

IN THE DISTRICT COURT FOR TULSA COUNTY, OKLAHOMA OCT 10 2018

JENNY LAWLESS,

Plaintiff,

vs.

MASSAGE ENVY FRANCHISING,
LLC, a foreign for-profit Limited
Liability Company, PROVIDENT
PACE, LLC, an Oklahoma Limited
Liability Company d/b/a MASSAGE
ENVY, PATRICK STRICKLAND,
SHELBY RANGEL, LINDSEY
CASLER and LEROY DOE,

Defendants.

DON NEWBERRY, Court Clerk
STATE OF OKLA. TULSA COUNTY

CJ-2018-04177
Case No. _____

Judge:

REBECCA NIGHTINGALE

**JURY TRIAL DEMANDED
ATTORNEY LIEN CLAIMED**

PETITION

COMES NOW Plaintiff, Jenny Lawless, by and through her attorney of record, William C. McLain, of the law firm GRAVES MCLAIN PLLC and for her cause of action against the Defendants, Massage Envy Franchising, LLC, Provident Pace, LLC d/b/a Massage Envy – Tulsa Hills, Patrick Strickland, Shelby Rangel, Lindsey Casler and LeRoy Doe, alleges and states as follows:

I. PARTIES, JURISDICTION, AND VENUE

1. Plaintiff Jenny Lawless (“Plaintiff” or “Mrs. Lawless”), at the time of this incident, was a resident of Tulsa County, Oklahoma and is now a resident of Florida.
2. On information and belief, Defendant Massage Envy Franchising, LLC (“Massage Envy”) is an Arizona Corporation with its principal place of business in Scottsdale, Arizona.
3. On information and belief, Defendant Provident Pace, LLC d/b/a Massage Envy – Tulsa Hills (“Provident Pace”, and/or collectively “Massage Envy”) is an Oklahoma Limited

Liability Company and is the legal entity that owns and operates Massage Envy – Tulsa Hills and other Massage Envy franchise locations.

4. On information and belief, Defendant Patrick Strickland (“Strickland”) is now and, at all times relevant to this action, has been a resident of Tennessee. Furthermore, Strickland is a member of Provident Pace, LLC, and, as such, is an owner and operator of multiple Massage Envy locations, including Massage Envy – Tulsa Hills. In addition, Strickland is a member of Strickland & Shue, LLC, a Tennessee Limited Liability Company, that also owns and operates Massage Envy franchises in the Nashville, Tennessee area.

5. On information and belief, Defendant Shelby Rangel (“Rangel”) is now and, at all times relevant to this action, has been a resident of Tulsa County, Oklahoma. Furthermore, Rangel is a member of Provident Pace, LLC, and, as such, is an owner and operator of multiple Massage Envy locations, including Massage Envy – Tulsa Hills.

6. On information and belief, Defendant Lindsey Casler (“Casler”) is now and, at all times relevant to this action, has been a resident of Tulsa County, Oklahoma. Furthermore, Casler is a district manager for Massage Envy.

7. On information and belief, Defendant LeRoy Doe (“LeRoy” or collectively with all “Defendants”) is now and, at all times relevant to this action, has been a resident of Tulsa County, Oklahoma. On information and belief, LeRoy is the therapist that assaulted Mrs. Lawless.

8. The events and circumstances giving rise to Plaintiff’s claims occurred in Tulsa County, Oklahoma.

9. This Court has jurisdiction over the subject matter of this claim, personal jurisdiction over the parties, and venue is properly lodged with this Court.

II. GENERAL FACTS GIVING RISE TO THIS CLAIM

10. Massage Envy is a national franchise based in Scottsdale, Arizona. Massage Envy has over 800 locations in 45 states and has more than 1.25 million members.

11. On information and belief, sexual assaults committed by massage therapists at Massage Envy franchise locations is an epidemic of national scale, with more than 180 allegations of sexual assaults by Massage Envy therapists occurring across the country.

12. On information and belief, Massage Envy controls the day-to-day operations of all of its franchises.

13. On information and belief, Massage Envy's policy and procedure of directing franchises to conceal reports of allegations of sexual assaults involving Massage Envy therapists and directing franchises not to report said allegations to local law enforcement and/or state massage therapy boards enables the assaults to occur on a national level.

