

STATE OF NORTH CAROLINA
COUNTY OF NEW HANOVER

FILED
IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

2018 OCT 29 A 9:07

— CVS —

K.B. & S.R.

NEW HANOVER CO., C.S.C.

Plaintiffs,

BY _____)

v.

COMPLAINT

MASSAGE ENVY FRANCHISING, LLC,)
SIMMONS EAST COAST, Inc. d/b/a)
MASSAGE ENVY -- MAYFAIRE TOWN)
CENTER, SUSAN K.)
WEIL, GREGORY W. SIMMONS, & JOEY)
LEE DIAZ, II)
Defendants.)

A TRUE COPY
CLERK OF SUPERIOR COURT
NEW HANOVER COUNTY
BY: *Brandt G. Kaczynski*
Deputy Clerk of Superior Court

NOW COME Plaintiffs complaining of Defendants and allege and states as follows:

INTRODUCTION

Massage Envy, the first and by far the largest chain of massage franchises in the country, boasts a billion-dollar business that falsely promises safety in the treatment room for massage and spa services at an affordable price. Massage Envy not only failed to provide basic safety to clients in a most vulnerable setting, but it systemically and intentionally conspired and concealed the rampant problem of massage therapists at Massage Envy franchise locations sexually assaulting customers throughout the country, including within the State of North Carolina.

Massage Envy's policy of telling staff to "not go to police" was singularly designed to continue its profit and protect the brand at the expense of the safety of unsuspecting customers. In furtherance of their conspiracy, the Defendants actively sought to conceal the knowledge and danger of customers being sexually assaulted within their business locations by actively preventing sexual assault reports from being reported to law enforcement and/or state massage therapy boards. According to at least one former employee:

"[The internal review policy] is not in place to protect the client. It's in place to protect the company. It's centered around defusing the situation so the client doesn't call the police. You don't want cop cars showing up at your location the next day."

Contrary to the CEO's, Joseph C. Magnacca, declaration to the public of a "Commitment to Safety," the Defendants have deceived the public regarding the dangers of its services and its knowledge of therapists' sexual assaults on customers and are, in fact, engaging in a continuous and repeated pattern to keep sexual assault claims "in-house" and from law enforcement, state massage therapy boards, unsuspecting customers and the public at large. According to a former corporate employee, the company's leadership has long feared the media would realize the national scope of the problem. That person recalled executives discussing what would happen "if someone connects the dots of how many sexual assaults have occurred across the country." In at least one risk management training, franchisees were told the goal when investigating claims is "to avoid police and keep membership."

Assaults have consisted of rape, digital and oral penetration of the vaginal area as well as touching of the breasts. As a result, a culture of not only tolerating sexual assaults has occurred at Massage Envy franchise locations, but women continue to be and will in the future be sexually assaulted as a result of the Defendants inexplicable, deceptive actions. Due to the actions of Defendants' intentional actions to conspire and conceal the assaults, it has deceived hundreds of women into believing they were purchasing a safe service from the Defendants. This lawsuit is about numerous women in the State of North Carolina who have fallen victim to the deceptive practices of the Defendants that resulted in their victimization at the hands of Massage Envy therapists. These women bravely proceed in this Court in a quest to put an end to the cover-up described above and below so that no additional women in the State of North Carolina (or elsewhere) suffer what the Plaintiffs have and will continue to endure for the rest of their lives.

PARTIES, VENUE, AND JURISDICTIONAL ALLEGATIONS

1. Plaintiff K.B. is a citizen and resident of Hampstead, Pender County, North Carolina. She is proceeding under a pseudonym because she is the victim of sexual assault and publicity of her true identity will cause further unwarranted trauma. Plaintiff K.B.'s true identity should be known to Defendants because of prior criminal proceedings, however if Defendants refuse in writing to consent for K.B. to proceed under a pseudonym, K.B. will move the court for formal permission to do so.

2. Plaintiff S.R. is a citizen and resident of Thorton, Adams County, Colorado. Plaintiff S.R. was previously a resident of Onslow County, North Carolina. She is proceeding under a pseudonym because she is the victim of sexual assault and publicity of her true identity will cause further unwarranted trauma. Plaintiff S.R.'s true identity should be known to Defendants because of prior criminal proceedings, however if Defendants refuse in writing to consent for S.R. to proceed under a pseudonym, S.R. will move the court for formal permission to do so.

3. On information and belief, Defendant MASSAGE ENVY FRANCHISING, LLC ("MEF") is, and at all relevant times mentioned herein was, a corporation organized under the laws of the State of Delaware, with a certificate of authority to transact business in the State of North Carolina. At all relevant times mentioned herein, Defendant MEF's primary place of business was located in the city of Scottsdale, County of Maricopa, State of Arizona, and is the franchisor of Massage Envy locations throughout North Carolina, and performed and controlled the day-to-day activities of the Massage Envy locations throughout North Carolina.

4. On information and belief, Defendant SIMMONS EAST COAST, INC. ("SEC") d/b/a Massage Envy—Mayfaire Town Center, is a business incorporated in North Carolina with an office located at 6863 Main Street, Mayfaire Town Center, Wilmington, New Hanover County, North Carolina. At all relevant times mentioned herein, Defendant SEC was the franchisee of the Massage Envy—Mayfaire Town Center location, and performed work in and at the Massage Envy—Mayfaire Town Center location.

5. On information and belief, Defendant Susan K. Weil (“WEIL”) is a citizen and resident of Brentwood, Williamson County, Tennessee. Defendant Weil is owner and President of Defendant SEC and franchisee of Massage Envy—Mayfaire Town Center location.

6. On information and belief, Defendant Gregory W. Simmons (“SIMMONS”) is a citizen and resident of Brentwood, Williamson County, Tennessee. Defendant Simmons is Vice-President of Defendant SEC and franchisee of Massage Envy—Mayfaire Town Center.

7. On information and belief, Defendant Joey Lee Diaz, II, (“DIAZ”) is a citizen and resident of Broadway, Lee County, North Carolina. Defendant Diaz was a massage therapist employed by Massage Envy—Mayfaire Town Center at all times alleged herein and specifically on November 15, 2015 and November 21, 2015.

