

**STIPULATION OF CLASS ACTION
SETTLEMENT AND RELEASE**

IT IS HEREBY STIPULATED AND AGREED, by and between BAERBEL MCKINNEY-DROBNIS (“MCKINNEY”), CAMILLE BERLESE (“BERLESE”), and JOSEPH PICCOLA (“PICCOLA”) (collectively, “CLASS REPRESENTATIVES” or “PLAINTIFFS”), individually and on behalf of the class they seek to represent (defined below as “CLASS MEMBERS”), on the one hand, and MESSAGE ENVY FRANCHISING, LLC (“MEF”), on the other hand (through their duly authorized counsel), that the proceedings in the United States District Court for the Northern District of California entitled *Baerbel McKinney-Drobnis, Joseph B. Piccola, and Camille Berlese, individually and on behalf of all others similarly situated, v. Massage Envy Franchising, LLC*, Case No. 3:16-cv-06450-MMC, including but not limited to the Complaint and the First Amended Complaint (the “ACTION”) is settled, fully and finally, on the terms and conditions set forth in this AGREEMENT and the exhibits hereto, which are expressly incorporated herein, subject to the occurrences set forth herein that permit MEF or the CLASS REPRESENTATIVES to terminate this AGREEMENT and, further, subject to and expressly conditioned upon the approval of the COURT and the entry of judgment substantially in the form provided for by this AGREEMENT.

WHEREAS, in light of the uncertain outcome of the ACTION, the PARTIES have each concluded, based upon their respective investigation and discovery and taking into account the sharply contested issues, the expense and time necessary to pursue the ACTION through trial and appeals, the risks and costs of further prosecution of the ACTION, the uncertainties of complex litigation, and the benefits of settlement to the CLASS MEMBERS, that a

SETTLEMENT on the terms set forth herein is fair, reasonable, adequate, and in the best interests of the PARTIES.

WHEREAS, the CLASS REPRESENTATIVES have asserted, and continue to assert, that their contentions in the ACTION are meritorious.

WHEREAS, MEF denies all of the claims, contentions, and each and every allegation the CLASS REPRESENTATIVES made in the ACTION, including that it is liable for the alleged actions and omissions of any ME LOCATION.

WHEREAS, MEF desires to settle the ACTION on the terms and conditions set forth in this AGREEMENT in order to (a) avoid the burden, expense, and uncertainty of defending the ACTION; (b) avoid the diversion of its resources and personnel required by continuing to defend the ACTION; and (c) put to rest the RELEASED CLAIMS.

WHEREAS, CLASS COUNSEL and MEF's COUNSEL have conducted sufficient discovery, investigation, and research of the RELEASED CLAIMS to reach this AGREEMENT.

WHEREAS, CLASS COUNSEL has investigated and evaluated the applicable law and facts regarding the RELEASED CLAIMS and the potential defenses thereto and have concluded that this SETTLEMENT is fair and adequate under the circumstances.

WHEREAS, the CLASS REPRESENTATIVES recognize the risks associated with further litigation through class certification and trial and through appeals but deem it desirable and beneficial to themselves and the CLASS MEMBERS that the ACTION be settled in the manner and upon the terms and conditions set forth in this AGREEMENT.

NOW, THEREFORE, the PARTIES enter this SETTLEMENT AGREEMENT upon the terms and conditions set forth below.

I. DEFINITIONS AND CONVENTIONS

A. Definitions

As used in this AGREEMENT, capitalized terms have the following meaning, unless specifically provided otherwise:

A. “ADMINISTRATOR” or “SETTLEMENT ADMINISTRATOR” means Epiq Class Action & Claims Solutions, Inc., which is an independent third-party administrator to be retained by MEF to provide services in the administration of this AGREEMENT, including providing CLASS NOTICE to the CLASS MEMBERS, the processing and evaluation of VOUCHER REQUESTS, and the processing of other documents or tasks as provided for in this AGREEMENT or as otherwise agreed to by the PARTIES or as ordered by the COURT.

B. “ADMINISTRATION COSTS” means the actual and direct costs reasonably charged by the SETTLEMENT ADMINISTRATOR for its services as provided for in this AGREEMENT or as otherwise agreed to by the PARTIES and the SETTLEMENT ADMINISTRATOR or as ordered by the COURT.

C. “AGREEMENT” means the terms and conditions of this document entitled “Stipulation of Class Action Settlement and Release.”

D. “CLASS COUNSEL” refers to the law firm of Finkelstein & Krinsk LLP, including the following attorneys who are counsel for the CLASS REPRESENTATIVES and who seek to be appointed as counsel for the CLASS MEMBERS in the ACTION:

Jeffrey R. Krinsk
Email: jrk@classactionlaw.com
Trenton R. Kashima
Email: trk@classactionlaw.com
FINKELSTEIN & KRINSK LLP
550 West C Street, Suite 1760
San Diego, CA 92101
Telephone: (619) 238-1333
Facsimile: (619) 238-5425

E. “CLASS” or “CLASS MEMBERS” means all MEMBERS of any ME LOCATION since November 4, 2006, who paid for a FEE INCREASE prior to the date of PRELIMINARY APPROVAL. Excluded from the CLASS are: (a) any person who is an employee, director, officer, or agent of MEF or any of the RELEASED PARTIES; (b) any judge, justice, judicial officer, or judicial staff of the COURT; and (c) CLASS COUNSEL, MEF’S COUNSEL, and any of their staff.

F. “CLASS NOTICE” means all types of notice that will be provided to the CLASS MEMBERS pursuant to Federal Rule of Civil Procedure 23(c)(2) and 23(e), the PRELIMINARY APPROVAL ORDER, and this AGREEMENT, including email notice, postcard notice, website notice, and any additional notice that the COURT may order.

G. “CLASS PERIOD” means the time period between November 4, 2006, and the date PRELIMINARY APPROVAL is entered.

H. “COURT” means the United States District Court for the Northern District of California.

I. “CURRENT MEMBER” or “CURRENT MEMBERS” means all members of an ME LOCATION whose MEMBERSHIP is active or frozen as of the date of PRELIMINARY APPROVAL and who paid a FEE INCREASE.

J. “EFFECTIVE DATE” means the earliest of the following: (1) thirty-one (31) days after the entry of the FINAL APPROVAL ORDER and JUDGMENT if no objections are filed or if objections are filed and overruled and no appeal is taken from the FINAL APPROVAL ORDER and JUDGMENT; or (2) if a timely appeal is made, three (3) business days after the date of the final resolution of that appeal (i.e., the issuance of remittitur) and any subsequent appeals or petitions for certiorari from FINAL APPROVAL of the SETTLEMENT.

K. “FEE INCREASE” means an increase in a MEMBER’s monthly membership fee above the amount stated in the respective MEMBER’s MEMBERSHIP AGREEMENT that is paid by a MEMBER before the date of PRELIMINARY APPROVAL.

L. “FEE AND EXPENSE AWARD” means an award of attorneys’ fees and the reimbursement of litigation costs and expenses authorized by the COURT to be paid to CLASS COUNSEL for the services rendered representing the CLASS REPRESENTATIVES and the CLASS MEMBERS of the ACTION.

M. “F&K” means Finkelstein & Krinsk LLP, any affiliate of either CLASS COUNSEL and/or Finkelstein & Krinsk LLP, or any employee or other person associated with CLASS COUNSEL and/or Finkelstein & Krinsk LLP.

N. “FINAL APPROVAL HEARING” means a hearing held before the COURT to consider FINAL APPROVAL of the SETTLEMENT, any FEE AND EXPENSE AWARD to be awarded to CLASS COUNSEL, any INCENTIVE AWARD to be awarded to the CLASS REPRESENTATIVES, and the merits of any objections to this AGREEMENT and/or any aspect of the SETTLEMENT itself.

O. “FINAL APPROVAL” or “FINAL APPROVAL ORDER” means an order substantially in the form attached hereto as **EXHIBIT 1** issued by the COURT finally approving this AGREEMENT as binding upon the PARTIES.

P. “FORMER MEMBER” or “FORMER MEMBERS” means all MEMBERS of an ME LOCATION who terminated, cancelled, or elected not to renew his/her MEMBERSHIP or whose MEMBERSHIP was suspended between November 4, 2006, and the date of PRELIMINARY APPROVAL and who paid a FEE INCREASE.

Q. “HOME CLINIC” means the ME LOCATION at which a CURRENT MEMBER entered into a MEMBERSHIP AGREEMENT or, if the CURRENT MEMBER transferred his/her MEMBERSHIP to a different ME LOCATION, then the “HOME CLINIC” for that CURRENT MEMBER is the different ME LOCATION to which the CURRENT MEMBER transferred his/her MEMBERSHIP.

R. “INCENTIVE AWARD” means an award authorized by the COURT to be paid to each of the CLASS REPRESENTATIVES in recognition of his/her efforts and participation in prosecuting the ACTION.

S. “JUDGMENT” means the final judgment dismissing the ACTION against MEF with prejudice.

T. “LONG FORM NOTICE” means the LONG FORM NOTICE of the SETTLEMENT that the SETTLEMENT ADMINISTRATOR shall make available on the SETTLEMENT WEBSITE. The LONG FORM NOTICE shall be substantially in the form attached hereto as **EXHIBIT 2**.

U. “MEF’s COUNSEL” means the following attorneys:

Luanne Sacks Email: lsacks@srclaw.com Sacks, Ricketts & Case LLP 177 Post Street, Suite 650 San Francisco, CA 94108 Phone: (415) 549-0581	Cynthia Ricketts Email: cricketts@srclaw.com Sacks, Ricketts & Case LLP 2800 N. Central Avenue, Suite 1910 Phoenix, Arizona 85004 Phone: (602) 385-3372
Kahn A. Scolnick Email: kscolnick@gibsondunn.com Gibson, Dunn & Crutcher 333 South Grand Avenue Los Angeles, CA 90071-3197 Phone: (213) 229-7656	

V. “ME LOCATION” means each of the locations in the United States operated by an individual or entity to whom MEF granted a license or to whom a license was assigned for use

of the “Massage Envy” trade name, trademark, and standardized business operations at any point during the CLASS PERIOD.

W. “MEMBER” means an individual who has signed a MEMBERSHIP AGREEMENT.

X. “MEMBERSHIP” means a membership that any CLASS MEMBER had or has with a ME LOCATION pursuant to an executed MEMBERSHIP AGREEMENT.

Y. “MEMBERSHIP AGREEMENT” means a written membership agreement between a CLASS MEMBER and an ME LOCATION.

Z. “MILLENNIUM DATABASE” means the Millennium Central Office database or any successor database.

AA. “NOTICE DATE” means the forty-fifth (45th) day following PRELIMINARY APPROVAL and the date by which the SETTLEMENT ADMINISTRATOR must complete initial email or mail notice to CLASS MEMBERS.

BB. “OBJECTION/EXCLUSION DEADLINE” means the deadline by which the CLASS MEMBERS must submit objections to the SETTLEMENT or requests to be excluded from the SETTLEMENT, subject to the terms set forth in the PRELIMINARY APPROVAL ORDER, which is the date sixty (60) days after the NOTICE DATE or such date otherwise ordered by the COURT.

CC. “PARTY” or “PARTIES” means the CLASS REPRESENTATIVES and/or MEF as defined herein.

DD. “PRELIMINARY APPROVAL” or “PRELIMINARY APPROVAL ORDER” means an Order entered by the COURT substantially in the form of **EXHIBIT 3** attached hereto preliminarily approving the terms and conditions of this AGREEMENT and the SETTLEMENT.