14. On information and belief, Massage Envy company protocol encourages franchises to handle sexual assault allegations by Massage Envy therapists "in house."

15. On information and belief, Massage Envy company protocol instructs franchises to put customers who have a complaint in a private room and to avoid admitting to anything, or making any promise to do anything, more than to internally investigate the matter, then to create an incident report and send it to the Corporate Office in Arizona.

16. On information and belief, at least one former Massage Envy employee is quoted as stating:

"[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."

17. On information and belief, according to a former corporate employee, the Company's leadership has long feared the media would realize the national scope of the problem. The former employee recalled executives discussing what would happen "if someone connects the dots of how many sexual assaults have occurred across the country."

18. On information and belief, in at least one risk management training, franchisees were told the goal when investigating claims is "to avoid police and keep membership."

19. Massage Envy has engaged in directing franchises in the state of Oklahoma not to report allegations of sexual assaults to local law enforcement and/or state massage therapy boards, in order to protect the brand and help ensure profits are not adversely affected.

20. In addition, a report from the massage therapist perpetrator is frequently sent to the professional liability carrier that has a symbiotic relationship with Massage Envy.

21. The insurance carrier is Associated Bodywork and Massage Professionals. The reports are normally handwritten, signed, and dated by the accused perpetrator.

22. The American Massage Therapy Association has described the therapist-client interaction as a fiduciary relationship. A fiduciary relationship is applied to a professional in whom a client places his or her trust. Fiduciaries are required to place the interests of their clients above and before their own. All healthcare professionals have a fiduciary relationship with their clients. The professional is in a position of power, while the client is in a position of weakness and vulnerability.

23. On information and belief, in numerous cases involving sexual assaults at Massage Envy franchise locations by Massage Envy massage therapists, Massage Envy therapists were allowed to remain employed and/or were transferred and/or hired/re-hired at other locations, only to go on to sexually assault another, if not multiple, female customers.

24. The sexual assault described herein occurred on a massage table, on the premises operated and/or controlled by Defendants.

25. The sexual assault described herein, including the assault of Plaintiff, occurred during normal business hours of Defendants and occurred in the course and scope of the performance of duties of Defendants' massage therapists.

26. On information and belief, consistent with Massage Envy's company protocol, none of these sexual assaults, including the assault of Plaintiff, were reported to law enforcement or the Oklahoma Board of Cosmetology, allowing other potential and future victims to sustain similar abuse or worse like so many other unsuspecting female customers of Massage Envy.

27. At no point did any of the Defendants inform and/or warn any female customers of the known prior assaults committed by Defendants' massage therapists.

28. Defendants authorized and entrusted its employees and/or agents to have skin-to-skin contact with its clients' bodies, including Plaintiff's body, and to be alone with its clients, including Plaintiff, while they were undressed and in a vulnerable position.

29. Defendants were aided in their commission of sexual assaults of Plaintiff by virtue of their duties as a massage therapist because Plaintiff was already undressed in a private room in a vulnerable position, per the protocol for massage clients at Massage Envy franchises. Defendants negligently maintained its premises and failed to keep the premises free from hazards and its customers safe, thereby causing Plaintiff severe injuries and damages.

30. Massage Envy is an operation devoted to massage therapist touching and massaging naked or nearly naked people, often of different gender. Massage Envy is also the perfect locale for a sexual predator to acquire ready access to victims.

31. Sexual assault, sexual misconduct, and sexual malfeasance is a generally foreseeable consequence of the nature of work involved in the massage industry and is an unfortunate possibility engendered by the type of work Massage Envy pays its employees to perform.

