BEFORE THE NEW MEXICO BOARD OF BARBERS AND COSMETOLOGISTS

IN THE MATTER OF:

Leanna Garms, **CASE: BC-15-43**
License # 03530
d/b/a Rock Paper Scissors,
Est. License #8032
RESPONDENT.

DEFAULT ORDER

This matter having come before the New Mexico Board of Barbers and Cosmetologists on May 23, 2017 with a quorum present and a majority voting in the affirmative, the Board finds as follows:

1. A Notice of Contemplated Action (NCA) was served upon Respondent in accordance with the Uniform Licensing Act (ULA), NMSA 1978, §§ 61-1-4 to -5.

2. Respondent did not request a hearing within twenty (20) days of receipt of service of the NCA as set forth in the ULA, Section 61-1-4, NMSA 1978.

3. Pursuant to Section 61-1-4(E) of the ULA, if the Respondent does not timely request a hearing, the Board may proceed to take action against the license of the Respondent by default.

4. As such, the Board unanimously voted in open session to impose a fine of $1000.00 against the Respondent pursuant to Section 61-1-3.2(A)(B), NMSA 1978.

IT IS THEREFORE ORDERED.

_____9/15/2017_____ _____
Date Gabriel Garduno, Chair
NM Board of Barbers & Cosmetologists

CERTIFIED MAIL NO._____
RETURN RECEIPT REQUESTED

BEFORE THE STATE OF NEW MEXICO
BOARD OF BARBERS AND COSMETOLOGISTS

IN THE MATTER OF:	)	
	)	
LEANNA GARMS, lic. 03530,	)	Case No. BC-2015-43
dba Rock Paper Scissors, est. lic. 8032	)	
	)	
Respondent.	)	
	)	

NOTICE OF CONTEMPLATED ACTION

1. LEANNA GARMS (hereafter "Respondent ") is hereby notified that the New Mexico Board of Barbers and Cosmetologists (hereafter the "Board") has before it sufficient evidence which, if not rebutted or satisfactorily explained at a formal hearing, will justify the Board in taking action to issue a fine or penalty, restrict, refuse to issue or renew or suspend or revoke a license or take other disciplinary action against a Respondent's license issued under the Barbers and Cosmetologists Act pursuant to §§ 61-17A-1 through 61-17A-25, NMSA 1978.

2. Respondent is hereby notified that the Board has before it sufficient evidence which, if not rebutted or satisfactorily explained at a formal hearing, will justify the Board in taking disciplinary action against Respondent including but not limited to assessment of administrative penalties or fines, pursuant to Section 61-17A-23(B) of the Barbers and Cosmetologists Act.

3. Action is contemplated to impose disciplinary measures pursuant to the following statutes and regulations:

NMSA 61-17A-5. License required.
A. Unless licensed pursuant to the Barbers and Cosmetologists Act [61-17A-1 NMSA 1978] or exempted from the provisions of that act, no person shall practice barbering or cosmetology for compensation either directly or indirectly.

16.34.7.9A (6-7) SANITARY AND SAFETY RULES FOR ESTABLISHMENTS AND ENTERPRISES

A. All licensees who operate enterprise outreach mobile units or establishments must comply with the following minimum sanitation and safety standards. Failure to comply with these requirements may result in an administrative fine as provided in 16.34.15 NMAC of these rules and other disciplinary action by the board.

* * *

(6) maintenance of clean towels in enclosed containers or cabinets with appropriate sanitizing agents;

(7) maintenance of combs and brushes in enclosed containers or cabinets with appropriate sanitizing agents;

16.34.7.11 NMAC SUPERVISION OF LICENSED PRACTICE:

A. Any enterprise or establishment licensed by the board must be under the immediate supervision of a board licensee while licensed activity is being practiced therein.

B. The supervising licensee must be licensed in ALL aspects of the licensed activity being practiced in the enterprise or establishment during the time he/she is in charge, (e.g. a licensed manicurist cannot supervise a barber shop or beauty salon unless he/she also holds a barber or cosmetology license respectively).

C. The enterprise or establishment owner or manager must appoint a licensee to act on their behalf in their absence. The holder of a temporary license may not act as a supervisor of any enterprise or establishment.