EE. “RELEASED CLAIMS” includes each SETTLEMENT CLASS MEMBER’s release of MEF and the RELEASED PARTIES from any and all injuries, demands, losses, damages, costs, loss of service, expenses, compensation, claims, suits, causes of action, obligations, rights, and liabilities of any nature, type, or description, whether known or unknown, contingent or vested, in law or in equity, based on direct or vicarious liability, and regardless of legal theory, that: (a) relate to, are based on, concern, or arise out of any allegation that MEF is a party to or has any liability under any SETTLEMENT CLASS MEMBER’s MEMBERSHIP AGREEMENT or any other express or implied contract including any obligation of good faith and fair dealing; is otherwise in privity with any SETTLEMENT CLASS MEMBER; interfered with any MEMBERSHIP AGREEMENT; induced any ME LOCATION to breach any MEMBERSHIP AGREEMENT; required any ME LOCATION to use any specific terms or language in any MEMBERSHIP AGREEMENT; or that MEF has any obligation to pay, repay, disgorge, or redress any alleged wrongdoing under any SETTLEMENT CLASS MEMBER’s MEMBERSHIP AGREEMENT; (b) were asserted or could have been asserted (whether individually or on a class-wide basis) in the ACTION or any other action or proceeding relating to (i) any monies a SETTLEMENT CLASS MEMBER paid to or at an ME LOCATION or (ii) any SETTLEMENT CLASS MEMBER’s MEMBERSHIP AGREEMENT that was brought or could have been brought on or prior to the date hereof including, but not limited to, claims that MEF engaged in unfair and/or deceptive business practices and/or violated applicable consumer protection statutes or other common laws or statutes of all fifty (50) states and the United States; and/or, without limiting the foregoing, (c) are based, in any way, on any one or more of the following factual predicates, which the claims asserted in the ACTION are based upon and depend upon:

(i) the terms and conditions of any MEMBERSHIP AGREEMENT between any SETTLEMENT CLASS MEMBER and any ME LOCATION that concern the monthly MEMBERSHIP fees and/or other monies a SETTLEMENT CLASS MEMBER paid to or at an ME LOCATION, a FEE INCREASE, an increased fee and/or price, and/or an increase of the monthly MEMBERSHIP fee additional to the amount initially stated by the MEMBERSHIP AGREEMENT including, not by way of limitation, the initial execution of any such MEMBERSHIP AGREEMENT;

(ii) the prices charged by MEF or any ME LOCATION, including, but not limited to, any fees paid under any MEMBERSHIP AGREEMENT (in the initial term or as extended), increased fees or prices, and any increase in the monthly MEMBERSHIP fee additional to the amount initially stated in any MEMBERSHIP AGREEMENT;

(iii) MEF's receipt of undue profits related in any way to MEMBERSHIP fees and/or other monies any SETTLEMENT CLASS MEMBER paid to or at any ME LOCATION;

(iv) the impact of MEF's and any ME LOCATION's alleged business procedures, methods, and/or systems on the ability of a SETTLEMENT CLASS MEMBER to avoid paying MEMBERSHIP fees, in either initial or increased amounts, because of the prepaid massage model and the corresponding restrictions on MEMBERSHIP cancellation, resulting in a SETTLEMENT CLASS MEMBER having a bank of accrued but unused MEMBER massage sessions that must be used within sixty (60) days of MEMBERSHIP cancellation or termination unless the ME LOCATION otherwise agrees; and/or

(v) misrepresentations, omissions, and/or inadequate disclosures by MEF or any ME LOCATION contained within any MEMBERSHIP AGREEMENT, advertising, and/or marketing by MEF and/or any ME LOCATION regarding prices, services, and/or MEMBERSHIP terms or conditions.

The RELEASED CLAIMS shall not release any SETTLEMENT CLASS MEMBER's right to enforce this AGREEMENT. The RELEASED CLAIMS shall be accorded the broadest preclusive scope and effect permitted by law against the SETTLEMENT CLASS MEMBERS and this definition of RELEASED CLAIMS is a material term of this AGREEMENT.

FF. "RELEASED PARTIES" means Massage Envy Franchising, LLC; Massage Envy, LLC; Massage Envy Acquisitions Holdings, LLC, a Delaware limited liability company; Golub Capital Partners Coinvestment Ltd., a Delaware corporation; Sentinel Capital Partners IV-A, L.P., a Delaware limited partnership; Roark Capital Management, LLC, a Delaware limited liability company; RC III ME LLC, a Georgia limited liability company; ME Holding Corporation, a Delaware corporation; Massage Envy Clinic Operations, LLC, an Arizona limited liability company; Massage Envy FLW, LLC, an Arizona limited liability company; Massage Envy Elements, LLC, a Delaware limited liability company; Massage Envy Co-op Marketing, LLC, a Delaware limited liability company; ME Equity, LLC, a Georgia limited liability company; and Massage Envy Gift Card Funding, LLC, an Arizona limited liability company; each and every individual or entity that independently owned and operated an ME LOCATION at any time since November 4, 2006, and each of their respective current and former parent companies, subsidiaries, divisions, and current and former affiliated individuals and entities, legal successors, predecessors (including companies they have acquired, purchased, or absorbed), assigns, joint venturers, and each and all of their respective officers, partners,

directors, servants, agents, shareholders, members, managers, principals, investment advisors, consultants, employees, representatives, attorneys, accountants, lenders, underwriters, and insurers.

GG. “ROARK ENTITY” means Roark Capital Management LLC, and/or any entity that was identified as a Roark portfolio company at <https://www.roarkcapital.com/portfolio> as of January 10, 2019, or any subsidiary or other controlled affiliate of such portfolio company.

HH. “SETTLEMENT” means the terms and conditions set forth in this AGREEMENT.

II. “SETTLEMENT CLASS” means CLASS MEMBERS excepting persons who properly excluded themselves from the SETTLEMENT pursuant to the terms of this AGREEMENT and the PRELIMINARY APPROVAL ORDER.

JJ. “SETTLEMENT WEBSITE” means the website established by the SETTLEMENT ADMINISTRATOR consistent with the entry of the PRELIMINARY APPROVAL ORDER to provide information regarding the SETTLEMENT where CLASS MEMBERS can obtain information concerning requesting exclusion from or objecting to the SETTLEMENT and/or can submit a VOUCHER REQUEST.

KK. “SUMMARY NOTICE” means the email and postcard notice of the SETTLEMENT that the SETTLEMENT ADMINISTRATOR will distribute to the CLASS MEMBERS. The SUMMARY NOTICE shall be substantially in the form attached hereto as **EXHIBIT 4**.

LL. “UNIQUE ID CODE” means a unique identification number that will be separately assigned to each CLASS MEMBER. The UNIQUE ID CODE will be provided in the SUMMARY NOTICE as set forth in Paragraph 21 of this AGREEMENT. CLASS MEMBERS

may also request the UNIQUE ID CODE by contacting the SETTLEMENT ADMINISTRATOR, who will verify that the individual is a CLASS MEMBER from the CLASS MEMBER list provided by MEF. CLASS MEMBERS will be able to input their UNIQUE ID CODE online at the SETTLEMENT WEBSITE in order to complete the VOUCHER REQUEST under this SETTLEMENT.

MM. “VOUCHER” or “VOUCHERS” means the voucher that a CLASS MEMBER who submits a timely and proper VOUCHER REQUEST shall be entitled to receive and that can be used to purchase goods and/or services from any ME LOCATION consistent with the terms and conditions of this AGREEMENT.

NN. “VOUCHER DATE” means the date (60) days following the EFFECTIVE DATE and is the date by which the SETTLEMENT ADMINISTRATOR must email the VOUCHERS to CLASS MEMBERS who submit a timely and proper VOUCHER REQUEST.

OO. “VOUCHER REQUEST” means a CLASS MEMBER’s timely request for a VOUCHER in which the CLASS MEMBER attests that (s)he is a CLASS MEMBER (i.e., (s)he paid a FEE INCREASE(S) within the CLASS PERIOD) and did not receive any discretionary accommodations from his/her HOME CLINIC (i.e., free services, delayed FEE INCREASES) when his/her HOME CLINIC increased their monthly MEMBERSHIP FEES. The VOUCHER REQUEST is required as MEF has represented that it would be impracticable, inefficient, prohibitively costly and time-consuming, and potentially underinclusive to compare each SETTLEMENT CLASS MEMBER’s MEMBERSHIP AGREEMENT, and any amendments thereto, with their respective MEMBERSHIP fee payment history to determine the eligibility under this Settlement.

PP. “VOUCHER REQUEST DEADLINE” means the deadline by which CLASS MEMBERS must submit a VOUCHER REQUEST and is the date sixty (60) days following the NOTICE DATE or such date the COURT otherwise orders.

B. Conventions

A. All personal pronouns used in this AGREEMENT, whether used in the masculine, feminine, or neuter gender, shall include all other genders and the singular shall include the plural and vice versa except where expressly provided to the contrary.

B. All references herein to sections, paragraphs, and exhibits refer to sections, paragraphs, and exhibits of and to this AGREEMENT, unless otherwise expressly stated in the reference.

C. The headings and captions contained in this AGREEMENT are inserted only as a matter of convenience and in no way define, limit, extend, or describe the scope of this AGREEMENT or the intent of any provision thereof.

II. THE LAWSUIT

1. On November 4, 2016, the CLASS REPRESENTATIVES filed the ACTION against MEF in the COURT, asserting causes of action for the alleged (1) Breach of Contract and the Covenant of Good Faith and Fair Dealing; (2) Violation of the California Consumer Legal Remedies Act; (3) Violation of Cal. Business & Professions Code § 17200 for “Unlawful” Business Acts and Practices; (4) Violation of Cal. Business & Professions Code § 17200 for “Unfair” Business Acts and Practices; (5) Violation of Cal. Business & Professions Code § 17200 for “Fraudulent” Business Acts and Practices; and (6) Declaratory Relief.

2. The ACTION was assigned to the Honorable Maxine Chesney.

3. On April 28, 2017, the CLASS REPRESENTATIVES filed their First Amended Complaint adding a cause of action for Intentional Interference with Contractual Relations.

4. MEF filed its Answer to the First Amended Complaint on May 22, 2017.

5. On February 8, 2018, the PARTIES participated in a mediation before David Rotman, Esq. During that mediation, the PARTIES discussed a general outline of a potential settlement. Thereafter, for months, the PARTIES engaged in further settlement discussions and exchanged information to facilitate the PARTIES' evaluation of their respective claims and defenses in the ACTION. The PARTIES continued their settlement discussions during a second mediation before Mr. Rotman on November 13, 2018. At that second mediation, the PARTIES were able to reach a settlement and thereafter negotiated a Term Sheet, which was fully executed on January 10, 2019, and is formally memorialized in this AGREEMENT.

III. PROVISIONAL CLASS CERTIFICATION FOR SETTLEMENT PURPOSES ONLY

6. The PARTIES reached this AGREEMENT before the PLAINTIFFS filed a motion for class certification. Accordingly, the PLAINTIFFS shall include a request for provisional certification as part of their Motion for PRELIMINARY APPROVAL that seeks certification of the CLASS for settlement purposes only.

7. As a material part of this SETTLEMENT, MEF, while reserving all defenses if this SETTLEMENT AGREEMENT is not finally approved, hereby stipulates and consents, solely for purposes of and in consideration of the SETTLEMENT, to provisional certification of the CLASS for settlement purposes only. MEF's stipulation and consent to class certification is expressly conditioned upon the entry of a PRELIMINARY APPROVAL ORDER, a FINAL APPROVAL ORDER, and JUDGMENT, and as otherwise set forth in this AGREEMENT. As

part of its provisional stipulation, MEF further consents to the appointment of CLASS COUNSEL and the CLASS REPRESENTATIVES to represent the CLASS.

8. The provisional certification of the CLASS, the appointment of the CLASS REPRESENTATIVES, and the appointment of CLASS COUNSEL shall be binding only with respect to this SETTLEMENT and this AGREEMENT. If the COURT fails to enter a PRELIMINARY APPROVAL ORDER or a FINAL APPROVAL ORDER, or if this SETTLEMENT AGREEMENT and the SETTLEMENT proposed herein is terminated, canceled, or fails to become effective for any reason whatsoever, the class certification, to which the PARTIES have stipulated solely for the purposes of this SETTLEMENT, this AGREEMENT, and all of the provisions of any PRELIMINARY APPROVAL ORDER or any FINAL APPROVAL ORDER shall be vacated by their own terms and the ACTION will revert to its status as it existed prior to the date of this AGREEMENT with respect to class certification, the appointment of CLASS REPRESENTATIVES, and the appointment of CLASS COUNSEL. In that event, MEF shall retain all rights it had immediately preceding the execution of this AGREEMENT to object to the maintenance of the ACTION as a class action, the appointment of the CLASS REPRESENTATIVES, and the appointment of CLASS COUNSEL and, in that event, nothing in this AGREEMENT or other papers or proceedings related to this SETTLEMENT shall be used as evidence or argument by any of the PARTIES concerning whether the ACTION may properly be maintained as a class action under applicable law, whether any of the CLASS REPRESENTATIVES are adequate or typical class representatives, or whether CLASS COUNSEL is adequate or may be appointed to represent the CLASS or any CLASS MEMBERS.