32. Such a foreseeable outgrowth is exemplified by a quick Google search which shows various similar incidents allegedly occurring on a regular basis at Massage Envy locations nationwide, including:

- * A Massage Envy employee allegedly sexually assaulted at least one, and potentially more, female customers in a Massage Envy and other therapy businesses in Kansas City in or around 2009;

- * A Massage Envy employee allegedly raped a female customer in Salt Lake City, Utah in February 2009;

- * A Massage Envy employee allegedly sexually assaulted at least one, and potentially more, female customers in an Austin, Texas Massage Envy in April 2009;

- * A Massage Envy employee assaulted at least three female customers during massages in Seal Beach, California in November 2009;

- * A Massage Envy employee allegedly raped a special-needs female customer in Draper, Utah in December 2009;

- * A Massage Envy employee allegedly fondled a female customer in North Bethesda, Maryland in April 2010;

- * A Massage Envy employee sexually assaulted at least one female customer during a massage in Tustin, California in September 2010;

* A Massage Envy therapist allegedly sexually assaulted at least one, and potentially more, female customers in a Massage Envy in Washington in or around September 2017;

* A Massage Envy therapist allegedly sexually assaulted a female customer in a Massage Envy in Aventura, Florida in or around September 2017;

* A Massage Envy therapist allegedly sexually assaulted a female customer in a Massage Envy in Burlingame, California in or around November 2017; and

* A Massage Envy therapist allegedly sexually assaulted a female customer in a Massage Envy in Washington, DC in or around August 2017.

33. In addition, there have been a number of civil lawsuits filed across the country, some of which are:

* *Jane Doe vs. Massage Envy Limited, LLC; Massage Envy Franchising, LLC, et al.*, Superior Court of the State of California for the County of Orange, Case No: 30-2011-00511102;

* *Amy Hunter vs. Justin Truesdale, MESOKC, LLC, d/b/a Massage Envy*, District Court of Cleveland County, State of Oklahoma, Case No. CJ-2011-1952;

* *Kellie Armstrong vs. Massage Envy-Magnolia, Dinh Lam and Cody Lewis*, District Court of Montgomery County, Texas, 284th Judicial District, Case No. 12-06-06010-Cv;

* *Victoria King vs. Brandon D. Knox and Abundant Living, Inc. d/b/a Massage Envy*, State Court of Cobb County, State of Georgia, Civil Action No. 2012 A 4247-5;

* *Dawn Kongvongsay vs. Massage Envy Franchising, LLC, MESOKC, LLC*, collectively doing business as Massage Envy, et al, District Court of Cleveland County, State of Oklahoma, Case No. CJ-2013-258;

* *Melinda Wood vs. Massage Envy, LLC, Massage Envy Franchising, LLC, et al*, District Court of Harris County, Texas, 11th Judicial District, Case No. 2013-76837;

* *Susan Weidemann vs. Massage Envy Franchising, LLC, et al*, Court of Common Pleas Philadelphia County, Pennsylvania, Case No. 3385, 2015;

* *Mary Doe vs. Harpster & Company, LLC and Massage Envy Franchising, LLC*, Court of Common Pleas, Richland County, South Carolina, Case No. 2016-CP-40-06730.

* *Jane Doe vs. Massage Envy Franchising, LLC, et al.*, Superior Court of California, Sacramento, Case No. 34-2017-00210331; and,

* *Jane Doe, et al. vs. Massage Envy Franchising, LLC, et al*, 15th Judicial Circuit In And For Palm Beach County, Florida, Filing #77010983.

34. Massage Envy acknowledges that a vast majority of victims have never come forward and never will internally publishing that “Only 4% of upset customers will tell you when there is a problem.”

35. To that end, Massage Envy created a procedure wherein a woman who has just complained of inappropriate conduct, or having been sexually assaulted, is sent out the door of Massage Envy with only the mere “promise to investigate and take appropriate action.” “Appropriate action” is the Massage Envy employee completing an internal incident report and emailing a copy to the Corporate Office.

III. SPECIFIC FACTS GIVING RISE TO THIS LAWSUIT

36. Plaintiff had been a member at Massage Envy for nearly five years at the time of the sexual assault described herein.

37. On or about October 11, 2017, Plaintiff made an appointment and was assigned a male therapist that she had not seen before.

38. The massage therapist was later identified as “LeRoy.”

39. During the massage, LeRoy began to fondle Mrs. Lawless’ right breast. She turned her body in protest. Mrs. Lawless was in shock.

40. LeRoy continued his assault when he fondled Mrs. Lawless’ left breast shortly thereafter. The massage terminated, and Mrs. Lawless left the business humiliated and embarrassed.

41. Mrs. Lawless lived with the humiliation of these events, scared and embarrassed to tell her husband for some time. After confiding with a friend about what happened, Mrs. Lawless told her husband and contacted Massage Envy – Tulsa Hills to report the incident.