16.34.15.8A&C (1-3) NMAC ADMINISTRATIVE PENALTIES AND FINES

A. Subject to legally required procedural safeguards, any person who violates any provisions of the act or any rule adopted by the board may incur, in addition to any other penalty provided by law, a civil penalty in an amount of less than one thousand dollars for each violation. The board will serve on the licensee official notice of any such fine that the board proposes to assess. Failure to pay a fine, once properly assessed, may result in an additional fine or revocation of license or other disciplinary action. The penalties to be assessed are as follows:

* * *

B. Failure to comply with establishment requirements:

(1) first offense: two hundred dollars

(2) second offense: four hundred dollars

(3) third and subsequent offenses: The board shall take steps to impose a further fine up to the limit of nine hundred ninety nine dollars or to take other disciplinary action as permitted by the act or the New Mexico Uniform Licensing Act.

4. The general nature of the evidence is attached to this Notice of Contemplated Action (hereafter the "NCA") in Attachment 1 (Complaint).

5. The general nature of the allegations is as follows:

a. Respondent possesses a professional licensure pursuant to the Barbers and Cosmetologists Act, license #03530, and an establishment license# 8032.

b. On March 3, 2015, State Inspector Donaciano Pacheco performed an inspection at the above-captioned establishment. He observed a female employee performing a manicure on another female. The female he observed performing the manicure denied that it was a manicure or that she was an employee. He also observed that no dry sanitizer was present with the enclosed towels, no dry sanitizer was present with the combs/brushes, an expired license was posted, and unlicensed activity was occurring in the establishment

6. The evidence in this case also includes, but is not limited to, the testimony of Inspector Donaciano Pacheco, Compliance Liaisons Randy Perez and Amanda Griego.

7. The foregoing statements are general in nature and the evidence adduced or elicited at the hearing will not be limited by this summary.

8. Unless rebutted or explained at a formal hearing, the evidence before the Board is sufficient to justify the Board to deny or take other disciplinary action as permitted under the Barbers and Cosmetologists Act.

9. **The Board shall take the contemplated action by default, unless Respondents within twenty days after service of the notice deposits in the mail a certified return receipt requested letter address to the Board and containing a request for a hearing.** *See* NMSA §

61-1-4(D)(3). If Respondents "does not mail a request for a hearing within the time and in the manner required by this section, the Board may take the action contemplated in the notice and such action shall be final and not subject to judicial review. *See* NMSA § 61-1-4(E). A written request for a hearing should be sent to the following address:

New Mexico Board of Barbers and Cosmetologists
ATTN: AMANDA GRIEGO
P.O. Box 25101
Santa Fe, New Mexico 87504-25101

10. If requested, the formal hearing will be conducted in accordance with the New Mexico Uniform Licensing Act, NMSA 1978, § 61-1-4(D)(4). Respondent is advised that NMSA 1978, § 61-1-8 affords the following rights:

> A. A person entitled to be heard under the Uniform Licensing Act [61-1-1 NMSA 1978] shall have the right to be represented by counsel or by a licensed member of his own profession or occupation, or both; to present all relevant evidence by means of witnesses and books, papers, documents and other evidence; to examine all opposing witnesses who appear on any matter relevant to the issues; and to have subpoenas and subpoenas duces tecum issued as of right prior to the commencement of the hearing to compel discovery and the attendance of witnesses and the production of relevant books, papers, documents and other evidence upon making written request therefore to the board or the hearing officer. The issuance of such subpoenas after the commencement of the hearing rests in the discretion of the board or hearing officer. All notices issued pursuant to NMSA 1978, § 61-1-4 shall contain a statement of these rights.
>
> B. Upon written request to another party, any party is entitled to:
>
> (1) obtain the names and addresses of witnesses who will or may be called by the other party to testify at the hearing; and
>
> (2) inspect and copy any documents or items which the other party will or may introduce in evidence at the hearing.
>
> The party to whom such a request is made shall comply with it within ten days after the mailing or delivery of the request. No such request shall be made less than fifteen days before the hearing.