8. Jurisdiction is proper in the General Court of Justice, Superior Court Division, in the State of North Carolina, New Hanover County, by virtue of N.C. Gen. Stat. 1-75.4 and other provisions of the laws of the State of North Carolina.

FACTUAL ALLEGATIONS

9. The preceding allegations are repeated and realleged as if fully set forth herein.

10. Sexual misconduct committed by massage therapists at MEF franchise locations is a national epidemic, with over 180 reports of sexual assaults by its therapists occurring throughout the country. The assaults range from forcible sexual intercourse to digital and oral penetration of women’s vaginas to touching of

women's breasts to therapists putting their genitals on women as well as ejaculating on women.

11. MEF does not require its franchisees to report sexual assaults of customers by its massage therapists to law enforcement and/or state massage therapy boards. In fact, one of the reasons this epidemic of sexual assaults of female customers by Massage Envy therapists exists is as a result of MEF's incomprehensible policy and procedure of directing franchisees to conceal allegations of inappropriate sexual behavior involving its massage therapists and directing franchisees not to report said allegations to local law enforcement and/or state massage therapy boards in order to "protect the brand."

12. MEF company protocol encourages employees to handle any allegations of sexual misconduct by its massage therapists "in-house."

13. In numerous cases involving sexual misconduct at franchise locations by its massage therapists, MEF therapists were allowed to remain employed and/or were transferred and/or hired/re-hired at another Massage Envy franchise location, only to go on to improperly touch multiple other female customers.

14. Defendant MEF, Defendant SEC, and other franchisees of MEF have long feared that the public would learn about the problem of massage therapists sexually assaulting female customers at its franchise locations but took no action whatsoever to prevent same but rather continued to protect the company at the expense of the safety of its customers.

15. Defendant MEF, Defendant SEC, and other franchisees of MEF do nothing to warn customers of the problem of women being sexually assaulted at its franchise locations by massage therapists, even though it trains franchisees on the problem.

16. Defendant MEF, Defendant SEC, and other franchisees of MEF conspired to keep the problem of women being sexually assaulted at its franchise locations by massage therapists, from Plaintiffs and from all of Defendants' customers. Instead of informing Plaintiffs and all of Defendants' customers about the problem of women being sexually assaulted at its franchise locations by massage therapists, Defendant MEF, Defendant SEC, and other franchisees of MEF intentionally and falsely told Plaintiffs and all of Defendants' customers that safety is at the core of their company's mission; that it has a zero tolerance policy towards sexual assaults committed by their massage therapists; that they protect their customers; that they carefully select and thoroughly train their massage therapists; that they are dedicated to providing a comfortable and professional environment; that Plaintiffs and all of Defendants' customers can be confident they will have a positive experience; that they bring joy into Plaintiffs and all of Defendants' customers' lives, and that they make the best of everybody, among other intentionally false statements to Plaintiffs and all of Defendants' customers.

K.B.

17. On November 15, 2015, K.B. went to the Massage Envy—Mayfaire Town Center location in Wilmington North Carolina, owned and operated by

franchisee Defendant SEC, for massages for herself and her then sixteen-year old daughter. At the time, K.B. had an ongoing membership for massages which covered herself, her daughter, and her husband. Plaintiff K.B. had been getting massages for approximately five years without incident.

18. Defendant Diaz was the massage therapist assigned to complete K.B.'s massage on November 15, 2015. A different massage therapist was assigned to complete the massage of K.B.'s daughter. Plaintiff K.B. and her daughter were placed in the same room for the duration of their respective massages.

19. As is the practice during massages, K.B. undressed, kept her underwear on, and laid on her stomach on a massage table under a sheet and blanket prior to Defendant Diaz entering the room to begin the massage.

20. In the course of K.B.'s massage, Defendant Diaz inappropriately massaged her inner thighs and continued to move up until his hands grazed her buttocks. Defendant Diaz then massaged K.B.'s inner thighs to the point of almost touching her vagina.

21. As a consequence, K.B. experienced extreme discomfort and fear and ended her massage early.

22. After Defendant Diaz left the room, K.B.'s discomfort was so apparent as to compel her daughter's massage therapist to tell K.B. to report the incident to management.

23. After getting dressed, K.B. confronted Defendant Diaz and stated she was going to management to complain about his conduct. Defendant Diaz did not deny K.B.'s allegations but feigned disbelief and apologized.

24. Plaintiff K.B. confronted management and front desk staff at Massage Envy—Mayfaire Town Center and shared the details of her sexual battery as committed by Defendant Diaz. A manager at Massage Envy—Mayfaire Town Center assured K.B. that Diaz would not be left alone with another client and would be placed back into training.

25. On November 16, 2015, K.B. submitted a Massage Envy—Mayfaire Town Center customer survey which shared the details of the sexual battery by Defendant Diaz.

26. On November 17, 2015, K.B. spoke again with a manager at Massage Envy—Mayfaire Town Center and recounted the sexual battery as committed by Defendant Diaz.

27. On information and belief, Defendants took no action in relation to Defendant Diaz and his sexual misconduct upon K.B..

28. As a result of this incident, K.B. has suffered, and continues to suffer, severe and prolonged emotional distress.

S.R.

29. On November 21, 2015, S.R. and her husband went to the Massage Envy—Mayfaire Town Center location for massages. Plaintiff S.R. and her husband were put in separate rooms for their massages.

30. Plaintiff S.R. frequented the Massage Envy—Mayfaire Town Center location for massages, was aware of appropriate conduct from massage therapists, and typically saw the same massage therapist at the Mayfaire Town Center location.

31. On November 21, 2015, the massage therapist typically assigned to S.R. was not available. Instead, Defendant Diaz was the massage therapist assigned to perform S.R.'s massage on November 21, 2015.

32. Plaintiff S.R. undressed, kept her underwear on, and laid on her stomach on a massage table under a sheet and blanket prior to Defendant Diaz entering the room to complete the massage.

33. Defendant Diaz first began massaging S.R.'s right inner thigh and inched his way up to the outside of her underwear. Defendant Diaz then massaged S.R.'s left inner thigh, inching his way up to the edge of her underwear. Defendant Diaz breathed heavily and brushed up his erection against S.R.. S.R. laid on the table, frozen with shock and extreme fear.