IV. VOUCHER SETTLEMENT BENEFIT

9. In full, complete, and final settlement and satisfaction of the ACTION and all RELEASED CLAIMS, and subject always to all of the terms, conditions, and provisions of this AGREEMENT, including COURT approval, MEF agrees to cause the following settlement benefits to be provided to each CLASS MEMBER who timely submits a valid VOUCHER REQUEST, who will thereafter receive a VOUCHER via email from the SETTLEMENT ADMINISTRATOR by the VOUCHER DATE as follows:

- (i) A CLASS MEMBER who aggregately paid \$75.00 or less in FEE INCREASES before the date of PRELIMINARY APPROVAL or before their MEMBERSHIP was terminated, cancelled, suspended, or not renewed shall receive a \$10.00 VOUCHER;
- (ii) A CLASS MEMBER who aggregately paid between \$75.01 and \$125.00 in FEE INCREASES before the date of PRELIMINARY APPROVAL or before their MEMBERSHIP was terminated, cancelled, suspended, or not renewed shall receive a \$20.00 VOUCHER;
- (iii) A CLASS MEMBER who aggregately paid between \$125.01 and \$175.00 in FEE INCREASES before the date of PRELIMINARY APPROVAL or before their MEMBERSHIP was terminated, cancelled, suspended, or not renewed shall receive a \$30.00 VOUCHER;
- (iv) A CLASS MEMBER who aggregately paid between \$175.01 and \$225.00 in FEE INCREASES before the date of PRELIMINARY APPROVAL or before their MEMBERSHIP was terminated, cancelled, suspended, or not renewed shall receive a \$40.00 VOUCHER; and

- (v) A CLASS MEMBER who aggregately paid \$225.01 or more in FEE INCREASES before the date of PRELIMINARY APPROVAL or before their MEMBERSHIP was terminated, cancelled, suspended, or not renewed shall receive a \$50.00 VOUCHER.

If a CLASS MEMBER does not timely submit a valid written VOUCHER REQUEST to the SETTLEMENT ADMINISTRATOR, the CLASS MEMBER is not entitled to any benefit under the SETTLEMENT. The email containing the VOUCHER and the VOUCHER provided to CLASS MEMBERS pursuant to the terms of this AGREEMENT shall conspicuously state the VOUCHER's expiration date, which shall be eighteen (18) months from the EFFECTIVE DATE. In no event will the total face value of all VOUCHERS issued to CLASS MEMBERS who timely submit a valid written VOUCHER REQUEST be less than Ten Million Dollars (\$10,000,000). Should the total face value of all VOUCHERS to be issued be less than Ten Million Dollars (\$10,000,000), then the CLASS MEMBERS who timely submit a valid written VOUCHER REQUEST shall receive a *pro rata* increase to the value of their issued VOUCHER such that the total face value of issued VOUCHERS shall be Ten Million Dollars (\$10,000,000).

10. The amount of FEE INCREASES and the corresponding VOUCHER amount shall be determined solely and exclusively by the SETTLEMENT ADMINISTRATOR based on data provided by MEF as set forth below in Paragraph 21. SETTLEMENT CLASS MEMBERS, the CLASS REPRESENTATIVES, CLASS COUNSEL, MEF, or MEF's COUNSEL, along with their respective predecessors, successors, and assigns, or any other party-in-interest, may not appeal or seek review or vacatur of or otherwise challenge such determination or VOUCHERS in any subsequent court or administrative proceeding, including without limitation any proceeding under any applicable federal or state law, rule, or statute.

11. Any VOUCHER that a CLASS MEMBER receives pursuant to the terms of this AGREEMENT may be redeemed at any ME LOCATION for retail products, massage sessions, enhancements, and/or facial sessions, shall be fully transferrable, may be aggregated, and shall expire if not used or redeemed within 18 months of the EFFECTIVE DATE. Under no circumstances shall any VOUCHER issued to a CLASS MEMBER pursuant to this AGREEMENT be redeemable for cash, payment of monthly MEMBERSHIP fees, or tips at any time.

12. No SETTLEMENT CLASS MEMBER shall have any claim against MEF, any ME LOCATION, MEF's COUNSEL, the CLASS REPRESENTATIVES, CLASS COUNSEL, or the SETTLEMENT ADMINISTRATOR based on the mailings, distributions, or process of awarding a VOUCHER made in accordance with this AGREEMENT or any order of the COURT.

13. Each SETTLEMENT CLASS MEMBER is solely responsible for any tax consequence, including but not limited to penalties and interest, relating to or arising out of the receipt of any benefit under this SETTLEMENT.

V. INJUNCTIVE RELIEF

14. In full, complete, and final settlement and satisfaction of all RELEASED CLAIMS, and subject to all of the terms, conditions, and provisions of this AGREEMENT, including COURT approval, MEF agrees to provide the following injunctive relief as additional consideration: At least beginning with the date the Court enters the PRELIMINARY APPROVAL ORDER, the PARTIES agree that each CLASS MEMBER who does not opt out of the SETTLEMENT shall be bound by a successor template MEMBERSHIP AGREEMENT substantially in the form attached hereto as **EXHIBIT 5** that MEF shall make available for use

by the franchisees at all ME LOCATIONS. This new template MEMBERSHIP AGREEMENT includes a provision that ME LOCATIONS may only increase the member's stated monthly MEMBERSHIP fee following the initial term by providing at least forty-five (45) days' advance written notice to the MEMBER's email address on record with the MEMBER's HOME CLINIC or to the MEMBER's last physical address known to the MEMBER's HOME CLINIC and that such notice shall be effective on the date sent. Forty-five (45) days' advance written notice allows the MEMBER a reasonable opportunity to cancel his/her MEMBERSHIP before incurring a noticed price increase. MEF shall keep this Injunctive Relief in force as a system standard for a period of at least two (2) years following the EFFECTIVE DATE. Upon the expiration of the two (2) year period following the EFFECTIVE DATE, MEF shall have no further obligation to maintain the Injunctive Relief as a system standard. Nothing prohibits MEF and nothing in this AGREEMENT or any other agreement shall restrict MEF or any ME LOCATION from otherwise modifying the terms of a CLASS MEMBER's MEMBERSHIP, including while this Injunctive Relief remains in effect.

15. In their motion for PRELIMINARY APPROVAL, the CLASS REPRESENTATIVES will request that the Court affirmatively state in the PRELIMINARY APPROVAL ORDER that the template MEMBERSHIP AGREEMENT, attached hereto as **EXHIBIT 5**, expressly entitles any ME LOCATION who uses this or a substantially similar template to increase a MEMBER's monthly MEMBERSHIP fee following the initial MEMBERSHIP term, provided in each and every instance that forty-five (45) days' advance written notice is sent to the MEMBER's email address on record with the MEMBER's HOME CLINIC or to the MEMBER's last physical address known to the MEMBER's HOME CLINIC and the forty-five (45) day period shall begin to run on the date the notice is sent.

16. In the event the COURT does not grant FINAL APPROVAL of the SETTLEMENT, then either the CLASS REPRESENTATIVES or MEF may request that the COURT vacate the portion of the PRELIMINARY APPROVAL ORDER related to the Injunctive Relief.

VI. VACATUR OF COURT ORDERS

17. Contemporaneous with the filing of the CLASS REPRESENTATIVES' motion for PRELIMINARY APPROVAL, the PARTIES shall jointly request that the COURT vacate in its entirety its Order Denying Defendant's Motion for Judgment on the Pleadings or, Alternatively to Strike Class Allegations; Granting in Part and Denying in Part Plaintiffs' Motion to Strike Affirmative Defenses entered on April 5, 2017 [Doc. 49] and Order Denying Defendant's Motion for Certification of Order for Interlocutory Appeal and Motion to Stay; Vacating Hearing entered on May 17, 2017 [Doc. 68] (collectively, the "MJOP Order") in the ACTION solely for purposes of approval of this SETTLEMENT.

18. The PARTIES acknowledge and agree that the COURT vacating the MJOP Order is a material term of this SETTLEMENT and for this reason this SETTLEMENT is expressly conditioned on the COURT vacating the MJOP Order in its entirety. If the COURT does not vacate the MJOP Order in its entirety within fourteen (14) calendar days of PRELIMINARY APPROVAL, then MEF shall have the option to withdraw from this SETTLEMENT, at which point this AGREEMENT shall become null and void *ab initio* and shall have no bearing on, and shall not be admissible in connection with, (a) any issue in the ACTION; (b) whether class certification would be appropriate in a non-settlement context; (c) MEF's liability for any final judgment or to any CLASS MEMBER; and (d) any award that may ultimately be entered against MEF or otherwise.

19. If a FINAL APPROVAL ORDER and JUDGMENT are not entered, or if the approval of the SETTLEMENT is overturned on any appeal, then the CLASS REPRESENTATIVES may move to have the MJOP Order reinstated and MEF shall not object to such reinstatement but shall nonetheless preserve all rights to challenge the MJOP Order, to seek reconsideration, to seek to have it vacated, and to pursue any and all appellate and other rights that may be available to it.

VII. CLASS NOTICE AND SETTLEMENT ADMINISTRATION

20. Subject to COURT approval, the PARTIES have agreed that providing direct email and mailed notice and SETTLEMENT WEBSITE notice to the CLASS MEMBERS in the manner described herein is the best and most fair and reasonable notice practicable under the circumstances.

21. The PARTIES agree to the following procedures for giving notice of this SETTLEMENT to the CLASS MEMBERS and for the determination of the amount of the VOUCHER for CLASS MEMBERS who timely submit a VOUCHER REQUEST (consistent with Section IV of this AGREEMENT):

(A) Within thirty (30) days of the PRELIMINARY APPROVAL ORDER or on such date otherwise ordered by the COURT, MEF shall provide the SETTLEMENT ADMINISTRATOR with an electronic list or database that includes the following information with respect to each CURRENT MEMBER from the MILLENNIUM DATABASE as of the date of PRELIMINARY APPROVAL: first and last name; last known mailing address; email address (if available); phone number (if available); a UNIQUE ID CODE; a UNIQUE ID CODE for each membership held by the CURRENT MEMBER; each date on which the CURRENT MEMBER paid a monthly

MEMBERSHIP fee that was higher than the prior month; and the total amount of any FEE INCREASE the CURRENT MEMBER paid through the date of the PRELIMINARY APPROVAL ORDER. MEF agrees to utilize reasonable efforts to provide accurate data from the MILLENNIUM DATABASE, which will be relied upon by the SETTLEMENT ADMINISTRATOR in sending CLASS NOTICE and administering this SETTLEMENT as described herein, and will submit a sworn declaration with the motion for FINAL APPROVAL of the SETTLEMENT that MEF utilized reasonable efforts to provide accurate data (and a description of those efforts) to the SETTLEMENT ADMINISTRATOR.

(B) Within thirty (30) days of the PRELIMINARY APPROVAL ORDER or on such date otherwise ordered by the COURT, MEF shall provide the SETTLEMENT ADMINISTRATOR with an electronic list or database that includes the following information with respect to each FORMER MEMBER from the MILLENNIUM DATABASE as of the date of PRELIMINARY APPROVAL: first and last name; last known mailing address; email address (if available); phone number (if available); a UNIQUE ID CODE; a UNIQUE ID CODE for each membership held by the Former Member; the date on which the FORMER MEMBER's MEMBERSHIP was terminated, cancelled, suspended, or not renewed; each date on which the FORMER MEMBER paid a monthly MEMBERSHIP fee that was higher than the prior month; and the total amount of any FEE INCREASE the FORMER MEMBER paid through the date the FORMER MEMBER's MEMBERSHIP was terminated, cancelled, suspended, or not renewed or the FORMER MEMBER's last EFT payment, whichever is later. MEF agrees to use reasonable efforts to provide accurate data from the MILLENNIUM DATABASE, which

will be relied upon by the SETTLEMENT ADMINISTRATOR in sending CLASS NOTICE and administering this SETTLEMENT as described herein, and will submit a sworn declaration with the motion for FINAL APPROVAL of the SETTLEMENT that MEF utilized reasonable efforts to provide accurate data (and a description of those efforts) to the SETTLEMENT ADMINISTRATOR.

(C) No later than the NOTICE DATE, the SETTLEMENT ADMINISTRATOR shall send a copy of the SUMMARY NOTICE in the form approved by the COURT to the CLASS MEMBERS, via email for those CLASS MEMBERS for whom an email address is available and via First Class U.S. Mail to all other CLASS MEMBERS.

(D) The SETTLEMENT ADMINISTRATOR shall utilize the national change of address database to update the mailing list of the CLASS MEMBERS prior to sending SUMMARY NOTICE via First Class U.S. Mail.

