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8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**

10 BAERBEL MCKINNEY-DROBNIS,
11 JOSEPH B. PICCOLA, and CAMILLE
BERLESE, individually and on behalf of all
12 others similarly situated,

13 Plaintiffs,

14 v.

15 MASSAGE ENVY FRANCHISING, LLC, a
Delaware Limited Liability Company,

16 Defendant.
17

Case No. 3:16-CV-6450-MMC (KAW)

**DECLARATION OF CAMILLE
BERLESE IN SUPPORT OF
PLAINTIFFS' MOTION FOR AWARD
OF ATTORNEYS' FEES, EXPENSES,
AND INCENTIVE AWARDS**

Courtroom: 7 – 19th Floor
Judge: Hon. Maxine M. Chesney

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1 I, Camille Berlese, hereby declare and state as follows:

2 1. I am over the age of eighteen and am fully competent to make this declaration. I
3 have personal knowledge of the matters set forth herein, based on my active participation in all
4 material aspects of this litigation. If called upon, I could and would testify competently to the
5 facts herein based upon my personal involvement in this case. I am making this declaration in
6 support of Plaintiffs' Motion for Award of Attorneys' Fees, Expenses, and Incentive Awards.

7 2. I am a resident of the County of Maricopa, and a citizen of Arizona. I also have
8 been a member of the 7000 E. Mayo Blvd, Building 8, Suite 1052, Phoenix, Arizona (also known
9 as the Scottsdale Massage Envy Clinic) since approximately June 14, 2011.

10 3. I originally signed a standardized Membership Agreement that provided for a
11 monthly membership fee of \$39.00 during the initial term. My Massage Envy Membership had
12 an initial term of thirteen months (from June 14, 2011 until July 14, 2012), with an automatic
13 renewal clause that continued the contract on a month-to-month basis at a stated fee of \$39.00 per
14 month until my membership is cancelled.

15 4. Prior to filing this lawsuit, my monthly membership fee was increased once in
16 March 2014 (a \$0.99 increase) and again in September 2016 (a \$15.01 increase). I do not
17 remember receiving notice with respect to the first increase. Accordingly, I had paid my Massage
18 Envy Clinic approximately thirty-three (33) monthly membership fee installments at \$39.00 each
19 and approximately thirty (30) monthly membership fee installments at \$39.99 each, and \$55.00
20 monthly membership fee to present.

21 5. Shortly after noticing the September 2016 price increase, I contacted the
22 Scottsdale Massage Envy Clinic multiple times to inquire about the increase to my monthly
23 membership dues. It was my belief that my membership was to continue on an auto-renewable
24 basis, at the original price of \$49.00, until I cancelled the Membership.

25 6. In late 2016, I spoke by phone with Trenton Kashima, an attorney from Finkelstein
26 & Krinsk LLP, regarding my situation and asked him about the potential legal claims I have
27 against Massage Envy for its price increases.

28 7. Prior to the filing the Complaint, I provided substantial assistance to Class Counsel

1 in aiding their investigation, including participating in several telephone calls, and electronic
2 email, to discuss the factual and legal issues involved in my claims. I requested documents from
3 the Scottsdale Massage Envy Clinic, reviewed my own records for relevant documents, and
4 search my credit card statements for payments to Scottsdale Massage Envy Clinic.

5 8. At this time, I understood that I filing a class action lawsuit and I sought to
6 represent a class of individuals who had their monthly membership dues increase by Massage
7 Envy. Like other members of the class I sought to represent, Massage Envy took the position that
8 it could unilaterally increase my monthly membership dues.

9 9. Therefore, I understand that I have agreed to act as a class representative in this
10 matter. I have neither been promised, nor have accepted or expect to receive any compensation in
11 connection with my role as a class representative in this matter other than that awarded by the
12 Court. I further understand that a class representative is not permitted to compromise, undermine,
13 or dismiss the class action in return for any special consideration not provided to other members
14 of the class. I also understood that as a plaintiff class representative it is my function to
15 periodically monitor and be familiar with matters occurring during the course of this litigation.

16 10. Prior to the filing of the Complaint, I reviewed drafts for their accuracy and
17 provided Class Counsel with my comments.

18 11. Throughout the course of the litigation, I was contacted by Class Counsel to
19 review documents produced by Defendants and to seek out and produce documents responsive to
20 Defendants' numerous discovery requests. I would also periodically contact my attorneys to
21 check on the status of the case.