34. Defendant Diaz then instructed S.R. to lay on her back. Defendant Diaz folded the sheet and blanket down to S.R.'s nipples. Defendant Diaz initially rubbed S.R.'s shoulders but then proceeded to massage the sides of her breasts.

35. At the conclusion of the massage, Defendant Diaz left the room. Plaintiff S.R. dressed and left Massage Envy—Mayfaire Town Center with her husband. On the drive home, S.R.'s husband noticed that she was visibly upset and

asked if Defendant Diaz had touched her inappropriately. S.R. began crying hysterically and nodded.

36. Plaintiff S.R.'s husband drove her back to the Massage Envy—Mayfaire Town Center location and called the Wilmington Police Department.

37. On December 1, 2015, K.B. filed a report with the Wilmington Police Department for the sexual battery committed by Defendant Diaz on November 15, 2015.

38. On March 7, 2016, K.B. and S.R. filed a complaint with the North Carolina Board of Massage and Bodywork Therapy for the sexual batteries committed by Defendant Diaz while at the Massage Envy—Mayfaire Town Center location.

39. On April 14, 2016, K.B. contacted Defendant MEF's Guest Relations office regarding the sexual battery committed by Defendant Diaz and the indifferent attitude and inaction by Defendants SEC and its staff.

40. On April 15, 2016, a member of MEF's Guest Relations office contacted K.B. via email stating MEF "has a strong interest in assuring that each customer of its franchised clinics receives exceptional customer service. To this end, we respond to all customers of our franchised clinics regarding their experiences. When that experience is not satisfactory, [MEF] communicates the customers' concern to the clinic owner." MEF stated it would contact SEC and communicate with its manager, owner, and regional team regarding K.B.'s sexual assault.

41. MEF's email to K.B. amounted to nothing more than lip-service. K.B. did not receive follow-up communication from either Defendant MEF, SEC, or its staff. On May 17, 2016, K.B. contacted MEF's Guest Relations office once more regarding their failure to follow up on the sexual battery committed by Defendant Diaz. In her communication K.B. noted that in contrast to its lack of response to her sexual assault, SEC had made countless attempts by phone and voicemail regarding the outstanding balance on her membership account.

42. On August 1, 2016, Defendant Diaz was convicted of the November 21, 2015 sexual battery of S.R. in New Hanover County, 15 CR 059682. On information and belief, in the course of Defendant Diaz's criminal trial, prosecution introduced evidence of Defendant Diaz having been dismissed from prior employment as a massage therapist for inappropriate touching and behavior.

43. As a direct and proximate result of the sexual batteries committed by Defendant Diaz, Plaintiffs developed severe emotional conditions, and their pre-existing psychological and physical conditions worsened, causing physical symptoms and serious and debilitating conditions which affect activities of daily living.

44. As a direct and proximate result of the sexual batteries committed by Defendant Diaz, Plaintiffs suffered from temporary inability to work and experienced lost wages.

45. As a direct and proximate result of the sexual batteries committed by Defendant Diaz, Plaintiffs have incurred and will incur in the future necessary medical and therapy expenses.

ALL DEFENDANTS

46. At all times relevant hereto, Defendants MEF, SEC, Weil, and Simmons authorized and/or entrusted Defendant Diaz to have skin-to-skin contact with female customers and to be alone with them while the customers were undressed and in a vulnerable position. Defendant Diaz was aided in his commission of the sexual misconduct by virtue of his duties as a massage therapist because K.B. and S.R. were already undressed in a private room in a vulnerable position per the protocol of massage clients at Massage Envy franchises.

47. The sexual misconduct described herein occurred on a massage table, on the premises operated and/or controlled by Defendants. The improper touching of Plaintiffs occurred during normal business hours of the Massage Envy—Mayfaire Town Center location, and occurred in the course and scope of the performance of duties of massage therapists while making skin-to-skin contact with female customers' bodies, including K.B. and S.R.

48. At all times relevant herein, Defendant Diaz was an employee, agent, and or servant of Defendants. Defendants are liable for the harm to Plaintiffs resulting from the conduct of their employee, agent, and/or servant's conduct because Defendants knew or should have known their massage therapist's unfitness and propensities prior to the assaults on Plaintiffs and at the time of their hire. Defendants are liable for the acts and omissions of Defendant Diaz and other employees at Massage Envy—Mayfaire Town Center under theories of respondeat superior, vicarious liability, master-servant, agency, and right of control. On

information and belief, Defendants failed to conduct any criminal background check or any reference check in making the determination to hire Defendant Diaz. On information and belief, long before these incidents, Defendants knew or should have known that Defendant Diaz has the propensity to act in a sexually inappropriate manner towards many other women at Massage Envy-Mayfaire Town Center.

49. Defendant Diaz engaged in unpermitted, harmful and offensive touching and contact upon the person of K.B. and S.R., in violation of North Carolina law. Said conduct was undertaken while Defendant Diaz was an employee and agent of Defendants, while in the course and scope of employment with said Defendants and/or was ratified by said Defendants. Also, incidents of sexual misconduct by massage therapists in Massage Envy's service or employment were neither isolated nor unusual. For years, Defendants failed to reprimand, punish, report, or otherwise sanction massage therapists, which they knew or had reason to know were sexual predators and/or mentally unfit to perform the job of massage therapist.

50. Defendants' failure to take appropriate action against massage therapists following their inappropriate sexual behavior inflicted on female customers, including K.B. and S.R., thereby ratified the actions of massage therapists, giving them access to further sexually assault other female customers in the future. By not terminating massage therapist employment, including that of Defendant Diaz, Defendants approved, aided and abetted, adopted, and ratified their improper touching. No one from Defendants reported the improper touching to

law enforcement or any governmental licensing or regulatory agency, or anyone for that matter.

51. Defendants owed a duty to female customers, including K.B. and S.R., to provide a reasonably safe environment for them, to ensure their safety, and to provide reasonably necessary supervision and oversight for their safety and welfare while at Massage Envy franchise locations, including Massage Envy—Mayfaire Town Center. Defendants failed to fulfill their legal duty to provide a reasonably safe environment for female customers at Massage Envy franchise locations.