42. After multiple attempts to make contact to report the assault, the “manager” identified himself as Patrick Strickland. Strickland said that LeRoy no longer worked at Massage Envy and offered to give Mrs. Lawless a discount.

IV. CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

Breach of Contract

43. Paragraphs 1 through 42 are incorporated by reference.

44. Plaintiff contracted with Massage Envy and Provident Pace.

45. Defendants Massage Envy and Provident Pace breached its contract with Mrs. Lawless and Mrs. Lawless has been damaged as a result of that breach.

WHEREFORE, Plaintiff prays for judgment against the Defendants Massage Envy and Provident Pace for an award of damages in an amount in excess of Seventy-Five Thousand and 00/100 Dollars (\$75,000.00) to be determined by a jury together with interest, costs and attorney fees; and for all such other and further relief to which Plaintiff may be entitled.

SECOND CLAIM FOR RELIEF

Negligence

46. Paragraphs 1 through 42, and 44 through 45 are incorporated by reference.
47. Defendants Massage Envy, Provident Pace, Strickland, Rangel and Casler had a duty to exercise reasonable care in hiring, retaining, training, and supervising its employees.
48. These Defendants breached their duty by failing to act in a reasonable and prudent manner. Specifically, Defendants committed negligence by:
 - a. Failing to create and implement policies and procedures to prevent the hiring or retention of would-be sexual predators, like LeRoy;
 - b. Failing to conduct a proper and thorough investigation of massage therapists, such as LeRoy;
 - c. Failing to create, implement, and properly train employees on policies and procedures to ensure the proper and safe conduct of LeRoy;
 - d. Failing to create, implement, and properly train employees on policies and procedures to ensure proper supervision of employees, such as LeRoy, who were entrusted with the care and treatment of clients;
 - e. Failing to create, implement, and properly train employees on policies and procedures preventing sexual misconduct, abuse or harm to the clients; identifying individuals who posed a risk of harm to the clients; how to respond to situations that posed a risk of harm to the clients; and how to

report inappropriate situations involving clients to law enforcement, to the Massage Envy hierarchy;

- f. Failing to create, implement, and properly train employees on their fiduciary duties as a professional in whom a client places his or her trust;
- g. Unreasonably retaining LeRoy for employment as a massage therapist when Defendants knew, should have known, and/or had reason to know that Le Roy posed a risk of harm to the clients;
- h. Misrepresenting LeRoy as a person who was worthy and fit to serve as a massage therapist;
- i. Misrepresenting LeRoy as a person who was worthy and fit to serve in a capacity that gave him authority, control, and power over clients who were in a position of vulnerability;
- j. Negligent acts and/or omissions of its employees; and
- k. By committing other acts of negligence which Plaintiff shall further describe after an adequate time for discovery.

49. Defendants' acts and failures to act were reckless.

50. Defendants' negligence was the direct and proximate cause of Plaintiff's personal injuries, mental and emotional distress, and damages.

WHEREFORE, Plaintiff prays for judgment against the Defendants Massage Envy, Provident Pace, Strickland, Rangel, and Casler; for an award of damages in an amount exceeding \$75,000.00 to be determined by a jury; and for an award of punitive damages exceeding \$75,000.00, to be determined by a jury, to apprise the parties and the community at large that the acts and/or omissions of Defendants are not acceptable in a civilized community; together with

interest, costs and attorney fees; and for all such other and further relief to which Plaintiff may be entitled.

THIRD CLAIM FOR RELIEF
Negligent Hiring, Retention and Supervision

51. Paragraphs 1 through 42; 44 through 45; and, 47 through 50 are incorporated by reference.

52. Defendants had a duty to use reasonable care in hiring, employing, supervising and retaining their massage therapists.

53. Upon information and belief, Defendants Massage Envy, Provident Pace, Strickland, Rangels, and Casler negligently hired, employed, supervised, and retained LeRoy despite the fact that they knew, should have known, and/or had reason to know that LeRoy posed a risk of physical harm and sexual misconduct to clients.

