SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

KOREAN AMERICAN NAIL SALON ASSOCIATION OF NEW YORK, INC.; CHINESE NAIL SALON ASSOCIATION OF EAST AMERICA, INC.,

Petitioners,

v.

ANDREW M. CUOMO, Governor of the State of New York; NEW YORK STATE DEPARTMENT OF STATE; CESAR A. PERALES, New York Secretary of State; NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES; ANTHONY J. ALBANESE, New York State Acting Superintendent of Financial Services,

Respondents.

Index No. _____

VERIFIED PETITION

Petitioners KOREAN AMERICAN NAIL SALON ASSOCIATION OF NEW YORK, INC. and CHINESE NAIL SALON ASSOCIATION OF EAST AMERICA, INC. ("Petitioners"), for their verified petition for judgment pursuant to Article 78 of the New York Civil Practice Law and Rules ("CPLR") and their complaint seeking a declaratory judgment pursuant to section 3001 of the CPLR, by their attorneys, allege as follows:

NATURE OF PROCEEDING

1. This Article 78 proceeding challenges Respondents' politically motivated assault against predominantly Asian-American-owned small businesses in the nail salon industry. What started as an irresponsible piece of reporting by the New York Times has led to a discriminatory abuse of executive authority against Asian Americans, small business owners, nail-salon customers, and even the workers Respondents claim to be "protecting."

2. Petitioners seek to enjoin the arbitrary and capricious actions taken by Respondents.

3. First, Petitioners seek a declaratory judgment invalidating the August 7, 2015 certification by Respondent Anthony J. Albanese, Acting Superintendent of the New York State Department of Financial Services ("DFS"), that wage bonds are "readily available to [Petitioners'] businesses from the market place" (the "DFS Certification"). Despite ample evidence that nail-salon owners—many of whom are Asian-American immigrants with limited English skills, credit history, and financial assets—have had difficulty obtaining wage bonds, Respondent Albanese nonetheless certified to the Department of State that such bonds are "readily available." Moreover, Respondents have refused to reconsider this erroneous, arbitrary, and burdensome abuse of executive authority.

4. Second, Petitioners seek to enjoin Respondents from enforcing wage-bond requirements on nail-salon owners. The result of the DFS Certification is that all nail-salon owners in the State of New York will be forced to purchase wage bonds by October 6, 2015 or face the prospect of substantial fines, the loss of their licenses, and even the closure of their businesses.

5. Petitioners' members have been forced into this precarious position even though *wage bonds are not readily available in the marketplace*.

6. Respondents have imposed these wage-bond requirements despite countless pleas from nail-salon owners to lift or delay the requirements until wage bonds are readily available to them in the marketplace, as required by law.

7. Even worse, there is ample evidence that Respondents are selectively enforcing wage bonds requirements against Asian-American nail salon owners.

8. Petitioners thus ask this Court to annul the DFS Certification and enjoin Respondents from requiring wage bonds from nail-salon owners because the DFS Certification is arbitrary and capricious, has no basis in law or fact, and will have a devastating effect on countless hard-working, Asian-American, small-business owners, in violation of their due process and equal protection rights under the United States Constitution and the New York State Constitution.

JURISDICTION

9. This Court has jurisdiction over this proceeding pursuant to sections 7801 and 7803 of the CPLR.

PARTIES

10. Petitioner Korean American Nail Salon Association of New York, Inc. ("KANSANY") is a non-profit organization incorporated under the laws of New York State with its principal place of business in Flushing, New York. KANSANY represents thousands of Korean-owned nail salons in the State of New York.

11. Petitioner Chinese Nail Salon Association of East America, Inc. ("CNSAEA") is a non-profit organization incorporated under the laws of New York State with its principal place of business in Flushing, New York. CNSAEA represents thousands of Chinese-owned nail salons in the State of New York.

12. Respondent Andrew M. Cuomo is the Governor of New York.

13. Respondent New York State Department of State is an agency of the State of New York. Its principal office is located in Albany, New York.

14. Respondent Cesar A. Perales is the Secretary of State of New York.

15. Respondent New York State Department of Financial Services is an agency of the State of New York. Its principal office is located in Albany, New York.

16. Respondent Anthony J. Albanese is the Acting Superintendent of Financial Services at the New York State Department of Financial Services.