52. Defendants failed to fulfill their legal duty to ensure that massage therapists were psychologically fit to provide massage therapy services to female customers at their franchise locations. These failures included the following:

- a. Failure to investigate the backgrounds of massage therapists in the employ or service of the Defendants;
- b. Failure to prohibit, restrict, or limit the activities of massage therapists suspected of sexual misconduct and/or those known to be sexual predators;
- c. Failure to reasonably and properly investigate allegations of sexual misconduct;
- d. Failure to properly train and instruct investigators;
- e. Failure to have in place standards of acceptable and unacceptable conduct;

- f. Failure to formulate, effectuate, and enforce policies to prevent and/or minimize the risk of sexual misconduct to female customers by agents, servants, and/or employees of the Defendants;
- g. Failure to designate competent investigators to evaluate complaints of sexual misconduct;
- h. Failure to have in place standards for reporting acts of sexual misconduct to law enforcement authorities;
- i. Failure to have in place standards for reporting acts of sexual misconduct to public officials and/or state massage therapy boards;
and
- j. Failure to warn customers regarding the danger of sexual assaults by massage therapists at franchise locations.

53. Defendants' wrongdoing, however, did not stop there. Defendants employed deliberate strategies to conceal known sexual misconduct by massage therapists in the employ or service of Defendants. These strategies included the following:

- a. Conducting sham investigations which were designed to avoid establishing culpability of massage therapists accused of sexual misconduct;
- b. Failing to interview witnesses or persons who possessed, or may have possessed, information which might tend to establish the guilt of an accused massage therapist;

- c. Routinely transferring, assigning and/or re-hiring massage therapists suspected of improperly touching female customers to and/or at other Massage Envy locations;
- d. Purposefully failing to inform customers of the acts of sexual misconduct and/or allegations of same, despite circumstances which gave rise to a duty to disclose such information and in fact, recommending massage therapists who were known to have improperly touched female customers;
- e. Knowingly harboring sexual predators that were suspected and/or accused of sexual misconduct;
- f. Purposefully refusing to notify law enforcement and/or state massage therapy board officials when there existed reasonable grounds to believe that a massage therapist had engaged in improper sexual conduct with a female customer; and
- g. Directing local franchisees not to report allegations of sexual abuse.

53. Defendants employed the above strategies knowing that they exposed female customers, including Plaintiffs, to a significant risk of serious physical and psychological harm, including a significant risk of improper touching. Defendants' actions were willful, malicious, wanton, outrageous, abhorrent, abominable, revolting, vile, and unconscionable because Defendants were motivated by a desire to protect themselves at the expense of female customers who would foreseeably be improperly touched. Through the negligent hiring and supervision by Defendants, the massage therapists' unfitness and dangerous propensities proximately caused the resulting injuries to Plaintiffs. Defendants breached their duty of reasonable

care in hiring the massage therapists because of the sensitive nature of the employment, which predictably involved a close degree of contact with vulnerable persons such as Plaintiffs.

54. Defendants were willful, wanton, reckless, and grossly negligent in overseeing and supervising the conduct of their employees, agents and/or servants as follows:

- a. In failing to supervise and control massage therapist employees;
- b. In negligently supervising massage therapists' interaction with the patrons of the Defendants;
- c. In failing to use reasonable measures to ensure the safety of patrons of Defendants and to prevent massage therapists from improperly touching customers of Defendants;
- d. In failing to provide adequate supervision of massage therapists;
- e. In failing to make themselves aware of the ongoing activity of the patrons of Defendants and/or massage therapists;
- f. In failing to take the usual and ordinary means by which the safety of the patrons of Defendants would be ensured;
- g. In failing to use ordinary skill and care to protect Plaintiffs, which Defendants undertook to perform;
- h. In failing to ensure that Plaintiffs would not be injured by massage therapists;
- i. In failing to follow up and investigate complaints made regarding massage therapists by patrons; and

j. In such other ways as will become evident during discovery.

55. Defendants then became directly liable because they approved, aided and abetted, adopted, and ratified the massage therapists' improper touching of Plaintiffs. Defendants' knowing acquiescence and silence with respect to the known, or reasonably knowable, activities of massage therapists constituted a course of conduct through which acts of sexual perversion and the violation of Massage Envy customers, including Plaintiffs, were condoned, approved and effectively authorized. Through Defendants' failure to timely reprimand and sanction the acts referenced herein, and for all of the other reasons set forth in this Complaint including, without limitation, its failure to take the steps necessary to prevent the occurrence of such reprehensible acts the Defendants ratified said actions and, accordingly, are vicariously liable for the actions of the massage therapists.

56. As a direct and proximate result of the foregoing, Plaintiffs have suffered, and continue to suffer, severe emotional distress. Plaintiffs have suffered and continue to suffer great pain of mind and body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation and loss of enjoyment of life; were prevented and will continue to be prevented from performing Plaintiffs' daily activities and obtaining the full enjoyment of life; and/or have suffered a loss of income and/or loss of earning capacity and incurred and will continue to incur expenses for medical and psychological treatment, therapy and counseling.

57. Defendants engaged in the conduct alleged herein with malice, oppression, and fraud. The conduct of Defendants, and each of them, was despicable and was done with a willful and knowing disregard of the rights or

safety of Plaintiffs and other female customers. Defendants, and each of them, knew that the massage therapists had a propensity to improperly touch female customers and were aware of the probable dangerous consequences of allowing them to continue massages for female customers, yet they continued to pay the massage therapists to work with physical access to more unsuspecting female victims, including Plaintiffs. Defendants' conduct was despicable and subjected Plaintiffs to cruel and unjust hardship in knowing disregard of their rights. Their conduct was so vile, base, and contemptible that it would be looked down on and despised by reasonable people. Defendants intentionally concealed the massage therapists' dangerous propensities from Plaintiffs with reckless indifference toward Plaintiffs' health, safety, and emotional well-being. Defendants' conduct alleged herein is outrageous and so extreme that it goes beyond all possible bounds of decency. A reasonable person would regard the conduct of Defendants as intolerable in a civilized community.

FIRST CAUSE OF ACTION

Negligence

(Against Defendants MEF, SEC, Weil, & Simmons)

58. Plaintiffs incorporate herein by reference, as though set forth in full, all proceeding Paragraphs of this Complaint.

59. Prior to the incidents, Defendants, and each of them, expressly and implicitly warranted to Plaintiffs that Defendants were competent, and that they possessed and exercised reasonable care and skill in providing massages without physically or emotionally harming customers such as Plaintiffs.

