defendants' enforcement of the cosmetology licensing regime against threaders, including Plaintiffs, threaders have no other adequate legal, administrative, or other remedy by which to prevent or minimize the continuing irreparable harm to their constitutional rights. Unless Defendants are enjoined from committing the above-described constitutional violations of the Due Process of Law Clause of Article 3, Section 14 of the Mississippi Constitution, threaders, including Plaintiffs, will continue to suffer great

and irreparable harm.

COUNT 3

FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION – EQUAL PROTECTION

172. Plaintiffs incorporate and re-allege all the allegations set forth above as if fully set forth herein.

173. Requiring threaders to attend beauty school and undergo extensive cosmetology training in order to obtain an esthetician's license, especially while neglecting to require any instruction on threading, is not rationally related to public health or safety, and disadvantages threaders. By not providing an equal opportunity for individuals trained in the practice of threading to lawfully offer their services to meet public demand, Defendants, their agents and employees, acting under color of state law, violate Plaintiffs' right to equal protection of the laws guaranteed by the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

174. The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution protects not just similarly situated people from being treated differently, but also differently situated people from being treated similarly. Threaders do not provide esthetician services and do not hold themselves out as estheticians. Mississippi's cosmetology licensing regime, as applied to threaders, including Plaintiffs, by Defendants, their agents and employees, treats threading like

any other hair removal practice, when threading is in fact a distinct and altogether different form of hair removal.

175. As a direct and proximate cause of Defendants' enforcement of Mississippi's cosmetology licensing laws and regulations against threaders, including Plaintiffs, threaders have no other adequate legal, administrative, or other remedy by which to prevent or minimize the continuing irreparable harm to their constitutional rights. Unless Defendants are enjoined from continuing the above-described constitutional violations of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, threaders, including Plaintiffs, will continue to suffer great and irreparable harm.

COUNT 4

ARTICLE 3, SECTION 14 OF THE MISSISSIPPI CONSTITUTION – EQUAL PROTECTION

176. Plaintiffs incorporate and re-allege all the allegations set forth above as if fully set forth herein.

177. Requiring threaders to attend beauty school and undergo extensive cosmetology training in order to obtain an esthetician's license, especially while neglecting to require any instruction on threading, is not rationally related to public health or safety, and disadvantages threaders. By not providing an equal opportunity for individuals trained in the practice of threading to lawfully offer their services to meet public demand, Defendants violate Plaintiffs' right to equal

protection of the laws guaranteed by Article 3, Section 14 of the Mississippi Constitution.

178. The equal protection guarantees of Article 3, Section 14 of the Mississippi Constitution protects not just similarly situated people from being treated differently, but also differently situated people from being treated similarly. Threaders do not provide esthetician services and do not hold themselves out as estheticians. Mississippi's cosmetology licensing regime, as applied to threaders, including Plaintiffs, by Defendants, their agents and employees, treats threading like any other hair removal practice, when threading is in fact a distinct and altogether different form of hair removal.

179. As a direct and proximate cause of Defendants' enforcement of Mississippi's cosmetology licensing laws and regulations against threaders, including Plaintiffs, threaders have no other adequate legal, administrative, or other remedy by which to prevent or minimize the continuing irreparable harm to their constitutional rights. Unless Defendants are enjoined from continuing the above-described constitutional violations of the equal protection guarantees of Article 3, Section 14 of the Mississippi Constitution, threaders, including Plaintiffs, will continue to suffer great and irreparable harm.

COUNT 5

ARTICLE 3, SECTION 32 OF THE MISSISSIPPI CONSTITUTION – UNENUMERATED RIGHTS

180. Plaintiffs incorporate and re-allege all the allegations set forth above as if fully set forth herein.

181. Economic liberty – the right to earn an honest living in the occupation of one’s choice free from unreasonable government regulation – is part of the common law of Mississippi. The right to economic liberty is given constitutional status by Article 3, Section 32 of the Mississippi Constitution.