VENUE

17. Venue is proper in this County because it is where Respondents have Executive Offices and where the challenged actions took effect upon filing.

FACTS

A. The Nail-Salon Industry Employs Tens of Thousands of Individuals and Provides a Valuable Service to New Yorkers.

18. More than 3,700 nail salons are operating in the State of New York. The nail-salon industry contributes more than 40,000 jobs to the State economy, generates over $2.7 billion in revenue for New York, and provides valuable low-cost services to millions of New Yorkers.

19. The nail-salon industry in America provides an avenue of opportunity for many small-business owners and immigrant workers, the vast majority of whom earn fair wages and enjoy safe working conditions.

20. In New York City, most nail salons are owned and operated by Asian-American women.

21. The nail-salon industry is an important source of employment for recent immigrants because the training required is relatively short and inexpensive, the work does not require high English proficiency, and the work hours tend to be flexible, allowing employees to attend to family obligations.

22. Like most industries, nail salons have long been regulated by the State of New York. To work as a manicurist in New York, an individual must receive a license from the State. To obtain a license, the individual must go to an accredited school for approximately three

months of classes, which typically costs about $1,000 and then pass both written and practical exams.

23. According to the Department of State, as of May 2015, there were 30,610 licensed manicurists in New York. In 2014 alone, 1,182 new "nail specialty licenses" were issued.

24. New York nail salons are hugely popular among New Yorkers because these salons provide valuable services (manicures, pedicures, and acrylics, to name a few) at an affordable price, competitive with the cost of similar services at high-end salons.

25. The manicure market in New York has grown dramatically, as services that used to be available only to the rich are now affordable and accessible to many middle- and low-income New Yorkers.

26. For many immigrants, nail salons provide a path to realizing the American dream by enabling individuals to become small-business owners. Indeed, most nail-salon owners started out as manicurists themselves and most continue to perform nail services alongside their employees.

27. As nail salons owned by Asian Americans have proliferated, many immigrants have trained and employed one another, providing new arrivals with a means of making a living, a way to support their families, and a community in which to belong.

B. The New York Times Published Biased and Inaccurate Portrayals of Nail-Salon Owners and Manicurists.

28. On May 7, 2015, the New York Times published the first of two stories presenting a highly critical portrayal of the nail-salon industry.

29. Although it admittedly "investigated" only a narrow slice of the nail-salon industry, the Times story nevertheless irresponsibly and incorrectly asserted that the "vast majority" of the tens of thousands of manicurists in the more than 3,700 salons in New York

suffered from "rampant exploitation." The Times story functioned as an indictment of the industry requiring a "call to arms."

30. In hyperbolic tones, the Times story described manicurists working "10- to 12-hour shifts hunched over fingers and toes" often "spending their days holding hands with women of unimaginable affluence" at "chandelier-spangled salon[s]" with "gleaming glass fronts."

31. Despite the fact that most nail-salon owners are also recent immigrants who typically work alongside their employees, the Times story portrayed nail-salon owners as rapacious taskmasters who pay rock-bottom wages to their employees. In particular, the Times reported that "Asian-language newspapers are rife with classified ads listing manicurist jobs paying so little the daily wage can at first glance appear to be a typo."

32. The story also contained racial undertones, accusing Koreans, in particular, of imposing a "rigid racial and ethnic caste system" by paying Korean workers "twice as much as their peers." It claimed that Koreans "dominate the industry" by opening businesses where "just a few thousand dollars is needed" to get started and "little English is required." The Times also expressed dismay at the fact that in Manhattan "it can seem as if nearly the entire work force is Korean" because "70 percent to 80 percent of salons in the city are Korean-owned."

33. The Times story also ridiculed immigrant nail-salon owners who view "themselves as heroic" for providing jobs and training to low-skilled immigrants new to the country. The story implied that Asian nail-salon owners were living lavish lifestyles, such as one who wears "a gold pendant embossed with Chinese characters" and has a "two-story house in Center Moriches, on Long Island" and another who has "sales exceed[ing] $400,000 a year" (not including expenses, such as rent and payroll) and comes to work "in [a] Cadillac S.U.V."