60. Defendants owed to the public in general, and to Plaintiffs in particular, a duty to reasonably identify, remove, and/or report to law enforcement

authorities and/or to government agencies individuals who it knew, or should have known, were sexual predators in its service and employ. Defendants owed to their customers in general, and to Plaintiffs in particular, a duty to reasonably supervise and/or monitor individuals who they knew, or should have known, were sexual predators in their service and employ. Defendants owed to Plaintiffs a duty to control the acts of their agents, servants, and/or employees. Defendants owed to Plaintiffs a duty to warn them of hidden dangers of which they were aware.

61. It was foreseeable that if Defendants did not adequately exercise or provide the duty of care owed to customers in their care, including, but not limited to Plaintiffs, they would be vulnerable to sexual misconduct by massage therapists, and in particular, Defendant Diaz.

62. Defendants negligently and improperly failed to exercise reasonable care by failing to warn Plaintiffs about massage therapists', and in particular Defendant Diaz's, known history and propensity to improperly touch women, and by permitting and encouraging dangerous massage therapists such as Defendant Diaz to have physical access to Plaintiffs' bodies on the premises of Defendants. Based on the acts alleged above, Defendants knew, or should have known, that their failure to exercise due care toward Plaintiffs would, and did, cause Plaintiffs severe emotional distress.

63. Despite actual knowledge of multiple instances in which sexual predators were employed, transferred, re-hired and/or assigned to positions within Massage Envy franchise locations and despite the foreseeable risk that said sexual predators would engage in repeated acts of sexual misconduct, Defendants did not have in place or failed to enforce adequate, reasonable, and necessary rules, regulations, policies, and procedures which could effectively identify, and deal with

sexual predators. Defendants did not have in place adequate, reasonable, and necessary rules, regulations, policies, and procedures for the removal of sexual predators in the employ and/or service of Defendants. Defendants did not have in place adequate, reasonable, and necessary rules, regulations, policies, and procedures, which provided for the reporting to criminal authorities sexual predators in the employ and/or service of Defendants. Defendants did not have in place adequate, reasonable, and necessary rules, regulations, policies, and procedures, which provided for the reporting to state boards of massage therapy the presence of sexual predators in the employ and/or service of Defendants.

64. Defendants failed to fulfill their legal duty to protect Plaintiffs and other female customers from the sexual misconduct of their massage therapists. Defendants failed to take reasonable steps to ensure that massage therapists at Massage Envy franchise locations were psychologically fit to provide massage therapy services to female customers. These failures included the following:

- (a) failure to investigate the background of massage therapists in its employ or service;
- (b) failure to prohibit, restrict, or limit the activities of massage therapists suspected of sexual misconduct and/or those known to be sexual predators;
- (c) failure to reasonably and properly investigate allegations of sexual misconduct;
- (d) failure to properly train and instruct investigators;
- (e) failure to have in place standards of acceptable and unacceptable conduct;
- (f) failure to designate competent investigators to evaluate complaints of sexual misconduct; and

(g) failure to have in place standards for reporting acts of sexual misconduct to law enforcement authorities and/or state boards of massage therapy.

65. Moreover, the negligent, reckless, outrageous, deliberately and recklessly indifferent and unlawful conduct of Defendants, as set forth above and herein, further consisted of:

(a) permitting massage therapists to improperly touch female customers, including Plaintiffs;

(b) permitting massage therapists to engage in sexual misconduct with female customers, including Plaintiffs, on the premises of Massage Envy franchise locations during operating hours;

(c) failing to properly and adequately supervise and discipline their employees to prevent the improper touching that occurred to Plaintiffs;

(d) failing to adopt, enforce and/or follow adequate policies and procedures for the protection and reasonable supervision of female customers who engaged the services of Defendants, including Plaintiffs, and, in the alternative, failing to implement and comply with such procedures which had been adopted;

(e) failing to implement, enforce and/or follow adequate protective and supervisory measures for the protection of female customers, including Plaintiffs;

(f) creating an environment that facilitated improper touching by massage therapists on Plaintiffs;

(g) failing to adopt, enforce and/or follow policies and procedures to protect female customers against harmful contact by its massage therapists;

(h) failing to warn Plaintiffs of the risk of harm posed by the massage

- therapists after Defendants knew or should have known of such risk;
- (i) failing to warn Plaintiffs of the risk of harm that Plaintiffs may suffer as a result of contact with the massage therapists;
 - (j) failing to warn or otherwise make reasonably safe the property which Defendants possessed and/or controlled, leading to the harm of Plaintiffs;
 - (k) failing to adopt/implement and/or enforce policies and procedures for the reporting to law enforcement, state board of massage therapy and/or other authorities of sexual misconduct by massage therapists;
 - (l) failing to report improper touching by massage therapists to authorities;
 - (m) violating their own policies and/or by-laws regarding sexual misconduct by staff;
 - (n) ignoring, concealing, or otherwise mitigating the seriousness of the known danger that the massage therapists posed;
 - (o) failing to prevent the sexual misconduct that was committed by the massage therapists on Plaintiffs and other women they improperly touched;
 - (p) allowing the massage therapists to remain employed after knowing that they improperly touched a female customer;
 - (q) failing to properly supervise and/or discipline their employees;
 - (r) failing to adequately and properly train their employees regarding sexual misconduct of female customers by massage therapists; and
 - (s) negligently managing and/or operating Massage Envy franchise locations.

66. Defendants having advertised and promoted Massage Envy as having a “zero tolerance” policy relating to sexual misconduct by massage therapists, explicitly and/or implicitly represented to the public in general, and to Plaintiffs in particular, that the massage therapists in their employ and service were not only

psychologically fit but were therapists who could be entrusted with the safety and well-being of customers. Defendants made these explicit and implied representations knowing that they were false and/or having reason to believe that they were false, and with the expectation that they would be relied upon by customers making decisions regarding their engagement of massage/spa services. Defendants did not have in place adequate, reasonable, and necessary rules, regulations, policies, and procedures with respect to the removal and/or supervision of individuals in its employ or service who were suspected of being sexual predators. Defendants failed to reasonably identify, remove, and/or report (to law enforcement authorities and/or to state massage therapy boards) sexual predators in their service and employ. Defendants failed to reasonably supervise and/or monitor individuals who it knew, or should have known, were sexual predators in their service and employ. Defendants negligently, carelessly, and/or intentionally failed to timely and reasonably identify, remove, and/or report (to law enforcement authorities and/or to state boards of massage therapy) the massage therapists as sexual predators. Defendants hired, retained and/or assigned the massage therapists to Plaintiffs knowing or having reason to know that they were sexual predators. Defendants further breached their duty of care to Plaintiffs by failing to protect the Plaintiffs from foreseeable harm from the sexual misconduct of employees of Defendants. Defendants further breached their duty of care by failing to warn Plaintiffs of the propensities of Defendant Diaz and by failing to provide a safe and secure environment for Plaintiffs.