(E) The SETTLEMENT ADMINISTRATOR shall perform a single skip trace using information identifying the CLASS MEMBERS, as necessary, to conduct an address update with respect to any SUMMARY NOTICES returned to the SETTLEMENT ADMINISTRATOR using an industry-accepted source such as Accurant, and shall send the SUMMARY NOTICES to the mailing address identified by the skip tracing. The SETTLEMENT ADMINISTRATOR shall resend via First Class U.S. Mail all SUMMARY NOTICES to new addresses within five (5) business days of obtaining such new addresses.

(F) Any mailed SUMMARY NOTICES returned to the SETTLEMENT ADMINISTRATOR as undelivered and bearing a forwarding address shall be re-mailed

by the SETTLEMENT ADMINISTRATOR within five (5) business days following receipt of the returned mail.

(G) Any emailed SUMMARY NOTICE that bounces back or is returned to the SETTLEMENT ADMINISTRATOR as undeliverable shall be mailed by the SETTLEMENT ADMINISTRATOR if a physical address is available in the MILLENNIUM DATABASE list provided to the SETTLEMENT ADMINISTRATOR. If no physical address is available in the MILLENNIUM DATABASE list provided to the SETTLEMENT ADMINISTRATOR, the ADMINISTRATOR shall perform a single skip trace using information identifying the CLASS MEMBER, as necessary, to conduct an address update to allow SUMMARY NOTICE to be sent using an industry-accepted source such as Accurint, and shall send the SUMMARY NOTICES to the mailing address identified by the skip tracing. Any such SUMMARY NOTICE shall be mailed within five (5) business days following receipt of the bounced back or returned as undeliverable email.

(H) The SETTLEMENT ADMINISTRATOR shall update the SETTLEMENT WEBSITE to include the LONG FORM NOTICE no later than the NOTICE DATE.

(I) Following PRELIMINARY APPROVAL, the domain name of the SETTLEMENT WEBSITE shall be www.massagefeesettlement.com (if available). The SETTLEMENT ADMINISTRATOR shall post copies of the First Amended Complaint, the LONG FORM NOTICE, this AGREEMENT, the PRELIMINARY APPROVAL motion, the PRELIMINARY APPROVAL ORDER, the MJOP Order, and, when available, the FINAL APPROVAL motion, the FINAL APPROVAL ORDER and JUDGMENT, and instructions on how to access the case docket via PACER (which

requires a PACER account) or in person at any of the Court's locations on the SETTLEMENT WEBSITE. The SETTLEMENT WEBSITE will prominently contain instructions on how a CLASS MEMBER can make a VOUCHER REQUEST, as well as instructions on how CLASS MEMBERS can request exclusion or file an objection to this SETTLEMENT by the OBJECTION/EXCLUSION DEADLINE. The SETTLEMENT WEBSITE will further note the date of the FINAL APPROVAL HEARING, clearly state that the date of the FINAL APPROVAL HEARING may change without further notice to the class, and that CLASS MEMBERS should be advised to check the SETTLEMENT WEBSITE or the Court's PACER site to confirm that the date has not been changed. The SETTLEMENT ADMINISTRATOR shall begin operating the SETTLEMENT WEBSITE at the above domain site within five (5) business days after entry of the PRELIMINARY APPROVAL ORDER and shall maintain and not take down the SETTLEMENT WEBSITE until two hundred (200) days after the EFFECTIVE DATE. When the SETTLEMENT WEBSITE is taken down, the SETTLEMENT ADMINISTRATOR shall immediately transfer ownership of the URL for the SETTLEMENT WEBSITE to MEF.

(J) Within ten (10) days following PRELIMINARY APPROVAL, the SETTLEMENT ADMINISTRATOR shall serve notice of this SETTLEMENT to appropriate state and federal officials pursuant to the Class Action Fairness Act ("CAFA") at 28 U.S.C. § 1715. The SETTLEMENT ADMINISTRATOR shall be responsible for drafting and preparing the notice in conformity with 28 U.S.C. § 1715 and for identifying the appropriate state and federal officials to be notified.

(K) CLASS NOTICE will:

- (i) Contain a concise statement of the background of the ACTION, the certification of the CLASS MEMBERS, and the SETTLEMENT;
- (ii) Describe the nature and scope of the claims, causes of action, and facts comprised in the SETTLEMENT and explain that SETTLEMENT CLASS MEMBERS will be releasing all RELEASED CLAIMS against the RELEASED PARTIES;
- (iii) Describe the relief provided by the SETTLEMENT;
- (iv) Inform the CLASS MEMBERS how to submit an exclusion request and of their right to object to the SETTLEMENT by the OBJECTION/EXCLUSION DEADLINE;
- (v) Inform CLASS MEMBERS how to submit a VOUCHER REQUEST;
- (vi) Explain the impact of the SETTLEMENT on participation in any existing and future litigation, arbitration, regulatory action, remediation, or other proceeding(s);
- (vii) State that any relief to the SETTLEMENT CLASS is contingent on the COURT's FINAL APPROVAL and JUDGMENT;
- (viii) State that MEF will pay any INCENTIVE AWARD to the CLASS REPRESENTATIVES and any FEE AND EXPENSE AWARD to CLASS COUNSEL (subject to the terms of the AGREEMENT and COURT approval) and that individual SETTLEMENT CLASS MEMBERS will not be responsible themselves for paying any

attorneys' fees, costs, litigation expenses, administration expenses, or incentive award (unless they elect to retain their own attorney at their own expense);

- (ix) Include instructions on how to access the case docket via PACER (which requires a PACER account) or in person at any of the Court's locations.
- (x) Inform the CLASS MEMBERS of the date, time, and place of the FINAL APPROVAL HEARING (and that the date may change without further notice to the class and to check the settlement website or the Court's PACER site to confirm that the date has not been changed), their right to object to the SETTLEMENT, and their right to appear at the FINAL APPROVAL HEARING as provided by this SETTLEMENT or ordered by the COURT in the PRELIMINARY APPROVAL ORDER, on their own or through counsel of their own selection (at their own expense), and the procedures for doing so as further described below; and
- (xi) Advise that any JUDGMENT entered in the ACTION (including the terms of the release set forth in Section VIII below) will be binding on all CLASS MEMBERS who do not timely exclude themselves from the SETTLEMENT.

22. The SETTLEMENT ADMINISTRATOR shall provide any information or declaration requested by the PARTIES to assist with seeking PRELIMINARY APPROVAL and FINAL APPROVAL.

23. The PARTIES each represent that he, she, or it does not and will not have any financial interest in the SETTLEMENT ADMINISTRATOR ultimately appointed and otherwise will not have a relationship with the SETTLEMENT ADMINISTRATOR ultimately appointed that could create a conflict of interest.

24. The PARTIES acknowledge and agree that the SETTLEMENT ADMINISTRATOR is not an agent of the CLASS REPRESENTATIVES, CLASS COUNSEL, MEF, or MEF's COUNSEL and that the SETTLEMENT ADMINISTRATOR is not authorized by this AGREEMENT or otherwise to act on behalf of the CLASS REPRESENTATIVES, CLASS COUNSEL, MEF, or MEF's COUNSEL.

25. If a CLASS MEMBER requests that the SETTLEMENT ADMINISTRATOR and/or its agent or employee refers him/her to CLASS COUNSEL, or if a CLASS MEMBER requests advice beyond merely ministerial information regarding applicable deadlines or procedures for submitting a VOUCHER REQUEST or other SETTLEMENT-related forms for which the SETTLEMENT ADMINISTRATOR does not have an approved response, then the SETTLEMENT ADMINISTRATOR and/or its agent or employee shall promptly refer the inquiry to CLASS COUNSEL and MEF's COUNSEL.

26. The SETTLEMENT ADMINISTRATOR is responsible for:

(A) Printing and distributing the SUMMARY NOTICE approved by the COURT;

(B) Performing physical home address and email address updates and verifications prior to the first distribution of the SUMMARY NOTICE;

(C) Sending mailed SUMMARY NOTICE to those CLASS MEMBERS who were provided SUMMARY NOTICE via email and had it returned undeliverable and who have a physical address in the MILLENNIUM DATABASE;

(D) Performing a single skip trace address follow up on any returned mail or email SUMMARY NOTICES;

(E) Creating and maintaining the SETTLEMENT WEBSITE and a toll-free number that CLASS MEMBERS can contact to request a copy of this AGREEMENT, a UNIQUE ID CODE, a VOUCHER REQUEST form, and/or to obtain any other information concerning this SETTLEMENT or this AGREEMENT;

(F) Consulting with MEF's COUNSEL and CLASS COUNSEL concerning any relevant issues, including (without limitation) distribution of the CLASS NOTICE and processing of VOUCHER REQUESTS;

(G) Processing and recording timely and proper requests for exclusion from or objections to the SETTLEMENT;

(H) Processing and recording VOUCHER REQUESTS;

(I) Within five (5) days after the VOUCHER REQUEST DEADLINE, providing to MEF a list in writing of all CURRENT MEMBERS who submitted a VOUCHER REQUEST and the following information, if available, with respect to each CURRENT MEMBER:

- (i) First and last name;
- (ii) Current mailing address;
- (iii) Current email address;
- (iv) UNIQUE ID CODE; and

(v) The amount of FEE INCREASES paid as of the date of PRELIMINARY APPROVAL.

(J) Within five (5) days after the VOUCHER REQUEST DEADLINE, providing to MEF a list in writing of all FORMER MEMBERS who submitted a VOUCHER REQUEST and the following information, if available, with respect to each FORMER MEMBER:

- (i) First and last name;
- (ii) Current mailing address;
- (iii) Current email address;
- (iv) UNIQUE ID CODE; and
- (v) The amount of FEE INCREASES paid as of the date the FORMER MEMBER's MEMBERSHIP was terminated, cancelled, suspended, or not renewed or the FORMER MEMBER's last EFT payment, whichever is later.

(K) Preparing, drafting, and serving the CAFA Notice;

(L) By the VOUCHER DATE, emailing VOUCHERS to CLASS MEMBERS who submit a timely and proper VOUCHER REQUEST and advising CLASS MEMBERS of any increased VOUCHER amount as a result of any necessary pro rata distribution to comply with Paragraph 9 of this AGREEMENT; and

(M) Such other tasks as the PARTIES mutually agree or the COURT orders the SETTLEMENT ADMINISTRATOR to perform in connection with this AGREEMENT.

27. MEF agrees to pay to the SETTLEMENT ADMINISTRATOR all reasonable ADMINISTRATIVE COSTS.

28. CLASS COUNSEL agrees that the PARTIES are providing the best notice practicable and will not of their own initiative advocate for content or methods of CLASS NOTICE beyond that to which the PARTIES have agreed in this Section VII of the AGREEMENT.

29. Within two hundred and ten (210) days after the EFFECTIVE DATE, the SETTLEMENT ADMINISTRATOR shall destroy all CLASS MEMBERS' personal identifying information received from MEF and otherwise in connection with the implementation and administration of this SETTLEMENT.

30. Upon completion of the implementation and administration of the SETTLEMENT, the SETTLEMENT ADMINISTRATOR shall provide written certification of such completion to CLASS COUNSEL and to MEF's COUNSEL.

VIII. OBJECTIONS TO AND EXCLUSIONS FROM THE SETTLEMENT

A. Exclusions

31. CLASS MEMBERS and persons purporting to act on their behalf who decide to be excluded from the SETTLEMENT must submit to the SETTLEMENT ADMINISTRATOR a written statement requesting exclusion from the SETTLEMENT by the OBJECTION/EXCLUSION DEADLINE or by such date otherwise ordered by the COURT. Such written request for exclusion (i) must contain the name and address of the person requesting exclusion and the CLASS MEMBER's UNIQUE ID CODE, (ii) must be made via email or mailed by First Class U.S. Mail to the SETTLEMENT ADMINISTRATOR at the

specified address, and (iii) must be submitted or postmarked on or before the OBJECTION/EXCLUSION DEADLINE.

32. CLASS MEMBERS who fail to submit a timely and valid written request for exclusion consistent with this Section shall be deemed to be a member of the SETTLEMENT CLASS and as such shall be bound by all terms of the SETTLEMENT and the FINAL APPROVAL ORDER and JUDGMENT if the SETTLEMENT is approved by the COURT.

33. CLASS MEMBERS who submit a valid and timely written request for exclusion pursuant to the CLASS NOTICE consistent with this AGREEMENT and who are excluded from this SETTLEMENT shall not be bound by this SETTLEMENT or any FINAL APPROVAL ORDER entered by the COURT approving this SETTLEMENT and shall not be entitled to receive any vouchers, or other benefit under this SETTLEMENT.

34. Within fifteen (15) days following the OBJECTION/EXCLUSION DEADLINE, the SETTLEMENT ADMINISTRATOR shall provide in writing to MEF's COUNSEL and CLASS COUNSEL the names of those CLASS MEMBERS who have requested exclusion.