182. Among the rights protected and broadly construed by Article 3, Section 32 of the Mississippi Constitution are the rights to due process and equal protection.

183. Under Article 3, Section 32 of the Mississippi Constitution, a law that impairs an individual’s economic liberty must have a real and substantial relationship to public health, safety, or welfare.

184. Under Article 3, Section 32 of the Mississippi Constitution, a law that impairs an individual’s economic liberty must not be arbitrary or capricious.

185. Mississippi’s cosmetology laws, as applied to Plaintiffs and others who provide commercial threading services, have no real and substantial relationship to public health, safety, or welfare.

186. Mississippi’s cosmetology laws, as applied to Plaintiffs and others who provide commercial threading services, do not advance any legitimate governmental interest.

187. Mississippi’s cosmetology laws, as applied to Plaintiffs and others who

provide commercial threading services, are arbitrary and capricious.

188. The state's police power does not extend to the regulation of eyebrow threading under Mississippi's current cosmetology laws and regulations as enforced by Defendants.

189. For each of these reasons, Mississippi's cosmetology laws and regulations as applied to Plaintiffs by Defendants, their agents and employees, unconstitutionally deprive Plaintiffs of the unenumerated right to economic liberty protected by Article 3, Section 32 of the Mississippi Constitution.

190. As a direct and proximate cause of Defendants' enforcement of Mississippi's cosmetology licensing laws and regulations against threaders, including Plaintiffs, threaders have no other adequate legal, administrative, or other remedy by which to prevent or minimize the continuing irreparable harm to their constitutional rights. Unless Defendants are enjoined from continuing the above-described constitutional violations of the equal protection guarantees of Article 3, Section 32 of the Mississippi Constitution, threaders, including Plaintiffs, will continue to suffer great and irreparable harm.

COUNT 6

FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION – PRIVILEGES OR IMMUNITIES

191. Plaintiffs incorporate and re-allege all the allegations set forth above as if fully set forth herein.

192. The Privileges or Immunities Clause of the Fourteenth Amendment to the United States Constitution protects the right to earn an honest living in the occupation of one's choice free from unreasonable government regulation.

193. Enforcement of Mississippi's current cosmetology and esthetician laws and regulations arbitrarily and unreasonably impairs Plaintiff Barker's ability to pursue his chosen livelihood by forcing him to obtain a license that is irrelevant to his profession and subjecting him to criminal penalties and fines, thus threatening the existence, profitability, and potential growth of his business, in violation of the privileges or immunities guarantee of the Fourteenth Amendment to the United States Constitution.

194. As a direct and proximate result of Defendants' enforcement of Mississippi's cosmetology laws and regulations against threaders, including Plaintiff Barker, threaders have no other adequate legal, administrative, or other remedy by which to prevent or minimize the continuing irreparable harm to their constitutional rights. Unless Defendants are enjoined from committing the above-described constitutional violations of the Privileges or Immunities Clause of the Fourteenth Amendment to the United States Constitution, threaders, including Plaintiff Barker, will continue to suffer great and irreparable harm.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request the following relief:

A. An entry of judgment declaring that the cosmetology licensing regime, its implementing rules and regulations, and the policies and practices of the Mississippi State Board of Cosmetology are unconstitutional when applied to eyebrow threaders generally and to Plaintiffs specifically;

B. A permanent injunction prohibiting Defendants from enforcing the cosmetology licensing regime and its implementing rules and regulations against eyebrow threaders generally and against Plaintiffs specifically;

C. An award for nominal damages in the amount of One Dollar (\$1.00);

D. An award of attorneys' fees, costs, and expenses in this action pursuant to 42 U.S.C. § 1988; and

E. Any other relief as the Court may deem just and proper.

RESPECTFULLY SUBMITTED, this the 12th day of August, 2019.

/s/ Aaron R. Rice

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