67. The acts and omissions of Defendants complained of herein constitute negligent and reckless hiring, training, supervision, and retention of massage therapists and in particular Defendant Diaz.

68. At all relevant times herein Defendant Diaz, while in the course and scope of his employment with Defendants, caused harmful or offensive contact with intimate parts of Plaintiffs, and sexually offensive contact with Plaintiffs directly and indirectly resulted therefrom.

69. Defendants ratified the improper touching committed by massage therapists, and Defendant Diaz in particular, by continuing to employ them as massage therapists and giving them access to touch the bodies of female customers including Plaintiffs, after having actual knowledge that the massage therapists had improperly touched prior customers.

70. Plaintiffs will continue to suffer extreme mental, physical, and pain and suffering in the future as a result of the injuries alleged herein. Plaintiffs have been damaged in that they have been required to expend money and incur obligations for medical services, drugs, and sundries reasonably required in the treatment and relief of the injuries. Plaintiffs will continue to incur, medical and related expenses.

71. As a result of Defendants' conduct, Plaintiffs have been damaged in an amount in excess of \$25,000.00

72. The acts of Defendants alleged above condoned Defendant Diaz's conduct and constituted an aggravating factor in Plaintiffs' damages which justifies the awarding of exemplary and punitive damages pursuant to Article 1D of the North Carolina General Statutes.

SECOND CAUSE OF ACTION

Respondeat Superior

(Against Defendants MEF, SEC, Weil, and Simmons)

73. Plaintiffs incorporate herein by reference, as though set forth in full,

all proceeding Paragraphs in this Complaint.

74. In providing massage services to Defendants' customers such as Plaintiffs, Defendant Diaz was acting within the course and scope of his employment by Defendants and in furtherance of his employers' business.

75. Defendant Diaz's misconduct and sexual battery committed in the course of massages performed on Plaintiffs was in furtherance of his duties and was an integral part of his duties as a massage therapist employed by Defendants.

76. Defendant Diaz's misconduct is imputed to Defendants by the doctrine of respondeat superior.

THIRD CAUSE OF ACTION

Premises Liability (Against Defendants MEF, SEC, Weil, and Simmons)

77. Plaintiffs incorporate herein by reference, as though set forth in full, all preceding Paragraphs of this Complaint.

78. Defendants owned, occupied, managed, operated, controlled, leased or serviced the premises of Massage Envy—Mayfaire Town Center.

79. Defendants owed a duty to Plaintiffs to own, occupy, manage, operate, control, lease, or service the premises of Massage Envy—Mayfaire Town Center in a safe and prudent manner.

80. Defendants owed a duty to Plaintiffs to inspect the premises of Massage Envy—Mayfaire Town Center for unsafe conditions and to warn and provide notice of unsafe conditions on the premises.

81. Defendants owed a duty to Plaintiffs to warn invited guests such as Plaintiffs of hidden dangers of which they were aware.

82. The acts and/or omissions of Defendants described in the foregoing

paragraphs were a breach of the duties Defendants owed to Plaintiffs.

83. As a result of Defendants' breaches of the duties described above, Plaintiffs have suffered and will continue to suffer extreme mental, physical, and pain and suffering in the future.

84. As a further proximate result, Plaintiffs have been damaged in that they have been required to expend money and incur obligations for medical services, drugs, and sundries reasonably required in the treatment and relief of the injuries alleged according to proof. As a further proximate result, Plaintiffs will continue to incur, medical and related expenses.

85. As a result of Defendants' conduct, Plaintiffs have been damaged in an amount in excess of \$25,000.00

86. The acts of Defendants alleged above were willful, wanton, malicious, oppressive, fraudulent, despicable, and outrageous and justify the awarding of exemplary and punitive damages pursuant to Article 1D of the North Carolina General Statutes.

FOURTH CAUSE OF ACTION

Intentional Infliction of Emotional Distress (Against All Defendants)

87. Plaintiffs incorporate herein by reference, as though set forth in full, all preceding Paragraphs of this Complaint.

88. As described above, without Plaintiffs' consent, Defendants' massage therapists engaged in unlawful, sexual misconduct against Plaintiffs.

89. Defendants allowed, adopted, approved, aided, abetted, and ratified the behavior of the massage therapists by allowing them to continue to work as massage therapists with physical access to female customers knowing that they

had a history of sexual misconduct, including improperly touching and harassing female customers.

90. Plaintiffs suffered and will continue to suffer extreme mental, physical, and pain and suffering in the future as a result of the injuries alleged herein.

91. As a further proximate result, Plaintiffs have been damaged in that they have been required to expend money and incur obligations for medical services, drugs, and sundries reasonably required in the treatment and relief of the injuries alleged according to proof. As a further proximate result, Plaintiffs will continue to incur, medical and related expenses.

92. As a result of Defendants' conduct, Plaintiffs have been damaged in an amount in excess of \$25,000.00

93. The acts of Defendants alleged above were willful, wanton, malicious, oppressive, fraudulent, despicable, and outrageous and justify the awarding of exemplary and punitive damages pursuant to Article 1D of the North Carolina General Statutes.

FIFTH CAUSE OF ACTION

Sexual Battery (Against All Defendants)

94. Plaintiffs incorporate herein by reference, as though set forth in full, all preceding Paragraphs of this Complaint.

95. Defendant Diaz, without Plaintiffs' consent, engaged in the intentional infliction of harmful and offensive sexual contact upon the persons of Plaintiffs, all with the intent of sexual arousal.

96. Defendant Diaz's harmful and offensive sexual contact inflicted upon

the persons of Plaintiffs was without Plaintiffs' consent.