34. Based on only one example of a nail-salon owner who did not satisfy a judgment against him, the Times story asserted that nail-salon owners frequently are found guilty of wage theft but then "vanish, along with their assets" before employees can collect damages.

35. The Times story drew immediate and well-deserved criticism. Most prominently, Richard Bernstein, a long-time foreign correspondent for both The New York Times and Time magazine, harshly criticized the Times for drawing "its conclusions about the 'vast majority' of workers at 'almost any' salon in New York by interviewing a pool of mostly undocumented, untrained, or unlicensed workers … ignoring clear evidence that tens of thousands of salon workers do not fall into this category."

36. Most glaring, Mr. Bernstein found no evidence to support the Times' assertion that Asian newspapers were "rife with classified ads" offering to pay manicurists next to nothing. Mr. Bernstein "read literally thousands of Chinese-language ads and found not a single one fitting the description of the ads that the Times asserts the papers to be full of." Indeed, Mr. Bernstein found numerous ads proving the *opposite*—these ads showed "that there is a lively demand on the part of nail salon owners for qualified workers and that the salons need to pay them at least minimum-wage rates to start, plus, in many cases, provide free transportation … to induce them to take the posts on offer." Tellingly, the Times story failed to explore income earned from tips, which is an important component of the amounts earned by employees in the industry.

37. Mr. Bernstein also questioned the Times' assertion that government inspections of nail salons are so infrequent as to be effectively non-existent, noting that "at least once, often twice a year, inspectors have come unannounced into … salons [his family owns], unprompted

by any complaints, to verify [their] employees' licenses, which, as required by law, are posted on a wall."

38. At bottom, Mr. Bernstein found that the Times had extrapolated from the experiences of a few individuals to draw conclusions about the "vast majority," thus castigating an entire industry. This was journalism at its worst, replicating "one of our worst traits in journalism [which is] when we have a narrative in our minds, we often plug in anecdotes that confirm it."

39. Asian manicurists also contradicted the Times' claims. Indeed, shortly after the publication of the stories, the Times itself published an interview with a Chinese manicurist, Luo Yufeng, who told a starkly different story:

> Q. What are your thoughts on the New York manicure industry in general?
>
> A. I think it's fine. Many of my friends have been doing the work for more than 10 years, and they generally think it's better than working in restaurants. The difference between a manicurist and her boss is not clear-cut. An ordinary worker can start in a nail salon to learn the techniques, and, after three or five years, she can pay around $30,000 to buy a salon and become a boss herself. I found this highly inspiring. Even when I was cursed or when my customers found fault with me, my heart was still full of hope, because one day I could become a boss, too.

40. Likewise, the Korean American Parents Association of Greater New York denounced the Times story for "describ[ing] Korean nail industry workers who work hard for their children as racists and people who commit crimes." Numerous others, including academics like Miliann Kang, a Professor at the University of Massachusetts, Amherst, were similarly critical of the Times' reporting.

C. Without Any Independent Investigation, Respondents Hurriedly Imposed Draconian Emergency Rules on Nail-Salon Owners in Response to the Times Story.

41. On May 11, 2015, three days after the last Times story was published, Governor Cuomo held a press conference announcing that he was ordering a multi-agency task force to investigate all New York salons for alleged mistreatment of workers.

42. In this press conference, Governor Cuomo announced a number of "immediate actions" he was taking against the industry.

43. In particular, Governor Cuomo announced that "Task Force members will implement new regulations requiring every nail salon to secure either a bond or expanded insurance policy to cover claims for unpaid wages as part of its licensure."

44. Seven days later, on May 18, 2015, without receiving any public comments, the Department of State adopted several temporary "emergency rulemakings" aimed at regulating nail salons.

45. In particular, the Department of State adopted a rule entitled "Rules Relating to Insurance and Bond Requirements," I.D. No. DOS-22-15-00010-E (May 18, 2015) (the "May Emergency Rule").

46. The May Emergency Rule imposed onerous requirements on nail-salon owners, including demanding that they purchase expensive wage payment surety bonds.