35. The CLASS REPRESENTATIVES acknowledge and agree that they will not exclude themselves from this SETTLEMENT.

B. Objections

36. CLASS MEMBERS and persons purporting to act on their behalf who wish to object to the fairness, reasonableness, or adequacy of the SETTLEMENT or this AGREEMENT, any request for a FEE AND EXPENSE AWARD, or any request for an INCENTIVE AWARD shall submit a written notice of objection in accordance with the following procedures:

(A) CLASS MEMBERS who wish to object must serve on the SETTLEMENT ADMINISTRATOR a written statement of objection that must be postmarked on or before the OBJECTION/EXCLUSION DEADLINE.

(B) To be valid, a CLASS MEMBER's written statement of objection must provide the following information:

- (i) the CLASS MEMBER's full name, current address, and, if different, the address used at time of MEMBERSHIP origination;
- (ii) a statement of the positions and objections asserted, including the factual and legal grounds for each position and objection; and
- (iii) a copy of any documents supporting the CLASS MEMBER's objection.

(C) To be valid, a CLASS MEMBER's written statement of objection also must provide a list of any other objections that the CLASS MEMBER made, filed, or submitted or that were made, filed, or submitted on the CLASS MEMBER's behalf to any class action settlement in any court, whether state, federal, or otherwise, in the United States in the five (5) years prior to the date of the PRELIMINARY APPROVAL ORDER. If the CLASS MEMBER has not objected or no objection has been made on the CLASS MEMBER's behalf to any other class action settlement in any court in the United States in the five (5) years prior to the date of PRELIMINARY APPROVAL, this fact must affirmatively be so stated in the written objection.

37. Subject to the COURT's approval, any objecting CLASS MEMBER may appear, in person or by counsel, at the FINAL APPROVAL HEARING to show cause why this SETTLEMENT and this AGREEMENT should not be approved as fair, adequate, and

reasonable or to object to any request for a FEE AND EXPENSE AWARD or INCENTIVE AWARD. To appear in person or by counsel at the FINAL APPROVAL HEARING, fourteen (14) days prior to the FINAL APPROVAL HEARING, the objecting CLASS MEMBER must file with the COURT and serve upon CLASS COUNSEL and MEF'S COUNSEL a Notice of Intention to Appear. The Notice of Intention to Appear must include copies of any papers, exhibits, or other evidence that the objecting CLASS MEMBER (or his/her counsel) will present to the Court in connection with the FINAL APPROVAL HEARING.

38. Any CLASS MEMBER who fails to submit a proper Notice of Intention to Appear prior to fourteen (14) days before the FINAL APPROVAL HEARING, along with copies of any papers, exhibits, or other evidence that the objecting CLASS MEMBER (or his/her counsel) will present to the COURT in connection with the FINAL APPROVAL HEARING, will not be heard during the FINAL APPROVAL HEARING.

39. Any CLASS MEMBER who fails to timely submit a written objection prior to the OBJECTION/EXCLUSION DEADLINE will not be heard during the FINAL APPROVAL HEARING and the CLASS MEMBER's objection(s) shall be waived and will not be considered by the COURT.

40. Any CLASS MEMBER who submits a timely written request for exclusion from the SETTLEMENT shall not be permitted to object to the SETTLEMENT. Any written objection submitted by a CLASS MEMBER who has submitted a timely written request for exclusion from the SETTLEMENT will not be heard during the FINAL APPROVAL HEARING and the CLASS MEMBER's objection(s) shall be waived and shall not be considered by the COURT at the FINAL APPROVAL HEARING.

41. The agreed-upon procedures and requirements for filing objections in connection with the FINAL APPROVAL HEARING are intended to ensure the efficient administration of justice in accordance with each CLASS MEMBER's due process rights. Such procedures are designed to identify whether any person making an objection has standing to do so and to identify "professional objectors."

42. Any CLASS MEMBER who submits a written objection in accordance with Section VIII of this AGREEMENT shall be entitled to all of the benefits of the SETTLEMENT and this AGREEMENT, provided the objecting CLASS MEMBER complies with all the requirements set forth in this AGREEMENT for submitting a timely and valid VOUCHER REQUEST, and shall be bound by all terms of the SETTLEMENT and the FINAL APPROVAL ORDER and JUDGMENT if the SETTLEMENT is approved by the COURT.

43. CLASS COUNSEL shall serve on MEF's COUNSEL and file with the COURT any written objections to the SETTLEMENT received within fifteen (15) days following the OBJECTION/EXCLUSION DEADLINE.

IX. PRELIMINARY APPROVAL

44. Counsel for the PARTIES shall jointly request a hearing before the COURT to seek PRELIMINARY APPROVAL of the SETTLEMENT. In conjunction with such hearing, CLASS COUNSEL shall submit this AGREEMENT, together with the attachments hereto, and any other documents necessary to implement the SETTLEMENT. Solely for purposes of this SETTLEMENT, CLASS COUNSEL shall request that the COURT enter an order, substantially in the form of **EXHIBIT 3** attached hereto, preliminarily approving the proposed SETTLEMENT; approving the proposed LONG FORM NOTICE and SUMMARY NOTICE; approving and appointing a SETTLEMENT ADMINISTRATOR; approving CLASS COUNSEL

as counsel for the CLASS MEMBERS; approving the CLASS REPRESENTATIVES as the representatives of the CLASS MEMBERS; setting a deadline for CLASS COUNSEL to file a request for a FEE AND EXPENSE AWARD and for an INCENTIVE AWARD; and setting a date for the FINAL APPROVAL HEARING.

X. FINAL APPROVAL AND JUDGMENT

45. After PRELIMINARY APPROVAL, CLASS NOTICE to the CLASS MEMBERS, and the expiration of the OBJECTION/EXCLUSION DEADLINE, a FINAL APPROVAL HEARING shall be held on a date set by the COURT. In connection with the FINAL APPROVAL HEARING, the PARTIES shall file such papers with the COURT as either their counsel or the COURT may determine to be necessary, which they anticipate will be done in accordance with the schedule set forth in Section XIV below.

46. Before the FINAL APPROVAL HEARING, proof of the extent and effectiveness of CLASS NOTICE shall be provided by the SETTLEMENT ADMINISTRATOR to the PARTIES no later than fifteen (15) days following the OBJECTION/EXCLUSION DEADLINE.

47. After FINAL APPROVAL, the PARTIES agree that the COURT will retain jurisdiction to enforce the terms of this AGREEMENT and the FINAL APPROVAL ORDER and JUDGMENT.

XI. CONDITIONS IMPACTING FINALITY OF SETTLEMENT

48. The PARTIES agree that this AGREEMENT is expressly conditioned upon the CLASS REPRESENTATIVES' receipt, analysis, and review of relevant portions of the MILLENNIUM DATABASE regarding the CLASS MEMBERS and the aggregate amount and individual FEE INCREASES paid by CLASS MEMBERS.

49. The PARTIES agree that execution of this AGREEMENT is expressly conditioned upon the CLASS REPRESENTATIVES' receipt of the following confirmatory discovery and review to ensure that VOUCHERS to be provided pursuant to the terms of this AGREEMENT may be redeemed for a sufficient number of existing goods and services without additional payment:

- (A) A list of all MEF-authorized products and services available for purchase at ME LOCATIONS, including the retail cost of all products and services and any standardized variations in the cost of services by region;
- (B) The annual sales data for the last three years for all authorized products and/or services for which VOUCHERS, to be issued pursuant to the terms of this AGREEMENT, may be redeemed to the extent such products and/or services were historically sold by ME LOCATIONS;
- (C) The number of CLASS MEMBERS included within each segment/tranche of SETTLEMENT benefits described in Paragraph 9, segmented by FORMER MEMBERS and, separately, CURRENT MEMBERS.

50. If more than three percent (3%) of the total value of the CLASS MEMBERS' claims or three percent (3%) of the total number of CLASS MEMBERS requests to exclude themselves from the SETTLEMENT, MEF and CLASS COUNSEL shall have the option, at each's sole discretion, of terminating and withdrawing from the SETTLEMENT in its entirety; provided, however, that the PARTY electing to terminate or withdraw from the SETTLEMENT pursuant to this provision of the AGREEMENT must notify the other PARTY and the COURT in writing that it is exercising such option within seven (7) days after being notified in writing by the SETTLEMENT ADMINISTRATOR that the number of CLASS MEMBERS who have

timely requested exclusion exceeds three percent (3%) of the total value of the CLASS MEMBERS' claims or three percent (3%) of the total number of CLASS MEMBERS.

51. The PARTIES expressly agree that in the event of any of the following conditions:

(A) The COURT does not preliminarily approve the SETTLEMENT; or

(B) The COURT does not vacate the MJOP Order in its entirety within fourteen (14) calendar days of PRELIMINARY APPROVAL and MEF exercises its rights under Paragraph 18 of this AGREEMENT; or

(C) The COURT does not finally approve the SETTLEMENT; or

(D) The COURT does not enter the FINAL APPROVAL ORDER and JUDGMENT; or

(E) MEF or CLASS COUNSEL withdraws and cancels the SETTLEMENT pursuant to Paragraph 50; or

(F) This SETTLEMENT does not become final for any reason;

then this AGREEMENT shall be null and void *ab initio* and any order entered by the COURT in furtherance of this SETTLEMENT shall be treated as withdrawn or vacated by stipulation of the PARTIES (subject to COURT approval) and MEF shall have no further obligation under this AGREEMENT; provided, however, that in the event of the denial of PRELIMINARY APPROVAL or FINAL APPROVAL, the CLASS REPRESENTATIVES and/or MEF may seek appellate review through a writ or pursue any other available appellate remedy in support of the SETTLEMENT or this AGREEMENT. Nothing herein is intended to restrict or limit the rights of either MEF or the CLASS REPRESENTATIVES to appeal any order of this COURT in the event the SETTLEMENT is not finally approved for any reason. During the pendency of any

appeal of the denial of PRELIMINARY APPROVAL or FINAL APPROVAL, this AGREEMENT shall remain valid and binding.

52. If any of the conditions outlined in Paragraph 51 occur such that this SETTLEMENT does not become final, the PARTIES shall proceed in all respects as if this AGREEMENT had not been executed; provided, however, that MEF shall be responsible for the payment of reasonable ADMINISTRATION COSTS incurred up to such time. Notwithstanding the foregoing, neither the denial of, an appeal of, a modification of, nor a reversal on appeal of any FEE AND EXPENSE AWARD or INCENTIVE AWARD shall constitute grounds for cancellation or termination of this AGREEMENT.

53. If PRELIMINARY APPROVAL is denied, the PARTIES shall be returned to their respective statuses as of the date immediately prior to the execution of this AGREEMENT on the latest of the following events (1) the thirty-first (31st) day following the denial of PRELIMINARY APPROVAL; or (2) the conclusion of any appeal or writ of mandamus from the denial of PRELIMINARY APPROVAL. In either of these events, within thirty (30) days, the PARTIES will jointly file a stipulation regarding a revised proposed schedule for briefing Plaintiffs' motion for class certification and for class-related discovery, including matters previously addressed in the Court's August 20, 2018, order setting forth several case management deadlines (Dkt. 96).

54. If FINAL APPROVAL is denied, the PARTIES shall be returned to their respective statuses as of the date immediately prior to the execution of this AGREEMENT on the latest of the following events (1) the thirty-first (31st) day following the denial of FINAL APPROVAL; or (2) the conclusion of any appeal or writ of mandamus from the denial of FINAL APPROVAL. In either of these events, within thirty (30) days, the PARTIES will file a joint

stipulation regarding a revised proposed schedule for briefing on Plaintiffs' motion for class certification and for class-related discovery, including the matters previously addressed in the Court's August 20, 2018, order setting forth several case management deadlines (Dkt. 96).

XII. FEE AND EXPENSE AND INCENTIVE AWARDS

A. Fee And Expense Award

55. At least thirty-five (35) days prior to the OBJECTION/EXCLUSION DEADLINE, CLASS COUNSEL intends to request that the COURT award them a FEE AND EXPENSE AWARD but agrees that, combined, the requested FEE AND EXPENSE AWARD shall not aggregately exceed Three Million Three Hundred Thousand Dollars (\$3,300,000). CLASS COUNSEL shall not petition the COURT for any additional payments for fees or expenses to be paid by MEF, any ME LOCATION, or any of the RELEASED PARTIES. In no event will CLASS COUNSEL's FEE AND EXPENSE AWARD reduce any other benefit provided to the SETTLEMENT CLASS or the CLASS REPRESENTATIVES. If the COURT enters a FEE AND EXPENSE AWARD that is collectively in excess of Three Million Three Hundred Thousand Dollars (\$3,300,000), CLASS COUNSEL will nevertheless accept, in full satisfaction of the amounts awarded by the COURT, payment by MEF of Three Million Three Hundred Thousand Dollars (\$3,300,000).