97. Defendants' conduct was a substantial factor in causing Plaintiffs' physical and emotional harm.

98. Defendant Diaz was still employed by Defendants as a massage therapist despite having known, or should have known, that he had committed sexual assaults upon female massage customers. Defendants failed to adequately investigate or reprimand him. By allowing Defendant Diaz to continue working as a massage therapist after each of the aforementioned incidents and failing to adequately investigate or reprimand him, Defendants approved, aided and abetted, adopted, and ratified Diaz's sexual misconduct.

99. As a result of the sexual battery committed by Defendant Diaz, Plaintiffs have suffered and will continue to suffer extreme mental, physical, and pain and suffering in the future as a result of the injuries alleged herein.

100. As a further proximate result, Plaintiffs have been damaged in that they have been required to expend money and incur obligations for medical services, drugs, and sundries reasonably required in the treatment and relief of the injuries alleged according to proof. Further, Plaintiffs will continue to incur, medical and related expenses.

101. As a result of Defendants' conduct, Plaintiffs have been damaged in an amount in excess of \$25,000.00

102. As a result of Defendants' willful and wonton conduct as described above, Plaintiffs are entitled to recover punitive damages against Defendants pursuant to Article 1D of the North Carolina General Statutes.

SIXTH CAUSE OF ACTION

Negligent Misrepresentation

(Against All Defendants)

103. Plaintiffs incorporate herein by reference, as though set forth in full, all preceding Paragraphs of this Complaint.

104. Defendants had no reasonable grounds for believing the false representations it made to Plaintiffs regarding safety and reliability of its services were true. Nevertheless, Defendants intended that customers, including Plaintiffs, rely on their representations in choosing Massage Envy over other massage therapy services and options.

105. Plaintiffs reasonably relied on Defendants' misrepresentations in obtaining massages at Massage Envy locations, and their reliance on Defendants' misrepresentations were a substantial factor in causing their harm. If Plaintiffs had known the facts Defendants concealed about their service, security screening, and massage therapists, they would not have accepted massages from the massage therapists. Defendants failed to provide Plaintiffs with safe massages.

106. As a result of Defendants' negligent misrepresentation, Plaintiffs have been damaged in an amount in excess of \$25,000.00

SEVENTH CAUSE OF ACTION

**Fraud, Intentional Misrepresentation, Concealment, False Promise
(Against All Defendants)**

107. Plaintiffs incorporate herein by reference, as though set forth in full, all preceding Paragraphs of this Complaint.

108. Defendants made false representations and false promises that harmed Plaintiffs.

109. Defendants falsely represented to Plaintiffs that they had a "zero tolerance" policy relating to sexual misconduct by massage therapists. Defendants

falsely represented to Plaintiffs that the massage therapists in their employ and service were not only psychologically fit, but were therapists who could be entrusted with the safety and well-being of female customers. Defendants represented that their massage therapists were properly screened and were safe.

110. Defendants falsely represented to Plaintiffs that their massages were safe and that their massage therapists were safe.

111. Defendants knew these representations were false and intended for customers, like Plaintiffs, to rely on them.

112. Defendants knew that their security screening was deficient, that their background checks were below industry standards, and that their massage therapists were not trained or supervised, or given sexual harassment and abuse standards. Defendants knew that numerous women had been assaulted by massage therapists. Defendants knew that it was not safe for female customers to get massages from their massage therapists. Defendants intentionally concealed these facts, and deliberately represented the opposite – that Massage Envy had a “zero tolerance” policy relating to sexual misconduct and their massage therapists could be entrusted with customer safety.

113. Plaintiffs reasonably relied on Defendants’ misrepresentations in getting massages at Massage Envy locations, and their reliance on Defendants’ misrepresentations were a substantial factor in causing their harm. If Plaintiffs had known the facts Defendants concealed about their service, security screening, and massage therapists, they would never have accepted massages from the massage therapists. Defendants failed to provide Plaintiffs with safe massages.

114. As a result of Defendants’ conduct, Plaintiffs have been damaged in an amount in excess of \$25,000.00

115. As a result of Defendants' willful and wonton conduct as described above, Plaintiffs are entitled to recover punitive damages against Defendants pursuant to Article 1D of the North Carolina General Statutes.

EIGHTH CAUSE OF ACTION
Civil Conspiracy
(Against Defendants MEF, SEC, Weil, and Simmons)

116. Plaintiffs incorporate herein by reference, as though set forth in full, all preceding Paragraphs of this Complaint.

117. Plaintiffs are informed and believe and thereon allege that Defendants knowingly and willfully conspired and agreed among themselves to misrepresent to Plaintiffs and all of Defendants' customers that there was a problem of women being sexually assaulted at their Massage Envy franchise locations by its massage therapists. This conspiracy continues to this day.

118. Defendant MEF, other Defendants named herein, and other of MEF's franchisees conspired to keep the problem of customers being sexually assaulted at its franchise locations by massage therapists from Plaintiffs, and all of Defendants' customers. Instead of informing Plaintiffs and all of Defendants' customers about the problem of customers being sexually assaulted at its franchise locations by massage therapists, MEF, other Defendants named herein, and other of MEF's franchisees, intentionally and falsely told Plaintiffs and all of Defendants' customers that: safety is at the core of their company's mission; that it has a zero tolerance policy towards sexual assaults committed by their massage therapists; that they protect their customers; that they carefully select and thoroughly train their massage therapists; that they are dedicated to providing a comfortable and professional environment; that Plaintiffs and all of Defendants' customers can be confident they will have a positive experience; that they bring joy into Plaintiffs

and all of Defendants' customers' lives, and that they make the best of everybody, among other intentionally false statements to Plaintiffs and all of Defendants' customers.

119. In furtherance of said conspiracy and agreement, Defendants engaged in fraudulent representations, omissions and concealment of facts, acts of cover-up and statements calculated to obtain Plaintiffs and all of Defendants' customers as massage customers in their Massage Envy franchise locations for the benefit of Defendants and as set forth in detail in the foregoing paragraphs, which are hereby incorporated herein as though set forth in full.