47. Specifically, the May Emergency Rule required that:

> An owner must maintain proof of minimum financial security in the following amounts: … for payment of wages and remuneration legally due employees who provide nail specialty services pursuant to the following schedule:
>
> (i) if owner employs the equivalent of two to five full time individuals who provide nail specialty services, at least $25,000 or in such other amount as directed by the Secretary;

(ii) if owner employs the equivalent of six to ten full time individuals who provide nail specialty services, at least $40,000 or in such other amount as directed by the Secretary;

(iii) if owner employs the equivalent of 11 to 25 full time individuals who provide nail specialty services, at least $75,000 or in such other amount as directed by the Secretary; or

(iv) if owner employs the equivalent of 26 or more full time individuals who provide nail specialty services, at least $125,000 or in such other amount as directed by the Secretary.

48. The May Emergency Rule required nail-salon owners to file the bond with the State and to maintain evidence of the bond purchase on the premises at all times.

49. Despite imposing burdensome new requirements on nail-salon owners, the May Emergency Rule gave owners less than 45 days to purchase the new bonds.

50. In passing the May Emergency Rule, the Department of State submitted no Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis, or Job Impact Statement.

51. Nail-salon owners expressed immediate concerns over the Governor's new wage-bond requirement, warning that if the May Emergency Rule remained in place, many nail salons would face certain bankruptcy.

52. Nevertheless, on June 10, 2015, the Department of State issued another temporary emergency rule imposing insurance and bond requirements on nail-salon owners. *See* "Rules Relating to Insurance and Bond Requirements," DOS-26-15-00002-E (June 10, 2015) (the "June Emergency Rule").

53. The June Emergency Rule was substantially similar to the May Emergency Rule, again imposing a wage-bond requirement on nail salons of between $25,000 and $125,000, depending on the number of employees.

54. As with the May Emergency Rule, the Department of State issued the June Emergency Rule without soliciting or receiving any comments from the public.

55. In adopting the June Emergency Rule, the Department of State provided arbitrarily low predictions of the price of a wage bond for nail-salon owners, asserting that it was "informed" that a nail salon "may expend as little as $500" to obtain a $25,000 bond and as little $2,500 for a $125,000 bond.

56. Despite the massive and predictable problems that such a requirement would inevitably cause, the Department of State amazingly admitted that it had not "consulted with small business interests ... that may be affected by this rule" to determine the impact of the wage-bond requirement on small businesses.

57. On July 16, 2015, Governor Cuomo signed into law Bills A. 7630A/S. 05966, which authorized the State to impose enormous punishments on nail-salon owners who are unable to obtain a bond.

58. Under the new law, the State can shut down any nail salon operating without a bond and impose fines of up to $2,500 per violation.

59. While drafting the nail-salon legislation, Assemblyman Ron Kim and others, after consulting with insurance and underwriting associations, determined that no wage-bond market existed for nail salons and so the private sector would need more time to develop such a product. Indeed, ensuring that bonds were "readily available" in the marketplace was critical to lawmakers. *See* NYS Assembly Tr. at 36-37 (June 19, 2015) (Assemblyman Kim) (noting the importance of "making sure any kind of new requirements on mom-and-pop nail salons, such as liability insurance or bonds, are readily available from a robust and competitive market").

60. Consequently, the State Assembly eliminated language from the legislation that would have empowered the Secretary of State to require a wage bond.

61. In its place, the legislature inserted language forbidding the enforcement of the wage-bond requirement until the sixtieth day after DFS certified in writing to the Secretary of State that any bonds or liability insurance required by the Department of State is "readily available to the businesses from the market place."

62. The new law thus was clear that any insurance or bond products must be "readily available" before the Department of State could require nail salons to purchase them. Indeed, the stated purpose of this precondition was to allow time for a robust and competitive market for wage bonds to develop.

63. For a financial product to be "readily available," it is not sufficient that the product merely exist in theory; instead, it must be *affordable*, available in a *fair and non-discriminatory* manner, and priced *comparably* to other types of business liability insurances.

D. Respondent Albanese Irresponsibly Certified That Wage Bonds Were "Readily Available" to Nail-Salon Owners Despite Overwhelming Evidence to the Contrary.

64. On August 7, 2015, only a few weeks after the legislation was passed and lawmakers' concerns about the unavailability of wage bonds were raised, Respondent Anthony Albanese, Acting Superintendent of DFS, aggressively pushed forward the wage-bond requirements by certifying to the Secretary of State "the ready availability of bonds or liability insurance to cover the financial guarantee requirements established by the Department of State (DOS) for certain appearance enhancement businesses in New York State."