22 12. I provided Class Counsel with insight on my understanding of and personal
23 experience with Massage Envy's business operations to aid in my attorneys' efforts. Particularly,
24 I discussed my communications with the Scottsdale clinic and Massage Envy related entities
25 regarding the price increases.

26 13. In addition, on August 1, 2017, I sat for more than seven hours to testify for a
27 deposition in this action. This deposition took place in Phoenix, Arizona. I testified extensively
28 on a number of issues, including my personal life, my business life and my understanding of

1 various facts and issues relevant to this case.

2 14. Defendant also sought discovery from my family members. Defendant served a
3 subpoena on my husband, Robert Berlese; my daughters, Lia Berlese, Angela Berlese; my son,
4 Christopher Berlese, and a family friend, Michael Damiani. I did not believe that my family and
5 friends should have been subpoenaed in a dispute between myself and Defendant. I worked with
6 family and friends, as well as my attorneys, to successfully challenge these subpoenas in Court.

7 15. It goes without saying, the subpoenas to my family and friends was a considerable
8 source of stress. These subpoenas were also a particular concern, as I had been worried about the
9 potential adverse reactions that would accompany being named as a representative plaintiff in a
10 class action prior to filing the complaint.

11 16. On October 27, 2017, I understand that my attorneys met with Defendant's
12 counsel to discuss their respective settlement positions. During these negotiations, I made myself
13 available by telephone as necessary to discuss any settlement opinions.

14 17. On February 8, 2018, I understand that my attorneys held a mediation before Mr.
15 David A. Rotman. Again, I made myself available by telephone as necessary to discuss any
16 settlement opinions during the February 8, 2018 mediation. I spoke with my attorneys after the
17 mediation, and I understood that the parties were unable to reach an agreement.

18 18. Over the next few months, I would periodically discuss the parties' settlement
19 negotiation with my attorneys. Particularly, we would discuss the structure of the settlement,
20 claims administration, the language of the release, and injunctive relief.

21 19. I understood that these negotiations had progressed to the point that parties agreed
22 to a second mediation with Mr. Rotman on August 8, 2018. I also prepared to make myself
23 available for this second mediation. However, I understand mediation was cancelled a few days
24 prior to the session.

25 20. After the aborted August 8, 2018 mediation, I was in contact with my attorneys'
26 regarding the status of the case. I discussed the preparation of the motion for summary judgment
27 and the motion for class certification with my attorneys and the risks associated with further
28 litigation.

1 21. On November 11, 2018, I understand that the parties agreed to return to mediation
2 before Mr. Rotman. Prior to this Mediation, I discussed the settlement parameters with my
3 attorneys. I also made myself available for this second mediation by telephone. Shortly, after the
4 mediation, I was informed that the parties had been able to come to a settlement in principle, but
5 still had to work out a number of additional terms. My attorneys contacted me to inform me of a
6 proposed settlement and explained the proposed terms to me as well as the proposed relief that
7 would be afforded to the Class. I consented to counsel continuing the settlement efforts.

8 22. Over the next few months, the parties exchanged several draft settlement
9 agreements and worked out additional details. I reviewed the draft settlement agreements
10 provided by counsel and provided my input. I found the proposed terms and relief to be fair,
11 reasonable and in the best interests of absent Class members. In March 2019, I received and
12 signed a copy of the final Settlement Agreement.

13 23. I have dedicated many hours to the prosecution of this case. This includes review
14 documents provided by counsel, periodic communications with counsel, and responding to
15 various discovery requests. I also spent a significant number of hours addressing Defendant's
16 subpoenas to my husband, son, daughters, and Mr. Damiani. In total, I believe that I have spent
17 more than 100 hours working on this case.

18 24. Since signing the Settlement Agreement, I understand that the Settlement has been
19 preliminarily approved and that I have been conditionally appointed Class Representative for
20 settlement purposes. However, throughout this litigation, I have worked to protect and advance
21 the rights of other members of the class. I am aware of no conflicts of interest that would render
22 me unqualified to carry out my duties and responsibilities to the class as a plaintiff class
23 representative for this Settlement.

24 25. Despite wanting to avoid the intrusions caused by this litigation into my personal
25 life and the significant time commitment prosecuting this case, I committed to ending what I
26 believed were harmful corporate practices and seeking relief for my fellow class members. It is
27 for these reasons, I sought to be appointed Class Representative and now support the settlement.

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I declare under penalty of perjury under the laws of the United States, that the forgoing statements made by me are true and correct.

Executed on August 14, 2019 in Scottsdale, AZ

Camille Berlese
Camille Berlese