54. As a direct result of the negligence of Defendants, Mrs. Lawless was injured.

WHEREFORE, Plaintiff prays for judgment against the Defendants Massage Envy, Provident Pace, Strickland, Rangel, and Casler; for an award of damages in an amount exceeding \$75,000.00 to be determined by a jury; and for an award of punitive damages exceeding \$75,000.00, to be determined by a jury, to apprise the parties and the community at large that the acts and/or omissions of Defendants are not acceptable in a civilized community; together with interest, costs and attorney fees; and for all such other and further relief to which Plaintiff may be entitled.

FOURTH CLAIM FOR RELIEF
Professional Negligence/Breach of Fiduciary Duty/Respondeat

55. Paragraphs 1 through 42 and 44 through 45; 47 through 50; and, 52 through 54 are incorporated by reference.

56. As a massage therapist licensed by the State of Oklahoma, LeRoy owed Mrs. Lawless a professional duty to provide therapeutically appropriate services that were within the scope of his license as a massage therapist.

57. LeRoy breached this professional duty when he;

- a. sexually assaulted Mrs. Lawless during her massage session;
- b. exceeded the scope of what a massage therapist is permitted to do during a therapeutic massage; and,
- c. violated the standards of ethics and professional conduct followed by massage therapists.

58. As a direct and proximate result of LeRoy's breach, Mrs. Lawless suffered injuries and damages.

59. At all times relevant to the acts and/or omissions complained of herein, LeRoy acted in the course and scope of his employment with Provident Pace and Massage Envy.

60. Provident Pace and Massage Envy is responsible for LeRoy's acts under the doctrine of *respondeat superior*.

WHEREFORE, Plaintiff prays for judgment against the Defendants Massage Envy and Provident Pace; for an award of damages in an amount exceeding \$75,000.00 to be determined by a jury; and for an award of punitive damages exceeding \$75,000.00, to be determined by a jury, to apprise the parties and the community at large that the acts and/or omissions of Defendants are not acceptable in a civilized community; together with interest, costs and attorney fees; and for all such other and further relief to which Plaintiff may be entitled.

FIFTH CLAIM FOR RELIEF
Premises Liability

61. Paragraphs 1 through 42 and 44 through 45; 47 through 50; 52 through 54; and, 56 through 60 are incorporated by reference.

62. Plaintiff was a business invitee on Provident Pace's premises.

63. Provident Pace owned and/or operated the premises on which the events that are the basis of this action occurred.

64. As a client and visitor to Provident Pace owed Mrs. Lawless a duty to use ordinary care to keep her safe while she was on the premises.

65. Defendants breached their duty to Mrs. Lawless when they, including, but not limited to: 1) allowed LeRoy access to Mrs. Lawless and other clients at this facility; 2) failed to properly supervise LeRoy; and, 3) failed to provide a reasonably safe environment for Mrs. Lawless and other clients.

66. As a direct and proximate result of Defendants breach of duty, Mrs. Lawless suffered injuries, emotional trauma, and damages.

WHEREFORE, Plaintiff prays for judgment against the Defendants Massage Envy and Provident Pace; for an award of damages in an amount exceeding \$75,000.00 to be determined by a jury; and for an award of punitive damages exceeding \$75,000.00, to be determined by a jury, to apprise the parties and the community at large that the acts and/or omissions of Defendants are not acceptable in a civilized community; together with interest, costs and attorney fees; and for all such other and further relief to which Plaintiff may be entitled.

SIXTH CLAIM FOR RELIEF
False Representation – Common Law Fraud

67. Paragraphs 1 through 42; 44 through 45; 47 through 50; 52 through 54; 56 through 60; and 62 through 66 are incorporated herein by reference.

68. Defendants have made false representations about the safety of their business practices and their massage franchises when they knew them to be false, or recklessly without any knowledge of its truth.

69. The representations were made with the intention that that unknowing females, including Plaintiff, would act upon these false representations.

70. Mrs. Lawless acted in reliance on these representations by becoming a member and using the massage services.

71. As a direct result, Mrs. Lawless suffered damages.

WHEREFORE, Plaintiff prays for judgment against the Defendants Massage Envy and Provident Pace; for an award of damages in an amount exceeding \$75,000.00 to be determined by a jury; and for an award of punitive damages exceeding \$75,000.00, to be determined by a jury, to apprise the parties and the community at large that the acts and/or omissions of Defendants are not acceptable in a civilized community; together with interest, costs and attorney fees; and for all such other and further relief to which Plaintiff may be entitled.