65. Specifically, Respondent Albanese stated that DFS had "identified nine insurers, as well as numerous agents and brokers, that intend to make bond and liability insurance products available" to nail salons.

66. Respondent Albanese certified on behalf of DFS that "the bonds and liability insurance necessary to meet the financial guarantee requirements established by DOS are readily available for purchase in New York State."

67. The DFS Certification caused an immediate outcry, as numerous individuals and organizations pointed out that it was erroneous and unsupported by any evidence.

68. On August 14, 2015, the Korean American Insurance & Finance Association of the Greater New York wrote to Assemblyman Kim to advise him that no sureties were willing to issue wage bonds for nail salons with "reasonable and economically feasible terms … due to the fact that there is no established loss history that can enable them to underwrite wage bonds." The few sureties who did show interest "wanted to impose unbearable conditions like collateral requirements such as 25% to 50% cash deposit with extremely high rates, which would not be affordable by any salon owners." In addition, the surety industry needed "more time to be educated and prepared to actually make any commitment to writing this bond." As a result, the probability of all nail salon owners securing wage bonds by October 6, 2015 was "very slim or none."

69. Also on August 14, 2015, KANSANY wrote to Respondents, advising them that it had received hundreds of calls from mom-and-pop store owners who did not know how to get a wage bond. KANSANY explained to Respondents that "thousands of honest and hardworking business owners have been confronting many difficulties" in their good-faith efforts to comply with the wage bond requirement. Most local Korean-speaking insurance agencies did not offer wage bonds at all. And when nail-salon owners did find the rare agency purporting to offer the bonds, many owners were unable to navigate the complicated documentation requirements or raise the high collateral demanded in the short period of time allotted to

them. KANSANY warned that the wage bond requirement would impose a "heavy financial burden" and inevitably cause many businesses to fail.

70. Despite these real and valid concerns, Respondents refused KANSANY's request to reconsider the wage bond requirement.

71. In addition to the financial burdens, many business owners ran into language and informational barriers as well. For example, the hotline provided by DFS is not equipped to provide meaningful assistance to much of the market because DFS is unable to provide Korean translation services for recent immigrants or even basic information about the wage bond requirement.

72. Most troublingly, there are many indications that Respondents are purposefully using the wage bond requirements in an attempt to shut down the type of low-cost, Asian-owned nail salons that were described in the New York Times articles. Indeed, one officer of a surety bond company expressed his understanding on August 21, 2015 that the wage bond requirement was actually designed for the purpose of putting some nail salons out of business: "Our job is to make sure that the ones that are not running their business properly and paying the wages according to the laws of New York are not able to obtain a bond… As it's designed, the bond requirement should put the bad ones out of business… We are actually predicting that most of the nail salon facilities will just operate out of compliance for a generous period of time or just shut down because they can't fathom paying income to their employees and running real books for their business."

73. The standards being used to obtain a wage bond, however, are out of sync with whether the applicants are compliant with wage and hour laws; the standards to obtain a wage

bond are arbitrary and capricious, unrelated to compliance with wage and hour laws, and have a racially discriminatory impact.

74. Since the adoption of the May Emergency Rule and the June Emergency Rule, thousands of nail-salon owners have attempted to purchase wage bonds, but have been unable to do so—either because the owners were quoted extremely high rates due to their lack of credit history or low credit score or because the wage bonds were simply unavailable.

75. Unlike other insurance products, in order for an owner to purchase a wage bond, the owner must have a minimum credit score of 710 and maintain meticulous personal financial records. Those at the cusp of these requirements (or who, like many new immigrants, lack any credit history at all) are often required to pay in cash a 40% security deposit. These costs far exceed the costs of similar insurance products.

76. Thus, it is clear that wage bonds are not "readily available" to these small-business owners, and any insurance product that relies heavily on personal credit scores will result in *discriminatory outcomes against new immigrant communities*.

77. Indeed, as of September 1, 2015, DFS reported that out of roughly 800 applications accepted by bond companies, 110 were issued a bond. Thus, only 110 owners out of almost 10,300 salon and beauty enhancement facilities—about 1% of the industry—have been able to comply with the rules' requirements.