C. Any party may take depositions after service of notice in accordance with the Rules of Civil Procedure for the District Courts. Depositions may be used as in proceedings governed by those rules.

STATE OF NEW MEXICO
BOARD OF BARBERS AND
COSMETOLOGISTS

Date: December 15, 2016

By: J David Stull

Chairperson
New Mexico Board of Barbers &
Cosmetologists
P.O. Box 25101
Santa Fe, New Mexico 87504-25101

Prepared by:

Julia White
Assistant Attorney General/Administrative Prosecutor
111 Lomas NW, Ste. 300
Albuquerque, NM 87102
telephone (505) 490-4060
facsimile (505) 490-4881
jwhite@nmag.gov

CERTIFICATE OF SERVICE

A true copy of this Notice of Contemplated Action was mailed to Respondent by certified mail, return receipt requested, on this _____day of _____ 201__, at the address noted below:

LEANNA GARMS
Address: _____
_____

Certified Mail No.: _____
Return Receipt Requested

_____

BEFORE THE STATE OF NEW MEXICO
BOARD OF BARBERS AND COSMETOLOGISTS

IN THE MATTER OF:	)	
	)	
LEANNA GARMS, lic. 03530,	)	Case No. BC-2015-43
dba Rock Paper Scissors, est. lic. 8032	)	
	)	
Respondent.	)	
	)	

NOTICE OF CONTEMPLATED ACTION

1. LEANNA GARMS (hereafter "Respondent ") is hereby notified that the New Mexico Board of Barbers and Cosmetologists (hereafter the "Board") has before it sufficient evidence which, if not rebutted or satisfactorily explained at a formal hearing, will justify the Board in taking action to issue a fine or penalty, restrict, refuse to issue or renew or suspend or revoke a license or take other disciplinary action against a Respondent's license issued under the Barbers and Cosmetologists Act pursuant to §§ 61-17A-1 through 61-17A-25, NMSA 1978.

2. Respondent is hereby notified that the Board has before it sufficient evidence which, if not rebutted or satisfactorily explained at a formal hearing, will justify the Board in taking disciplinary action against Respondent including but not limited to assessment of administrative penalties or fines, pursuant to Section 61-17A-23(B) of the Barbers and Cosmetologists Act.

3. Action is contemplated to impose disciplinary measures pursuant to the following statutes and regulations:

NMSA 61-17A-5. License required.
A. Unless licensed pursuant to the Barbers and Cosmetologists Act [61-17A-1 NMSA 1978] or exempted from the provisions of that act, no person shall practice barbering or cosmetology for compensation either directly or indirectly.

BEFORE THE STATE OF NEW MEXICO
BOARD OF BARBERS AND COSMETOLOGISTS

IN THE MATTER OF:	)	
	)	
LEANNA GARMS, lic. 03530,	)	Case No. BC-2015-43
dba Rock Paper Scissors, est. lic. 8032	)	
	)	
Respondent.	)	
	)	

NOTICE OF CONTEMPLATED ACTION

1. LEANNA GARMS (hereafter "Respondent ") is hereby notified that the New Mexico Board of Barbers and Cosmetologists (hereafter the "Board") has before it sufficient evidence which, if not rebutted or satisfactorily explained at a formal hearing, will justify the Board in taking action to issue a fine or penalty, restrict, refuse to issue or renew or suspend or revoke a license or take other disciplinary action against a Respondent's license issued under the Barbers and Cosmetologists Act pursuant to §§ 61-17A-1 through 61-17A-25, NMSA 1978.

2. Respondent is hereby notified that the Board has before it sufficient evidence which, if not rebutted or satisfactorily explained at a formal hearing, will justify the Board in taking disciplinary action against Respondent including but not limited to assessment of administrative penalties or fines, pursuant to Section 61-17A-23(B) of the Barbers and Cosmetologists Act.

3. Action is contemplated to impose disciplinary measures pursuant to the following statutes and regulations:

NMSA 61-17A-5. License required.
A. Unless licensed pursuant to the Barbers and Cosmetologists Act [61-17A-1 NMSA 1978] or exempted from the provisions of that act, no person shall practice barbering or cosmetology for compensation either directly or indirectly.

