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6 *Attorneys for Plaintiffs  
and the Class*

7  
8 **UNITED STATES DISTRICT COURT**  
9 **NORTHERN DISTRICT OF CALIFORNIA**

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

12 Plaintiffs,

13 v.

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

16 Defendant.  
17

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

**DECLARATION OF BAERBEL  
MCKINNEY-DROBNIS IN SUPPORT  
OF PLAINTIFFS' MOTION FOR  
AWARD OF ATTORNEYS' FEES,  
EXPENSES, AND INCENTIVE  
AWARDS**

Courtroom: 7 – 19<sup>th</sup> Floor  
Judge: Hon. Maxine M. Chesney

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1 I, Baerbel Mckinney-Drobnis, 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 Marin, and a citizen of California. I also have  
8 been a member of the 160 Donahue Street, Sausalito, California (also known as the Sausalito  
9 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 \$59.00 during the initial term. My Massage Envy Membership had  
12 an initial term of seven months (from October 12, 2007 until May 12, 2008), with an automatic  
13 renewal clause that continued the contract on a month-to-month basis at a stated fee of \$59.00 per  
14 month until my membership is cancelled.

15 4. Prior to filing this lawsuit, my monthly membership fee was increased once in  
16 January 2014 (a \$0.99 increase) and again in April 2017 (a \$15.01 increase)<sup>1</sup>. I do not remember  
17 receiving notice with respect to the increases. Accordingly, I had paid my Massage Envy Clinic  
18 approximately seventy-two (72) monthly membership fee installments of \$59.00 each and  
19 approximately thirty-four (38) monthly membership fee installments of \$59.99 each, and \$75.00  
20 membership fee to present.

21 5. I did not notice that Massage Envy had increased my prices until 2016. In late  
22 2016, my husband and I spoke by phone with Trenton Kashima, an attorney from Finkelstein &  
23 Krinsk LLP, regarding my situation and asked him about the potential legal claims I have against  
24 Massage Envy for its price increases.

25 6. Prior to the filing the Complaint, I provided substantial assistance to Class Counsel  
26 in aiding their investigation, including participating in several telephone calls, and electronic  
27 email, to discuss the factual and legal issues involved in my claims. I requested documents from

28 \_\_\_\_\_  
<sup>1</sup> Despite the increase on May 2017 I was charged \$59.99.

1 the Sausalito Massage Envy Clinic, reviewed my own records for relevant documents, and  
2 searched my credit card statements for payments to Sausalito Massage Envy Clinic.

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

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

14 9. Prior to the filing of the Complaint, I reviewed drafts for their accuracy and  
15 provided Class Counsel with my comments.

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

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

24 12. In addition, on July 17, 2017, I sat for more than seven hours to testify for a  
25 deposition in this action. This deposition took place in San Francisco, California. I testified  
26 extensively on a number of issues, including my personal life, my business life and my  
27 understanding of various facts and issues relevant to this case.

28 13. Defendant also sought discovery from my family members. Defendant served a

1 subpoena on my husband, Burton Drobniš. I did not believe that my husband should have been  
2 subpoenaed in a dispute between myself and Defendant. I worked with my husband, as well as  
3 my attorneys, to challenge these subpoenas in Court.

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

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

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

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

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

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

28 20. Over the next few months, the parties exchanged several draft settlement

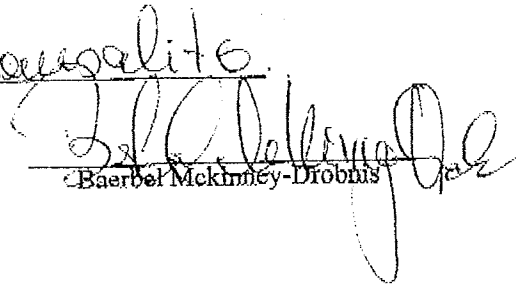
1 agreements and worked out additional details. I reviewed the draft settlement agreements  
2 provided by counsel and provided my input. I found the proposed terms and relief to be fair,  
3 reasonable and in the best interests of absent Class members. In March 2019, I received and  
4 signed a copy of the final Settlement Agreement.

5 21. I have dedicated many hours to the prosecution of this case. This includes  
6 reviewing documents provided by counsel, periodic communications with counsel, and  
7 responding to various discovery requests. I also spent a significant number of hours addressing  
8 Defendant's subpoenas to my husband. In total, I believe that I have spent more than 100 hours  
9 working on this case.

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

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

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

22 Executed on August 19, 2019 in Sausalito  
23   
24 Haerbel McKinney-Drobnis  
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