78. Countless examples of such denials abound. For example, on August 25, 2015, one issuer responded to a bond request: "[T]he above referenced client does not qualify due to a $206 past due on owner's credit to Department of Education. In order to proceed we must see evidence this has been paid along with confirmation client has been in business over 3 years."

79. On August 27, 2015, another issuer responded to a bond request: "The owner for this one does not qualify for our in house authority due to a 709 fico score. Can you get a personal financial or tax return showing real estate owned? Also, please confirm in business over three years. If not in business 3 years please forward resume showing experience."

80. Similarly, on August 28, 2015, a wholesale insurance broker sent an e-mail stating: "I have attached 3 examples of quote requests for those who did not pass the credit rating. We asked the brokers to provide financial documents such as personal tax returns, financial statements, and if they have an outstanding debt we require them to provide proof that the outstanding balance has been cleared."

81. Needless to say, implementation of the wage bond requirement has been riddled with problems. Bond issuers require extensive financial information that is clearly unavailable within the limited time allotted, and most immigrant-run small-business owners lack the personal credit history or credit score to quality for this newly invented product.

82. In the absence of such information, some issuers required an exorbitant security deposit of more than $10,000 to purchase a bond. Several other bond issuers simply refuse to offer any wage surety bonds because they have no product suitable for mom-and-pop nail salons.

83. By certifying a product that is clearly not "readily available" to the salon owners, DFS has set up thousands of good operators for failure.

84. Because the wage bond market is undeveloped, there is virtually no support for the DFS Certification that wage bonds are "readily available." Numerous barriers remain before such a system will exist. Most brokers must, among other things: (1) develop automated systems to sell wage bonds, which currently do not exist; (2) hire dedicated staff to provide information and to sell the bonds; and (3) determine that their development and sale will be profitable. For

now, however, the lack of "readily available" bonds and insurance makes it extremely difficult for many nail-salon owners to obtain or re-attain licensing.

E. Respondents Pushed New Regulations Despite Overwhelming Evidence of the Devastating Harm They Would Cause.

85. On September 7, 2015, the June Emergency Rule expired without the State adopting any emergency or permanent replacement regulations.

86. Accordingly, because the June Emergency Rule expired, there are no specific requirements detailing the type or amount of wage bonds that nail salon owners must purchase.

87. Nevertheless, Respondents continue to tell the public that such bonds are required pursuant to the now-expired rules. For example, the DFS website continues to state that nail-salon owners are required to purchase bonds because "on July 16, 2015, Governor Cuomo signed a law requiring licensed appearance enhancement facilities that provide specialty nail salon services to post a bond to cover unpaid wages."

88. DFS's statement is inaccurate in two respects. First, it is the Governor's Rules—not the new law—that required these bonds. Although the DFS has been repeatedly informed of this misrepresentation, it continues to maintain this language on its website.

89. And second, in Respondents' haste to enforce the wage bond requirement, they allowed the Governor's rules to expire on September 7, 2015, thus leaving no current legal requirement on nail-salon owners to secure wage bonds and making all assertions to the contrary both confusing, false, and misleading.

90. Since the DFS certification, the Department of State has also been denying license applications from nail salons on the basis that they have been unable to secure wage bonds, despite any authority for taking such actions and despite numerous pleas from nail-salon owners explaining that such bonds are not readily available.

91. The DFS Certification that wage bonds are "readily available" will have a devastating effect on the nail-salon industry.

92. As detailed above, the absence of "readily available" bonds and insurance is making it extremely difficult for many small business owners—almost all of whom are female, Asian-American immigrants—to obtain or renew licensing. As a result, thousands of nail-salon owners will be forced to close or face bankruptcy if they are required to purchase wage bonds by October 6, 2015, which is just three weeks away.

93. The costs will be prohibitive for many businesses. As Assemblyman Kim has noted, "for a $100,000 bond, a company must put down 10 to 20 thousand," which is "way too much" for mom-and-pop stores.

94. By certifying a product that is clearly not "readily available" to the salon owners, DFS has set up thousands of good operators for failure. More time is needed for a market to develop and for small-business owners—who are mostly first-generation immigrants—to comply with the wage-bond requirement.