56. MEF shall not object and will affirmatively express MEF's non-opposition to CLASS COUNSEL's request for a FEE AND EXPENSE AWARD provided CLASS COUNSEL's request for a FEE AND EXPENSE AWARD shall not collectively exceed Three Million Three Hundred Thousand Dollars (\$3,300,000).

57. A FEE AND EXPENSE AWARD approved by the COURT, which does not exceed Three Million Three Hundred Thousand Dollars (\$3,300,000), shall be paid by MEF to

Finkelstein & Krinsk LLP (CLASS COUNSEL) within twenty (20) business days after the EFFECTIVE DATE. MEF shall not be required to otherwise pay any portion of any attorneys' fees and expenses of CLASS COUNSEL, the CLASS REPRESENTATIVES, CLASS MEMBERS, or SETTLEMENT CLASS MEMBERS.

58. Payment of the FEE AND EXPENSE AWARD to CLASS COUNSEL shall constitute full satisfaction by MEF of any obligation to pay any amounts for attorneys' fees, expenses, or costs in the ACTION incurred by any attorney on behalf of the CLASS REPRESENTATIVES, CLASS MEMBERS, or the SETTLEMENT CLASS and shall relieve MEF, MEF's COUNSEL, and the RELEASED PARTIES of any other claims or liability to any other attorney or law firm for any attorneys' fees, expenses, and/or costs to which any of them may claim to be entitled on behalf of the CLASS REPRESENTATIVES, the CLASS, and/or the SETTLEMENT CLASS or related to any RELEASED CLAIM.

59. MEF's own legal fees, costs, and expenses incurred in the ACTION shall be borne by MEF.

60. Neither the denial of, an appeal of, a modification of, nor a reversal on appeal of a FEE AND EXPENSE AWARD shall constitute grounds for cancellation or termination of this AGREEMENT.

B. Incentive Awards

61. Twenty-five (25) days prior to the OBJECTION/EXCLUSION DEADLINE, CLASS COUNSEL intends to request that the COURT approve an INCENTIVE AWARD for the CLASS REPRESENTATIVES in an amount that does not exceed Ten Thousand Dollars (\$10,000) for each of the three (3) CLASS REPRESENTATIVES or a total of Thirty Thousand Dollars (\$30,000) in the aggregate. These INCENTIVE AWARDS are not conditioned on the

CLASS REPRESENTATIVES' support for the SETTLEMENT. MEF shall not object and will affirmatively express MEF's non-opposition to CLASS COUNSEL's request, provided that the INCENTIVE AWARD payable to the CLASS REPRESENTATIVES does not exceed Ten Thousand Dollars (\$10,000) for each of the three (3) CLASS REPRESENTATIVES or a total of Thirty Thousand Dollars (\$30,000) in the aggregate.

62. MEF's payment of the INCENTIVE AWARDS to the CLASS REPRESENTATIVES does not preclude the CLASS REPRESENTATIVES from receiving any other benefits to which each may be entitled under the terms of this AGREEMENT as part of the SETTLEMENT CLASS.

63. In addition to any FEE AND EXPENSE AWARD awarded and paid consistent with the terms of this AGREEMENT, any INCENTIVE AWARD approved by the COURT shall be paid by MEF to Finkelstein & Krinsk LLP (CLASS COUNSEL) on behalf of the CLASS REPRESENTATIVES within thirty (30) days after the EFFECTIVE DATE, provided each of the CLASS REPRESENTATIVES has executed the General Release substantially in the form attached as **EXHIBITS 6, 7, and 8**.

64. Any INCENTIVE AWARD paid to the CLASS REPRESENTATIVES shall be reported on an IRS Form 1099 (i.e., as "Other Income") and provided to the CLASS REPRESENTATIVES and applicable governmental authorities.

XIII. RELEASE

65. As of the EFFECTIVE DATE, the CLASS REPRESENTATIVES and the SETTLEMENT CLASS hereby expressly fully release and forever discharge the RELEASED PARTIES and further expressly agree that they shall not now or thereafter institute, maintain, or assert against the RELEASED PARTIES, either directly or indirectly, on their own behalf or on

behalf of any class or other person or entity, in any action, regulatory action, arbitration, or court or other proceeding of any kind, any causes of action, claims, damages, equitable, legal and administrative relief, interest, demands, rights, or remedies, including, without limitation, claims for injunctive relief, declaratory relief, damages, mental anguish, unpaid costs, penalties, liquidated damages, punitive damages, interest, attorneys' fees, litigation costs, restitution, disgorgement, or equitable relief against the RELEASED PARTIES, whether based on federal, state, or local law, statute, ordinance, regulation, constitution, contract, common law, or any other source, that relate to the RELEASED CLAIMS.

66. Nothing in this release shall be deemed to alter any other contractual MEMBERSHIP rights or obligations that a CLASS MEMBER or any RELEASED PARTY may have beyond that described in the RELEASED CLAIMS.

67. Solely with respect to any and all RELEASED CLAIMS, upon FINAL APPROVAL and JUDGMENT, the CLASS REPRESENTATIVES and the SETTLEMENT CLASS shall expressly waive and relinquish, to the extent permitted by law, the provisions, rights, and benefits of Section 1542 of the California Civil Code and any and all provisions, rights, and benefits of any similar statute or law of California or of any other jurisdiction as to all known or unknown claims against the RELEASED PARTIES. Section 1542 provides:

A general release does not extend to claims that the creditor or releasing party [in this case, each SETTLEMENT CLASS MEMBER] does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party [in this case, MEF and each and every ME LOCATION].

To the extent that California law or other similar federal or state law may apply, the CLASS REPRESENTATIVES and the SETTLEMENT CLASS hereby agree that the provisions of Section 1542 and all such similar federal or state laws, rights, rules, or legal principles, to the

extent they are found to be applicable herein, are hereby knowingly and voluntarily waived and relinquished by the CLASS REPRESENTATIVES and the SETTLEMENT CLASS in connection with this release of the RELEASED CLAIMS.

68. The CLASS REPRESENTATIVES and the SETTLEMENT CLASS expressly agree that this release is, and may be raised as, a complete defense to and precludes any claim, action, or proceeding encompassed by the release against the RELEASED PARTIES. It is the intention of the CLASS REPRESENTATIVES in executing this release on behalf of themselves and the SETTLEMENT CLASS to fully, finally, and forever settle and release all matters and all claims relating to the RELEASED CLAIMS in every way.

69. Without limiting the foregoing, nothing in this AGREEMENT shall release, preclude, or limit any claim or action by the PARTIES to enforce the terms of this AGREEMENT.

70. To the fullest extent permitted by law, the CLASS REPRESENTATIVES and the SETTLEMENT CLASS MEMBERS agree not to commence or participate in any claim, demand, grievance, action, or other proceeding against any of the RELEASED PARTIES based on, concerning, or arising out of any of the RELEASED CLAIMS. CLASS COUNSEL represents and warrants that none of CLASS COUNSEL, Finkelstein & Krinsk LLP, any affiliate of the foregoing, or any employee or other person associated with any of the foregoing (collectively, "F&K") (a) are knowingly, after reasonable due inquiry, representing any person who has any potential claim against MEF, any ME LOCATION, and/or any ROARK ENTITY and/or who has expressed an interest or intent to assert, file, and/or pursue any potential claim against MEF, any MEF LOCATION, and/or any ROARK ENTITY; (b) are aware, after reasonable due inquiry, of any person who has any potential claim against MEF, any ME

LOCATION, and/or any ROARK ENTITY, and/or who has expressed an interest or intent to assert, file, and/or pursue any potential claim against MEF, any ME LOCATION, and/or any ROARK ENTITY; (c) currently intend or expect to bring any claim on behalf of any person or entity against MEF, any ME LOCATION, and/or any ROARK ENTITY; (d) anticipate or intend to engage in any advertising or other direct or indirect solicitation through social media or otherwise of any person for the purpose of pursuing or assisting other counsel to pursue any claim against MEF, any ME LOCATION, and/or any ROARK ENTITY; (e) currently intend or expect to encourage, participate, or voluntarily cooperate, directly or indirectly, in any claim or lawsuit or the pursuit of any such claim or lawsuit against MEF, any ME LOCATION, and/or any ROARK ENTITY; or (f) is aware as of the date of this Agreement of any facts that F&K intends to rely upon, on behalf any person, to support a claim or legal theory against MEF, any ME LOCATION, and/or any ROARK ENTITY. The PARTIES intend this representation and warranty to be a material term of this AGREEMENT.

XIV. SCHEDULE OF EVENTS

71. Based upon the foregoing, the PARTIES anticipate the following schedule related to PRELIMINARY APPROVAL and FINAL APPROVAL of this AGREEMENT and performance of this AGREEMENT:

<u>Event Date</u>	<u>Event</u>
TBD	The CLASS REPRESENTATIVES file their motion for PRELIMINARY APPROVAL.
10 days following filing of the CLASS REPRESENTATIVES' motion for PRELIMINARY APPROVAL	ADMINISTRATOR serves CAFA Notice.
5 business days following PRELIMINARY APPROVAL	ADMINISTRATOR launches SETTLEMENT WEBSITE.

<u>Event Date</u>	<u>Event</u>
30 days following PRELIMINARY APPROVAL	Last day for MEF to provide the ADMINISTRATOR with the list of CLASS MEMBERS to whom to provide CLASS NOTICE.
35 days before the OBJECTION/EXCLUSION DEADLINE	Last day for CLASS COUNSEL to file a request for a FEE AND EXPENSE AWARD and/or a request for an INCENTIVE FEE AWARD.
60 days following the NOTICE DATE	The VOUCHER REQUEST DEADLINE and OBJECTION/EXCLUSION DEADLINE.
15 days following the OBJECTION/EXCLUSION DEADLINE	Last day for the ADMINISTRATOR to provide the list of CLASS MEMBERS who submitted valid exclusion requests to CLASS COUNSEL and MEF's COUNSEL, and Last day for CLASS COUNSEL to file with the COURT and serve upon MEF's COUNSEL any written objections received.
45 days following the OBJECTION/EXCLUSION DEADLINE	Last day for the PARTIES to submit any motion and supporting documentation/evidence to the COURT in support of FINAL APPROVAL (including evidence by the ADMINISTRATOR concerning the effectiveness of CLASS NOTICE).
14 days before FINAL APPROVAL HEARING	Deadline to file a Notice of Intention to Appear at FINAL APPROVAL HEARING.
To be set by the COURT	FINAL APPROVAL HEARING.
20 business days following the EFFECTIVE DATE	MEF to pay any FEE AND EXPENSE AWARD and any INCENTIVE AWARD consistent with Paragraphs 57 and 63
60 days following the EFFECTIVE DATE	VOUCHER DATE.
180 days following the VOUCHER DATE	Last day for FORMER MEMBERS to use VOUCHERS.
200 days following the EFFECTIVE DATE	ADMINISTRATOR must remove SETTLEMENT WEBSITE and transfer domain name to MEF.
210 days following the EFFECTIVE DATE	ADMINISTRATOR to destroy any CLASS MEMBERS' personal identifiable information received from MEF.

XV. NONDISPARAGEMENT

72. Each of the CLASS REPRESENTATIVES and CLASS COUNSEL agrees that he, she, or they will not disparage MEF or any of the RELEASED PARTIES in any manner potentially harmful to them or their business, business reputation, or personal reputation. This includes, but is not limited to, publishing disparaging statements (whether anonymously or for ascription) on the internet, in blogs, in chat rooms, in emails, or in any other electronic means of transmitting information, regardless of manner and/or method.

XVI. CONFIDENTIALITY

73. Any information and documentation provided to CLASS COUNSEL, the ADMINISTRATOR, or the SETTLEMENT CLASS by MEF is confidential and cannot be provided to third parties or used for any purpose other than effectuating the terms of this AGREEMENT absent MEF's prior express written consent obtained in each instance.