120. All of the actions of Defendants set forth in the preceding paragraphs, incorporated herein, were in violation of the rights of Plaintiffs and committed in furtherance of the aforementioned conspiracies and agreements. Moreover, each of the aforementioned Defendants lent aid and encouragement and knowingly financed, ratified and adopted the acts of the other. As a proximate result of the wrongful acts herein alleged, Plaintiffs and other customers have suffered significant damage to be determined at trial.

121. These acts constituted malicious conduct which was carried on by said Defendants with willful and conscious disregard for Plaintiffs' rights with the intention of willfully concealing the problem of customers being sexually assaulted at its franchise locations by massage therapists, and was despicable conduct that subjected Plaintiffs to a cruel and unjust hardship so as to justify an award of exemplary and punitive damages. Accordingly, punitive damages should be awarded against Defendants to punish them and deter them and other such persons from committing such wrongful and malicious acts in the future.

122. As a result of Defendants' conduct, Plaintiffs have been damaged in

an amount in excess of \$25,000.00

123. As a result of Defendants' willful and wonton conduct as described above, Plaintiffs are entitled to recover punitive damages against Defendants pursuant to Article 1D of the North Carolina General Statutes.

NINTH CAUSE OF ACTION
Unfair and Deceptive Trade Practice
(Against All Defendants)

124. Plaintiffs incorporate herein by reference, as though set forth in full, all preceding Paragraphs of this Complaint.

125. As detailed above, Defendants have engaged in and continue to engage in "business activities" and practices in violation of the Unfair and Deceptive Trade Practice, N.C. Gen. Stat. § 75 1.1, *et seq.* (the UDTPA) by inter alia, actively concealing and failing to warn customers about the inadequacy of their background screening of massage therapists, as well as their failure to monitor the conduct of massage therapists after hire.

126. Defendants also misled consumers about the safety of their services by falsely claiming they had a "zero tolerance" policy relating to sexual misconduct by massage therapists. Defendants misled consumers that the massage therapists in their employ and service were not only psychologically fit, but were therapists who could be entrusted with the safety and well-being of female customers.

127. Defendants have actively concealed and failed to disclose this information knowing that such information is material to a reasonable consumer's decision to use Massage Envy for massage services, and thereby misrepresented the safety of massages offered by Massage Therapy.

128. Defendants' business practices are unfair and/or deceptive and should be enjoined.

129. Defendants have engaged in unfair or deceptive acts or practices intended to result in consumers agreeing to pay Defendants for massage services in violation of N.C. Gen. Stat. § 75 1.1.

130. Defendants knew and/or should have known that their concealment and/or omissions of material fact concerning their safety representations to consumers, including their screening of massage therapists, monitoring of massage therapists' conduct after hire, and safety during massages that were material and likely to mislead the public.

131. Defendants have engaged in and continue to engage in unlawful, fraudulent and unfair practices, which are substantially likely to mislead Plaintiffs and all of Defendants' customers, by intentionally misrepresenting that their Massage Envy franchise locations were safe from sexual assaults, when in fact they knew they were not and their statements were false.

132. Plaintiffs are informed and believe and thereon allege that Defendants' conduct resulted in profits and pecuniary gain received from Plaintiffs and all of Defendants' customers who contracted with Defendants and/or purchased massage services from Defendants.

133. The business acts and practices of Defendants are unlawful, unfair and deceptive within the meaning of the consumer protection statutes because, inter alia, Defendants engaged in fraud by intentionally misrepresenting that their Massage Envy franchise locations were safe from sexual assaults, when in fact they knew they were not and their statements were false. Further, Defendants have engaged in, and continue to engage in the following unlawful, unfair and/or fraudulent business practices in violation of N.C. Gen. Stat. §75 1.1: sexual battery; sexual harassment; civil conspiracy; intentional infliction of emotional distress;

negligence and negligent supervision and hiring; and fraud, concealment and misrepresentation.

134. As a direct and proximate result of Defendants' conduct, as set forth herein, Defendants have received ill-gotten gains and/or profits, including, but not limited to money. Therefore, Defendants were and are unjustly enriched.

135. Plaintiffs engaged counsel to prosecute this action and pursuant to N.C. Gen. Stat. § 75-16.1 reasonable attorney fees should be awarded.

136. Plaintiff's assessed damages should be rendered in favor of Plaintiffs and against Defendants for treble the amount fixed by verdict pursuant to N.C. Gen. Stat. § 75-16.

137. Plaintiffs are informed and believe and based thereon allege that Defendants' illegal acts as described above are a serious and continuing threat to Plaintiffs and the public. If Defendants are allowed to continue their unfair and unlawful acts, Plaintiffs and the public will suffer further immediate and irreparable injury, loss and damage. Plaintiffs are further informed and believe, and based thereon alleges, that, in the absence of a temporary restraining order and preliminary and permanent injunction as allowed by N.C. Gen. Stat. § 75-19 and as prayed for below, Defendants will continue to unfairly and unlawfully compete.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs prays for the following relief:

1. That this matter be tried to a jury;
2. That judgment be entered against Defendants, jointly and severally;

3. That Plaintiffs have and recover damages from Defendants, jointly and severally, in an amount in excess of Twenty-Five Thousand (\$25,000.00) Dollars as compensatory damages for each and every cause of action;

4. That Plaintiffs have and recover damages from Defendants, jointly and severally, in an amount in excess of Twenty-Five Thousand (\$25,000.00) Dollars as general damages for each and every cause of action;

5. That Plaintiffs be awarded special damages for medical, hospital, past wage loss, loss of earning capacity and incidental expenses;

6. That Plaintiffs be awarded punitive damages pursuant to Chapter 1D;

7. That Plaintiffs be awarded attorney fees and penalties in an amount to be determined by the court pursuant to N.C. Gen. Stat. §§ 75-16 and 75-16.1;

8. That the costs of this action be taxed against and to Defendants;

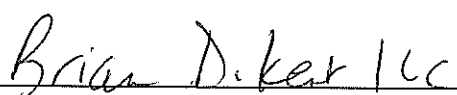
9. That Plaintiffs be awarded prejudgment interest on all damages as permitted by law;

10. That Plaintiffs be granted injunctive relief pursuant to N.C. Gen. Stat. § 75-19;

11. That Plaintiffs be granted such other and further relief to which Plaintiff may be entitled under the allegations set forth herein and additionally as the Court deems just and proper.



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