FIRST CAUSE OF ACTION
(Arbitrary Actions without Rational Basis)

95. Petitioners re-allege paragraphs 1 through 94 as if fully set forth herein.

96. On August 7, 2015, Respondent Albanese certified on behalf of DFS that "the bonds and liability insurance necessary to meet the financial guarantee requirements established by DOS are readily available for purchase in New York State."

97. The DFS Certification was false and unsupported by substantial evidence. As detailed herein, wage bonds are not "readily available." Indeed, thousands of nail-salon owners will be unable to purchase such products at a reasonable rate or without a prohibitively expensive deposit.

98. The DFS Certification will impose substantial and unwarranted costs and burdens on Petitioners' members with no regard to the fact that the bonds are not "readily available for purchase in New York State."

99. The DFS Certification is arbitrary and capricious within the meaning of Section 7803 of the Civil Practice Law and Rules.

SECOND CAUSE OF ACTION
(Lack of Statutory Authority)

100. Petitioners re-allege paragraphs 1 through 99 as if fully set forth herein.

101. General Business Law Section 412 prohibits the Department of State from imposing civil penalties against nail salons operating without a wage bond until the Department of Financial Services has certified that such bonds are "readily available to appearance enhancement businesses from the market place."

102. Based on the false DFS Certification that wage bonds "are readily available for purchase in New York State," Respondents arrogated to themselves the authority to enforce a requirement that the Legislature did not authorize.

103. The DFS Certification and Respondents' enforcement of wage bond requirements are thus inconsistent with the reasoned and comprehensive statutory scheme intended by the Legislature to protect workers.

THIRD CAUSE OF ACTION
(Violation of Due Process)

104. Petitioners re-allege paragraphs 1 through 103 as if fully set forth herein.

105. General Business Law Section 412 prohibits the Department of State from imposing civil penalties against nail salons operating without a wage bond until the Department of Financial Services has certified that such bonds are "readily available" from the market place.

106. Respondents' false certification that wage bonds "are readily available for purchase in New York State" lacks any rational basis and will result in the arbitrary bankruptcies of thousands of small businesses in the State of New York.

107. Respondents' actions violate the Due Process Clauses of the United States and New York State Constitutions. U.S. Const. Amend. XIV; N.Y. Const. Art. I, § 6.

FOURTH CAUSE OF ACTION
(Violation of Equal Protection)

108. Petitioners re-allege paragraphs 1 through 107 as if fully set forth herein.

109. The DFS Certification targets only the "appearance enhancement" industry, which encompasses businesses specializing in nail specialty, natural hair styling, waxing, esthetics, and cosmetology.

110. In New York City, the vast majority of appearance enhancement business owners are Asian American. Thus, the burdens of the wage-bond requirement will fall disproportionately on Asian Americans.

111. Respondents had no basis for imposing these requirements on only the nail-salon industry. Labor law violations are not confined to this industry. Nor has the State produced any evidence that wage bonds are needed to target a particular problem in the industry.

112. Respondents' *sole basis* for imposing the wage-bond requirement is the largely discredited New York Times story. Reliance on second-hand reporting is grossly insufficient to justify the massive burdens on Asian Americans that Respondents' actions will impose.

113. The DFS Certification discriminates among similarly situated persons and entities without any rational basis.

114. The DFS Certification and Respondents' selective enforcement thus violate the Equal Protection Clauses of the United States Constitution and the New York State Constitution. U.S. Const. Amend. XIV; N.Y. Const. Art. I, § 11.

WHEREFORE, Petitioners respectfully request an order and judgment:

(a) declaring Respondents have acted arbitrarily, capriciously, and contrary to law;

(b) declaring the DFS Certification invalid, null, and void;

(c) annulling the DFS Certification in its entirety as lacking the requisite statutory authority and permanently enjoining Respondents from implementing the DFS Certification and any wage bond requirements;

(d) granting injunctive relief during the pendency of this proceeding to prohibit Respondents from denying applications for licenses based on the inability of individuals to obtain bonds;

(e) awarding costs and disbursements incurred by Petitioners along with reasonable attorneys fees pursuant to Article 86 of the Civil Practice Law and Rules; and

(f) such other or further relief as the Court may seem just and proper.

Dated: New York, New York
September 15, 2015

Respectfully submitted,

By: /s/ Michael H. Park

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