SEVENTH CLAIM FOR RELIEF
Civil Conspiracy

72. Paragraphs 1 through 42; 44 through 45; 47 through 50; 52 through 54; 56 through 60; 62 through 66; and 68 through 71 are incorporated herein by reference.

73. When a conspiracy is entered into, all persons/entities who engage therein are responsible for all that is done in pursuance thereof by any of their co-conspirators until the object for which the conspiracy was entered into is fully accomplished.

74. A civil conspiracy consists of a combination of two or more persons/entities to do an unlawful act, or to do a lawful act by unlawful means.

75. Defendants have engaged in a policy of non-disclosure to its clients coupled with a campaign of misleading and untruthful stories hiding prior criminal activity and company policies that hide information from its clients. These harmful truths are perpetrated on a national scale, including Tulsa, and have caused many women to be the subject of countless sexual assaults and other acts of sexual misconduct. All in the name of corporate image and profits.

WHEREFORE, Plaintiff prays for judgment against the Defendants Massage Envy, Provident Pace, Strickland, Rangel, and Casler; for an award of damages in an amount exceeding \$75,000.00 to be determined by a jury; and for an award of punitive damages exceeding \$75,000.00, to be determined by a jury, to apprise the parties and the community at large that the acts and/or omissions of Defendants are not acceptable in a civilized community; together with interest, costs and attorney fees; and for all such other and further relief to which Plaintiff may be entitled.

EIGHTH CLAIM FOR RELIEF
Intentional Infliction Of Emotional Distress

76. Paragraphs 1 through 42; 44 through 45; 47 through 50; 52 through 54; 56 through 60; 62 through 66; 68 through 71; and 73 through 75 are incorporated herein by reference.

77. Defendants' actions and conduct during the time of the circumstances claimed herein were so extreme and outrageous as to go beyond all possible bounds of decency and would be considered atrocious and utterly intolerable in a civilized society.

78. Defendants' intentional, and/or reckless actions and conduct, caused severe emotional distress to Mrs. Lawless beyond which a reasonable person could be expected to endure.

79. Defendants' intentional, and/or reckless actions and conduct, caused physical injuries to Mrs. Lawless beyond which a reasonable person could be expected to endure and is entitled to compensation for all injuries by the intentional infliction of emotional distress.

WHEREFORE, Plaintiff prays for judgment against the Defendants Massage Envy, Provident Pace, Strickland, Rangel and Casler; for an award of damages in an amount exceeding \$75,000.00 to be determined by a jury; and for an award of punitive damages exceeding \$75,000.00, to be determined by a jury, to apprise the parties and the community at large that the acts and/or omissions of Defendants are not acceptable in a civilized community; together with interest, costs and attorney fees; and for all such other and further relief to which Plaintiff may be entitled.

NINTH CLAIM FOR RELIEF
Civil Assault & Battery

80. Paragraphs 1 through 42; 44 through 45; 47 through 50; 52 through 54; 56 through 60; 62 through 66; 68 through 71; 73 through 75; and 77 through 79 are incorporated herein by reference.

81. LeRoy acted with the intent of making a harmful and offensive contact and made such contact without Mrs. Lawless's consent;

82. Plaintiff was placed in apprehension of an immediately harmful and offensive contact and she suffered fright and terror.

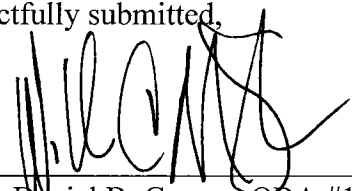
83. As a direct result of LeRoy's actions, Mrs. Lawless suffered damages.

WHEREFORE, Plaintiff prays for judgment against the Defendant LeRoy Doe; for an award of damages in an amount exceeding \$75,000.00 to be determined by a jury; and for an award

of punitive damages exceeding \$75,000.00, to be determined by a jury, to apprise the parties and the community at large that the acts and/or omissions of Defendants are not acceptable in a civilized community; together with interest, costs and attorney fees; and for all such other and further relief to which Plaintiff may be entitled.

Respectfully submitted,

By: _____



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