74. The PARTIES and their counsel agree to keep the existence and contents of this AGREEMENT confidential until the motion for PRELIMINARY APPROVAL is filed; provided, however, that this Paragraph shall not prevent the disclosure of such information prior to the filing of such motion to (1) regulators, rating agencies, mediators, independent accountants, advisors, financial analysts, agents, existing or potential insurers or reinsurers, CLASS REPRESENTATIVES, CLASS MEMBERS requesting information, experts, courts, co-counsel, any existing or potential ME LOCATION, any existing or potential investor of or any existing or potential lender to any of the RELEASED PARTIES, the ADMINISTRATOR as may reasonably be required to effectuate the terms and conditions of this AGREEMENT, and/or as otherwise required to comply with any applicable law or regulation, (2) any person or entity to whom the PARTIES agree in writing disclosure must be made to effectuate the terms of this

AGREEMENT, and/or (3) by MEF, any ME LOCATION, or any of the RELEASED PARTIES as necessary for any reasonable commercial purpose.

75. If contacted by a CLASS MEMBER, CLASS COUNSEL may provide advice or assistance regarding any aspect of the SETTLEMENT requested by the CLASS MEMBER. At no time shall any of the PARTIES or their counsel or their agents seek to solicit CLASS MEMBERS or any other persons to submit written objections to the SETTLEMENT, requests for exclusion from the SETTLEMENT, or to encourage CLASS MEMBERS or any persons to appeal from the PRELIMINARY APPROVAL ORDER and/or the FINAL APPROVAL ORDER and JUDGMENT.

76. The CLASS REPRESENTATIVES and CLASS COUNSEL agree that the discussions and the information exchanged in the course of negotiating this SETTLEMENT and AGREEMENT are confidential and were made available on the condition that they not be disclosed to third parties (other than experts or consultants retained by the CLASS COUNSEL in connection with the ACTION), that they not be the subject of public comment, and that they not be publicly disclosed or used by the CLASS REPRESENTATIVES or CLASS COUNSEL in any way in the ACTION should it not settle or in any other proceeding.

77. The CLASS REPRESENTATIVES and CLASS COUNSEL agree that they will not contact the press, issue any press releases, give interviews, or comment upon this SETTLEMENT to any person other than to the CLASS MEMBERS in any way other than as provided in this AGREEMENT, on the SETTLEMENT WEBSITE, or as otherwise agreed upon by MEF in writing. After the PRELIMINARY APPROVAL ORDER, CLASS COUNSEL can display a link to the SETTLEMENT WEBSITE on their firm website and reference this SETTLEMENT as evidence of CLASS COUNSEL's professional qualifications in resumes,

curriculum vitae, and future motions for appointment as class counsel pursuant to Fed. R. Civ. P. 23.

XVII. CONFIDENTIAL DOCUMENTS

78. All of the PARTIES agree to cooperate and to work with one another to protect any confidential materials produced in discovery in the ACTION. This includes, but is not limited to, promptly complying with all aspects of the Stipulated Protective Order (Dkt. 78) regarding such information and stipulating that any confidential information submitted, whether in the past or in the future, to any court in the ACTION will be sealed.

79. CLASS COUNSEL are entitled to retain an archival copy of the entire file (paper and/or electronic), including all pleadings, motion papers, transcripts, legal memoranda, correspondence, discovery, expert reports and exhibits thereto, or attorney work product, even if such materials contain material designated as confidential, provided CLASS COUNSEL complies with all aspects of the Stipulated Protective Order (Dkt. 78). Said archival copy will not be used or disclosed for any purpose other than: (1) in this ACTION (including the SETTLEMENT approval process and/or SETTLEMENT administration), (2) in responding to or defending against any objection or complaint by or on behalf of any SETTLEMENT CLASS MEMBER as to the adequacy of CLASS COUNSEL's representation of the SETTLEMENT CLASS, or (3) in response to a court order or legal process requiring disclosure of such materials. Prior to disclosing any such materials to any third party, CLASS COUNSEL will provide written notice to MEF's COUNSEL as early as feasible, and no later than three (3) business days after receipt of such order or legal process, so as to permit MEF to seek appropriate relief and otherwise comply with all aspects of the Stipulated Protective Order (Dkt. 78).

80. CLASS COUNSEL shall destroy the foregoing electronic and paper archival copy on the date six (6) years after the EFFECTIVE DATE, unless during that time period a SETTLEMENT CLASS MEMBER or other person entitled to or potentially entitled to relief under this SETTLEMENT, or a legally authorized representative acting on their behalf, asserts any claim of malpractice or otherwise challenges the adequacy of CLASS COUNSEL's representation of the SETTLEMENT CLASS in this ACTION, in a lawsuit, or otherwise. If such a claim is asserted, CLASS COUNSEL may retain an archival copy until the date (i) six (6) years after the EFFECTIVE DATE, (ii) such claim is finally resolved, or (iii) five (5) years after the assertion of such a claim, whichever is latest, provided CLASS COUNSEL otherwise complies with all aspects of the Stipulated Protective Order (Dkt. 78).

81. The PARTIES agree that if there is anything inconsistent in Section XVII of this AGREEMENT and the Stipulated Protective Order (Dkt. 78), the provisions of the Stipulated Protective Order (Dkt. 78) shall control.

XVIII. AGREEMENT TO COOPERATE

82. All of the PARTIES, their successors and assigns, and their attorneys agree to work reasonably and cooperatively in order to obtain COURT approval of this AGREEMENT and to effectuate the SETTLEMENT, and to provide Declarations to facilitate the Court's PRELIMINARY APPROVAL and FINAL APPROVAL of the SETTLEMENT.

83. The PARTIES further agree to cooperate in the SETTLEMENT administration process and implementation of the SETTLEMENT and to make all reasonable efforts to control and minimize the costs and expenses incurred in the administration and implementation of the SETTLEMENT.

XIX. WARRANTIES

84. Each signatory to this AGREEMENT hereby warrants that (s)he has the authority to execute this AGREEMENT and thereby bind the respective PARTY. The CLASS REPRESENTATIVES each warrant and represent that (s)he is the sole and lawful owner of all rights, title, and interest in and to all of the RELEASED CLAIMS and that (s)he has not heretofore voluntarily, by operation of law or otherwise, sold, assigned, or transferred or purported to sell, assign, or transfer to any other person or entity any RELEASED CLAIMS or any part or portion thereof.

XX. BINDING EFFECT OF THE AGREEMENT

85. The terms of this AGREEMENT shall inure to the benefit of, and be binding upon, the PARTIES and their respective heirs, legal representatives, executors, administrators, successors, and assigns upon the EFFECTIVE DATE.

XXI. INTEGRATION CLAUSE

86. This AGREEMENT and its attachments constitute the entire agreement of the PARTIES with respect to the matters discussed herein and supersede all prior or contemporaneous oral or written understandings, negotiations, agreements, statements, or promises. In executing this AGREEMENT, the PARTIES acknowledge that they have not relied upon any oral or written understandings, negotiations, agreements, statements, or promises that are not set forth in this AGREEMENT. The PARTIES also acknowledge and agree that each has been represented by its own counsel with respect to the negotiating and drafting of this SETTLEMENT and this AGREEMENT.

87. All exhibits to this AGREEMENT as set forth herein are integrated herein and are to be considered terms of this AGREEMENT as if fully set forth herein.

XXII. MODIFICATIONS

88. This AGREEMENT may not be amended or modified in any respect except by a written instrument duly executed by all of the PARTIES to this AGREEMENT or their counsel.

89. The PARTIES agree that nonmaterial amendments or modifications to this AGREEMENT may be made in writing after PRELIMINARY APPROVAL without the need to seek the COURT's approval.

90. If the COURT indicates, prior to PRELIMINARY APPROVAL or FINAL APPROVAL, that the SETTLEMENT will not be approved unless certain changes are made, the PARTIES will attempt in good faith to reach an agreement as to any such changes prior to withdrawing from this AGREEMENT. However, if no such agreement can be reached within thirty (30) days after the COURT indicates that the SETTLEMENT will not be approved unless certain changes are made, then the CLASS REPRESENTATIVES or MEF may terminate and withdraw from this AGREEMENT. If this AGREEMENT is terminated under such circumstances, the CLASS REPRESENTATIVES, MEF, and the CLASS MEMBERS shall be deemed to be in the same position as existed prior to its execution, with the same *status quo ante* rights and interests as they may have had absent the entry by MEF and the CLASS REPRESENTATIVES into this AGREEMENT and any and all other understandings and agreements between the PARTIES and their respective counsel relating to the SETTLEMENT shall be deemed to be null and void and of no force and effect. Upon termination under this Paragraph of the AGREEMENT, within thirty (30) days of the AGREEMENT's termination, the PARTIES will file a joint stipulation regarding a revised proposed schedule for briefing on the Plaintiffs' motion for class certification and for class-related discovery, including the matters previously addressed in the Court's June 13, 2017 Order (Doc. 71).

91. Without further order of the COURT, the PARTIES may agree in writing to reasonable extensions of time to carry out any of the provisions of this AGREEMENT or the PRELIMINARY APPROVAL ORDER.

XXIII. COUNTERPARTS

92. This AGREEMENT may be executed in one or more counterparts, each of which shall be an original, and this AGREEMENT is effective upon execution of at least one counterpart by each PARTY to this AGREEMENT.

XXIV. NO ADMISSIONS

93. If this AGREEMENT does not become effective or is cancelled, withdrawn, or terminated for any reason, it shall be deemed negotiation for settlement purposes only and will not be admissible in evidence or usable for any purposes whatsoever in the ACTION or any proceedings between the PARTIES or in any other action related to the RELEASED CLAIMS or otherwise involving the PARTIES, any ME LOCATION, or any RELEASED PARTY.

94. Nothing in this AGREEMENT may be construed as, or may be used as, an admission by the CLASS REPRESENTATIVES that any of their claims are without merit.

95. Nothing in this AGREEMENT may constitute, may be construed as, or may be used as an admission by MEF of any fault, wrongdoing, or liability whatsoever or that class certification is appropriate. MEF continues to affirmatively deny all liability and all of the claims, contentions, RELEASED CLAIMS, and each and every allegation made by the CLASS REPRESENTATIVES in the ACTION.

XXV. NO TAX ADVICE

96. Neither CLASS COUNSEL nor MEF's COUNSEL intends anything contained herein to constitute legal advice regarding the tax consequences of any amount paid hereunder nor shall it be relied upon as such.

XXVI. CONFLICTS

97. In the event of a conflict between this AGREEMENT and any other document prepared pursuant to the SETTLEMENT, the terms of this AGREEMENT supersede and control.

XXVII. WAIVER

98. Any failure by any PARTY to insist upon the strict performance by any other PARTY of any provision of this AGREEMENT shall not be deemed a waiver of any provision of this AGREEMENT and such PARTY, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this AGREEMENT.

XXVIII. CONSTRUCTION AND GOVERNING LAW

99. This AGREEMENT is a result of extensive arm's-length, bilateral negotiations between the PARTIES and has been drafted by all PARTIES such that any rule that construes ambiguities against the drafter shall have no force or effect and no provision of this AGREEMENT shall be construed in favor of or against a PARTY.

100. This AGREEMENT shall be governed by, interpreted according to, and enforced in accordance with the law of the state of California without regard to choice of law provisions.

ATTACHMENTS

EXHIBIT 1	FINAL APPROVAL ORDER
EXHIBIT 2	LONG FORM NOTICE
EXHIBIT 3	PRELIMINARY APPROVAL ORDER
EXHIBIT 4	SUMMARY NOTICE
EXHIBIT 5	TEMPLATE MEMBERSHIP AGREEMENT
EXHIBIT 6	GENERAL RELEASE FORM – BAERBEL MCKINNEY-DROBNIS
EXHIBIT 7	GENERAL RELEASE FORM – CAMILLE BERLESE
EXHIBIT 8	GENERAL RELEASE FORM – JOSEPH PICCOLA

DATED: 2/25, 2019


BAERBEL MCKINNEY-DROBNIS

CAMILLE BERLESE

JOSEPH PICCOLA

MESSAGE ENVY FRANCHISING, LLC

By:

Its:

DATED: 2.27, 2019

BAERBEL MCKINNEY-DROBNIS

Camille Berlese

CAMILLE BERLESE

JOSEPH PICCOLA

MASSAGE ENVY FRANCHISING, LLC

By:

Its:

DATED: 3-6, 2019

BAERBEL MCKINNEY-DROBNIS

CAMILLE BERLESE

Joseph B. Piccola

JOSEPH PICCOLA
B

MESSAGE ENVY FRANCHISING, LLC

By:

Its:

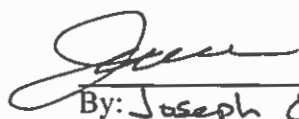
DATED: 3.11, 2019

BAERBEL MCKINNEY-DROBNIS

CAMILLE BERLESE

JOSEPH PICCOLA

MESSAGE ENVY FRANCHISING, LLC



By: Joseph C. Magnacca

Its:

EXHIBIT 1

1 FINKELSTEIN & KRINSK LLP
Jeffrey R. Krinsk (SBN 109234)
2 jrk@classactionlaw.com
Trenton R. Kashima (SBN 291405)
3 trk@classactionlaw.com
550 C Street, Suite 1760
4 San Diego, CA 92101
Telephone: 619-238-1333
5 Facsimile: 619-238-5425
Attorneys for Plaintiffs

6 Attorneys for Plaintiffs
7

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

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Baerbel McKinney-Drobnis, Joseph B. Piccola,
and Camille Berlese, individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

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

Defendants.