16.34.7.9A (6-7) SANITARY AND SAFETY RULES FOR ESTABLISHMENTS AND ENTERPRISES

A. All licensees who operate enterprise outreach mobile units or establishments must comply with the following minimum sanitation and safety standards. Failure to comply with these requirements may result in an administrative fine as provided in 16.34.15 NMAC of these rules and other disciplinary action by the board.

* * *

(6) maintenance of clean towels in enclosed containers or cabinets with appropriate sanitizing agents;

(7) maintenance of combs and brushes in enclosed containers or cabinets with appropriate sanitizing agents;

16.34.7.11 NMAC SUPERVISION OF LICENSED PRACTICE:

A. Any enterprise or establishment licensed by the board must be under the immediate supervision of a board licensee while licensed activity is being practiced therein.

B. The supervising licensee must be licensed in ALL aspects of the licensed activity being practiced in the enterprise or establishment during the time he/she is in charge, (e.g. a licensed manicurist cannot supervise a barber shop or beauty salon unless he/she also holds a barber or cosmetology license respectively).

C. The enterprise or establishment owner or manager must appoint a licensee to act on their behalf in their absence. The holder of a temporary license may not act as a supervisor of any enterprise or establishment.

16.34.15.8A&C (1-3) NMAC ADMINISTRATIVE PENALTIES AND FINES

A. Subject to legally required procedural safeguards, any person who violates any provisions of the act or any rule adopted by the board may incur, in addition to any other penalty provided by law, a civil penalty in an amount of less than one thousand dollars for each violation. The board will serve on the licensee official notice of any such fine that the board proposes to assess. Failure to pay a fine, once properly assessed, may result in an additional fine or revocation of license or other disciplinary action. The penalties to be assessed are as follows:

* * *

B. Failure to comply with establishment requirements:

(1) first offense: two hundred dollars

(2) second offense: four hundred dollars

(3) third and subsequent offenses: The board shall take steps to impose a further fine up to the limit of nine hundred ninety nine dollars or to take other disciplinary action as permitted by the act or the New Mexico Uniform Licensing Act.

4. The general nature of the evidence is attached to this Notice of Contemplated Action (hereafter the "NCA") in Attachment 1 (Complaint).

5. The general nature of the allegations is as follows:

a. Respondent possesses a professional licensure pursuant to the Barbers and Cosmetologists Act, license #03530, and an establishment license# 8032.

b. On March 3, 2015, State Inspector Donaciano Pacheco performed an inspection at the above-captioned establishment. He observed a female employee performing a manicure on another female. The female he observed performing the manicure denied that it was a manicure or that she was an employee. He also observed that no dry sanitizer was present with the enclosed towels, no dry sanitizer was present with the combs/brushes, an expired license was posted, and unlicensed activity was occurring in the establishment

6. The evidence in this case also includes, but is not limited to, the testimony of Inspector Donaciano Pacheco, Compliance Liaisons Randy Perez and Amanda Griego.

7. The foregoing statements are general in nature and the evidence adduced or elicited at the hearing will not be limited by this summary.

8. Unless rebutted or explained at a formal hearing, the evidence before the Board is sufficient to justify the Board to deny or take other disciplinary action as permitted under the Barbers and Cosmetologists Act.

9. **The Board shall take the contemplated action by default, unless Respondents within twenty days after service of the notice deposits in the mail a certified return receipt requested letter address to the Board and containing a request for a hearing.** *See* NMSA §

61-1-4(D)(3). If Respondents "does not mail a request for a hearing within the time and in the manner required by this section, the Board may take the action contemplated in the notice and such action shall be final and not subject to judicial review. *See* NMSA § 61-1-4(E). A written request for a hearing should be sent to the following address:

New Mexico Board of Barbers and Cosmetologists
ATTN: AMANDA GRIEGO
P.O. Box 25101
Santa Fe, New Mexico 87504-25101

10. If requested, the formal hearing will be conducted in accordance with the New Mexico Uniform Licensing Act, NMSA 1978, § 61-1-4(D)(4). Respondent is advised that NMSA 1978, § 61-1-8 affords the following rights:

> A. A person entitled to be heard under the Uniform Licensing Act [61-1-1 NMSA 1978] shall have the right to be represented by counsel or by a licensed member of his own profession or occupation, or both; to present all relevant evidence by means of witnesses and books, papers, documents and other evidence; to examine all opposing witnesses who appear on any matter relevant to the issues; and to have subpoenas and subpoenas duces tecum issued as of right prior to the commencement of the hearing to compel discovery and the attendance of witnesses and the production of relevant books, papers, documents and other evidence upon making written request therefore to the board or the hearing officer. The issuance of such subpoenas after the commencement of the hearing rests in the discretion of the board or hearing officer. All notices issued pursuant to NMSA 1978, § 61-1-4 shall contain a statement of these rights.
>
> B. Upon written request to another party, any party is entitled to:
>
> (1) obtain the names and addresses of witnesses who will or may be called by the other party to testify at the hearing; and
>
> (2) inspect and copy any documents or items which the other party will or may introduce in evidence at the hearing.
>
> The party to whom such a request is made shall comply with it within ten days after the mailing or delivery of the request. No such request shall be made less than fifteen days before the hearing.

C. Any party may take depositions after service of notice in accordance with the Rules of Civil Procedure for the District Courts. Depositions may be used as in proceedings governed by those rules.

STATE OF NEW MEXICO
BOARD OF BARBERS AND
COSMETOLOGISTS

Date: December 15, 2016

By: J David Stull

Chairperson
New Mexico Board of Barbers &
Cosmetologists
P.O. Box 25101
Santa Fe, New Mexico 87504-25101

Prepared by:

Julia White
Assistant Attorney General/Administrative Prosecutor
111 Lomas NW, Ste. 300
Albuquerque, NM 87102
telephone (505) 490-4060
facsimile (505) 490-4881
jwhite@nmag.gov

CERTIFICATE OF SERVICE

A true copy of this Notice of Contemplated Action was mailed to Respondent by certified mail, return receipt requested, on this _____day of _____ 201__, at the address noted below:

LEANNA GARMS
Address: _____
_____

Certified Mail No.: _____
Return Receipt Requested

_____

16.34.7.9A (6-7) SANITARY AND SAFETY RULES FOR ESTABLISHMENTS AND ENTERPRISES

A. All licensees who operate enterprise outreach mobile units or establishments must comply with the following minimum sanitation and safety standards. Failure to comply with these requirements may result in an administrative fine as provided in 16.34.15 NMAC of these rules and other disciplinary action by the board.

* * *

(6) maintenance of clean towels in enclosed containers or cabinets with appropriate sanitizing agents;

(7) maintenance of combs and brushes in enclosed containers or cabinets with appropriate sanitizing agents;

16.34.7.11 NMAC SUPERVISION OF LICENSED PRACTICE:

A. Any enterprise or establishment licensed by the board must be under the immediate supervision of a board licensee while licensed activity is being practiced therein.

B. The supervising licensee must be licensed in ALL aspects of the licensed activity being practiced in the enterprise or establishment during the time he/she is in charge, (e.g. a licensed manicurist cannot supervise a barber shop or beauty salon unless he/she also holds a barber or cosmetology license respectively).

C. The enterprise or establishment owner or manager must appoint a licensee to act on their behalf in their absence. The holder of a temporary license may not act as a supervisor of any enterprise or establishment.

16.34.15.8A&C (1-3) NMAC ADMINISTRATIVE PENALTIES AND FINES

A. Subject to legally required procedural safeguards, any person who violates any provisions of the act or any rule adopted by the board may incur, in addition to any other penalty provided by law, a civil penalty in an amount of less than one thousand dollars for each violation. The board will serve on the licensee official notice of any such fine that the board proposes to assess. Failure to pay a fine, once properly assessed, may result in an additional fine or revocation of license or other disciplinary action. The penalties to be assessed are as follows:

* * *

B. Failure to comply with establishment requirements:

(1) first offense: two hundred dollars

(2) second offense: four hundred dollars

(3) third and subsequent offenses: The board shall take steps to impose a further fine up to the limit of nine hundred ninety nine dollars or to take other disciplinary action as permitted by the act or the New Mexico Uniform Licensing Act.

4. The general nature of the evidence is attached to this Notice of Contemplated Action (hereafter the "NCA") in Attachment 1 (Complaint).

5. The general nature of the allegations is as follows:

a. Respondent possesses a professional licensure pursuant to the Barbers and Cosmetologists Act, license #03530, and an establishment license# 8032.

b. On March 3, 2015, State Inspector Donaciano Pacheco performed an inspection at the above-captioned establishment. He observed a female employee performing a manicure on another female. The female he observed performing the manicure denied that it was a manicure or that she was an employee. He also observed that no dry sanitizer was present with the enclosed towels, no dry sanitizer was present with the combs/brushes, an expired license was posted, and unlicensed activity was occurring in the establishment

6. The evidence in this case also includes, but is not limited to, the testimony of Inspector Donaciano Pacheco, Compliance Liaisons Randy Perez and Amanda Griego.

7. The foregoing statements are general in nature and the evidence adduced or elicited at the hearing will not be limited by this summary.

8. Unless rebutted or explained at a formal hearing, the evidence before the Board is sufficient to justify the Board to deny or take other disciplinary action as permitted under the Barbers and Cosmetologists Act.

9. **The Board shall take the contemplated action by default, unless Respondents within twenty days after service of the notice deposits in the mail a certified return receipt requested letter address to the Board and containing a request for a hearing.** *See* NMSA §

61-1-4(D)(3). If Respondents "does not mail a request for a hearing within the time and in the manner required by this section, the Board may take the action contemplated in the notice and such action shall be final and not subject to judicial review. *See* NMSA § 61-1-4(E). A written request for a hearing should be sent to the following address:

New Mexico Board of Barbers and Cosmetologists
ATTN: AMANDA GRIEGO
P.O. Box 25101
Santa Fe, New Mexico 87504-25101

10. If requested, the formal hearing will be conducted in accordance with the New Mexico Uniform Licensing Act, NMSA 1978, § 61-1-4(D)(4). Respondent is advised that NMSA 1978, § 61-1-8 affords the following rights:

> A. A person entitled to be heard under the Uniform Licensing Act [61-1-1 NMSA 1978] shall have the right to be represented by counsel or by a licensed member of his own profession or occupation, or both; to present all relevant evidence by means of witnesses and books, papers, documents and other evidence; to examine all opposing witnesses who appear on any matter relevant to the issues; and to have subpoenas and subpoenas duces tecum issued as of right prior to the commencement of the hearing to compel discovery and the attendance of witnesses and the production of relevant books, papers, documents and other evidence upon making written request therefore to the board or the hearing officer. The issuance of such subpoenas after the commencement of the hearing rests in the discretion of the board or hearing officer. All notices issued pursuant to NMSA 1978, § 61-1-4 shall contain a statement of these rights.
>
> B. Upon written request to another party, any party is entitled to:
>
> (1) obtain the names and addresses of witnesses who will or may be called by the other party to testify at the hearing; and
>
> (2) inspect and copy any documents or items which the other party will or may introduce in evidence at the hearing.
>
> The party to whom such a request is made shall comply with it within ten days after the mailing or delivery of the request. No such request shall be made less than fifteen days before the hearing.

C. Any party may take depositions after service of notice in accordance with the Rules of Civil Procedure for the District Courts. Depositions may be used as in proceedings governed by those rules.

STATE OF NEW MEXICO
BOARD OF BARBERS AND
COSMETOLOGISTS

Date: December 15, 2016

By: J David Stull

Chairperson
New Mexico Board of Barbers &
Cosmetologists
P.O. Box 25101
Santa Fe, New Mexico 87504-25101

Prepared by:

Julia White
Assistant Attorney General/Administrative Prosecutor
111 Lomas NW, Ste. 300
Albuquerque, NM 87102
telephone (505) 490-4060
facsimile (505) 490-4881
jwhite@nmag.gov

CERTIFICATE OF SERVICE

A true copy of this Notice of Contemplated Action was mailed to Respondent by certified mail, return receipt requested, on this _____day of _____ 201__, at the address noted below:

LEANNA GARMS
Address: _____
_____

Certified Mail No.: _____
Return Receipt Requested

_____