CASE NO. 3:16-CV-6450-MMC

**[PROPOSED] ORDER ON CLASS
REPRESENTATIVES' MOTION FOR
FINAL APPROVAL OF CLASS
ACTION SETTLEMENT**

Date:

Time:

Courtroom: 7 – 19th Floor

Judge: Hon. Maxine M. Chesney

Filed/Lodged Herewith:

- 1.
- 2.

1 **ORDER OF FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

2 On _____, 2019, this Court entered its Order [Dkt. __] preliminarily approving the
3 class action settlement set forth in the Stipulation of Class Action Settlement and Release (the
4 “AGREEMENT”) finding that the settlement appeared fair, adequate, and reasonable, free of
5 collusion or indicia of unfairness, and within the range of likely judicial approval thereby
6 warranting notice to the class. The Court also conditionally certified the CLASS pursuant to Rule
7 23(e) of the Federal Rules of Civil Procedure.

8 Currently pending before the Court is the Motion for Final Approval of the Class Action
9 Settlement and Entry of Final Judgment [Dkt. ____] filed by the CLASS REPRESENTATIVES
10 Baerbel McKinney-Drobnis, Camille Berlese, and Joseph Piccola (collectively, the “CLASS
11 REPRESENTATIVES”). The CLASS REPRESENTATIVES and Defendant Massage Envy
12 Franchising, LLC (“MEF”) are collectively referred to herein as “the PARTIES.” Also pending
13 before the COURT is the CLASS REPRESENTATIVES’ Motion for an Award of Attorneys’
14 Fees, Expenses and Service Awards [Dkt. ____]. Due and adequate notice having been given to
15 the CLASS of the SETTLEMENT, the AGREEMENT, and of the FINAL APPROVAL
16 HEARING as required in the PRELIMINARY APPROVAL ORDER [Dkt. __] and the COURT
17 having considered all papers, including all objections filed, having heard oral argument on
18 _____, 2019, and otherwise being fully informed and good cause appearing:

19 IT IS HEREBY ORDERED THAT:

20 1. This FINAL APPROVAL ORDER incorporates the AGREEMENT, as submitted
21 to the COURT with the Motion for Preliminary Approval of Class Action Settlement, filed ____,
22 2019 [Dkt. ____]. The capitalized terms used in this FINAL APPROVAL ORDER shall have the
23 meanings and/or definitions given to them in the AGREEMENT unless specified herein to the
24 contrary.

25 2. This COURT has jurisdiction over the subject matter of this ACTION, over the
26 CLASS, and over those persons and entities undertaking affirmative obligations under the
27 AGREEMENT.

1 3. The COURT finds that the AGREEMENT is eminently reasonable as it will
2 provide the SETTLEMENT CLASS MEMBERS with substantial and immediate relief and
3 allows the SETTLEMENT CLASS MEMBERS to avoid the risk, expense, complexity, and likely
4 duration of further litigation.

5 4. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the COURT hereby
6 certifies for settlement purposes only the CLASS, which it previously conditionally certified,
7 which includes:

8 All Members of an ME LOCATION since November 4, 2006, whose monthly
9 membership fee has been increased above the amount stated in their Membership
10 Agreement (“Fee Increase”) prior to date of the PRELIMINARY APPROVAL
ORDER.

11 The Court further certifies for settlement purposes only the SETTLEMENT CLASS,
12 which is comprised of all CLASS MEMBERS except (i) those ___ individuals, identified on
13 **EXHIBIT 1** hereto, who properly excluded themselves by submitting a timely request for
14 exclusion in accordance with the requirements set forth in the AGREEMENT and CLASS
15 NOTICE; (ii) any person, firm, trust, corporation, or other entity affiliated with MEF; and
16 (iii) any judge, justice, judicial officer, or judicial staff of the Court.

17 5. The COURT finds on the record before it that the SETTLEMENT CLASS
18 satisfies the requirements for class certification under Federal Rules of Civil Procedure 23(a) and
19 23(b)(3), for settlement purposes only, because (a) the SETTLEMENT CLASS MEMBERS are
20 so numerous that joinder of all SETTLEMENT CLASS MEMBERS is impracticable; (b) there
21 are questions of law and fact common to the SETTLEMENT CLASS; (c) the named CLASS
22 REPRESENTATIVES’ claims are typical of the claims of the SETTLEMENT CLASS members;
23 (d) the named CLASS REPRESENTATIVES and CLASS COUNSEL have adequately
24 represented and will continue to adequately represent and protect the interests of the
25 SETTLEMENT CLASS for purposes of the SETTLEMENT; and (e) class-wide treatment of the
26 disputes raised in the ACTION is superior to other available methods for adjudicating the
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1 controversy before this COURT at this time. Manageability issues do not prevent certification for
2 settlement purposes only because there will be no trial.

3 6. The COURT hereby finds that the individual direct CLASS NOTICE given to the
4 CLASS via email or First Class U.S. Mail (i) fairly and accurately described the ACTION and the
5 proposed SETTLEMENT; (ii) provided sufficient information so that the CLASS MEMBERS
6 were able to decide whether to accept the benefits offered by the SETTLEMENT, exclude
7 themselves from the SETTLEMENT, or object to the SETTLEMENT; (iii) adequately described
8 the manner in which CLASS MEMBERS could submit a VOUCHER REQUEST under the
9 SETTLEMENT, exclude themselves from the SETTLEMENT, or object to the SETTLEMENT
10 and/or appear at the FINAL APPROVAL HEARING; and (iv) provided the date, time, and place
11 of the FINAL APPROVAL HEARING. The COURT hereby finds that the CLASS NOTICE was
12 the best notice practicable under the circumstances and complied fully with Federal Rule of Civil
13 Procedure Rule 23, due process, and all other applicable laws.

14 7. The COURT hereby finds there were very few timely written objections and
15 requests for exclusion from the SETTLEMENT. Only ___ objections and ___ opt-outs were
16 received, out of _____ CLASS MEMBERS. The small number of opt-outs and objections
17 indicates that the vast majority of the CLASS found the SETTLEMENT and the AGREEMENT
18 to be fair, reasonable, and adequate. Furthermore, the PARTIES demonstrated that none of the
19 asserted bases for objection are valid and, accordingly, any and all objections to the
20 SETTLEMENT and the AGREEMENT are hereby overruled.

21 8. The COURT further finds that a full and fair opportunity has been afforded to the
22 CLASS MEMBERS to opt out of and to object to the SETTLEMENT and to participate in the
23 hearing convened to determine whether the SETTLEMENT should be given final approval.
24 Accordingly, the COURT hereby determines that SETTLEMENT CLASS MEMBERS are bound
25 by this FINAL APPROVAL ORDER.

26 9. The COURT hereby finds that the SETTLEMENT set forth in the AGREEMENT
27 is in all respects fair, reasonable, and adequate and in the best interests of the SETTLEMENT
28

1 CLASS, taking into account that (a) the CLASS REPRESENTATIVES and CLASS COUNSEL
2 have adequately represented the CLASS; (b) the SETTLEMENT was negotiated at arm's length;
3 (c) the relief provided to the CLASS is adequate, in light of the costs, risks, and delay of trial and
4 appeal; the effectiveness of the proposed method of distributing relief to the CLASS; and the
5 terms of the proposed Award of Attorneys' Fees, Expenses and Service Awards; and (d) the
6 SETTLEMENT treats CLASS members equitably relative to each other. In addition, the COURT
7 finds that there was no collusion in connection with the SETTLEMENT, that the SETTLEMENT
8 was the product of informed and arm's-length negotiations among competent counsel, and that
9 the record is sufficiently developed to have enabled the CLASS REPRESENTATIVES and MEF
10 to adequately evaluate and consider their respective positions. Accordingly, the Court hereby
11 finally and unconditionally approves the SETTLEMENT set forth in the AGREEMENT.

12 10. The CLASS REPRESENTATIVES and each of the SETTLEMENT CLASS
13 MEMBERS hereby expressly and fully release and forever discharge the RELEASED PARTIES
14 and further expressly agree that they shall not now or thereafter institute, maintain, or assert
15 against the RELEASED PARTIES, either directly or indirectly, on their own behalf, or on behalf
16 of any class or other person or entity, in any action, regulatory action, arbitration, or court or other
17 proceeding of any kind, any causes of action, claims, damages, equitable, legal, and
18 administrative relief, interest, demands, rights, or remedies, including, without limitation, claims
19 for injunctive relief, declaratory relief, damages, mental anguish, unpaid costs, penalties,
20 liquidated damages, punitive damages, interest, attorneys' fees, litigation costs, restitution,
21 disgorgement, or equitable relief against the RELEASED PARTIES, whether based on federal,
22 state, or local law, statute, ordinance, regulation, the Constitution, contract, common law, or any
23 other source, that relate to the RELEASED CLAIMS as set forth in the AGREEMENT.

24 11. The CLASS REPRESENTATIVES and each of the SETTLEMENT CLASS
25 MEMBERS hereby expressly waive and relinquish, to the extent permitted by law, the
26 provisions, rights, and benefits of Section 1542 of the California Civil Code and any and all
27 provisions, rights, and benefits of any similar statute or law of California or of any other
28

1 jurisdiction as to all known or unknown claims as against the RELEASED PARTIES with respect
2 to the RELEASED CLAIMS.

3 12. The RELEASED PARTIES may file this FINAL APPROVAL ORDER in any
4 other action that may be brought against them to support a defense or counterclaim based on
5 principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar or
6 reduction, or any other theory of claim preclusion or issue preclusion or similar defense or
7 counterclaim.

8 13. In its PRELIMINARY APPROVAL ORDER [Dkt. ____], the Court appointed and
9 designated The Garden City Group, Inc. to act as the SETTLEMENT ADMINISTRATOR. The
10 Garden City Group, Inc. shall continue to act as the SETTLEMENT ADMINISTRATOR to
11 perform those duties and responsibilities that remain under the AGREEMENT and this FINAL
12 APPROVAL ORDER.

13 14. CLASS COUNSEL are hereby awarded the sum of \$_____ in
14 attorneys' fees and reimbursement of expenses, which sum the COURT finds to be fair and
15 reasonable and fairly compensates them for their contributions to the prosecution of this ACTION
16 and the SETTLEMENT. The payment of attorneys' fees and costs shall be pursuant to the terms
17 of the AGREEMENT.

18 15. Each of the CLASS REPRESENTATIVES is hereby awarded an INCENTIVE
19 AWARD in the amount of \$_____, which the COURT finds to be fair and reasonable and in
20 recognition of their efforts in prosecuting the action and the SETTLEMENT. Payment of the
21 INCENTIVE AWARDS shall be pursuant to the terms of the AGREEMENT.

22 16. Within sixty (60) days after the EFFECTIVE DATE of the SETTLEMENT, as
23 defined and in accordance with the AGREEMENT, the SETTLEMENT ADMINISTRATOR
24 shall issue via email a VOUCHER to each SETTLEMENT CLASS MEMBER who timely
25 submitted a valid VOUCHER REQUEST in accordance with the instructions in the
26 AGREEMENT and the CLASS NOTICE, for use consistent with the AGREEMENT's terms.

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1 The email containing the VOUCHER and the VOUCHER shall conspicuously state the
2 VOUCHER's expiration date.

3 17. Within five (5) days after the EFFECTIVE DATE of the SETTLEMENT, the
4 SETTLEMENT ADMINISTRATOR shall disclose on the SETTLEMENT WEBSITE that (i) the
5 SETTLEMENT is final and its EFFECTIVE DATE; (ii) the date by which the VOUCHERS will
6 be emailed to SETTLEMENT CLASS MEMBERS who timely submitted a valid VOUCHER
7 REQUEST in accordance with the instructions in the AGREEMENT and the CLASS NOTICE;
8 and (iii) the date on which the issued VOUCHERS shall expire.

9 18. As of the date of the PRELIMINARY APPROVAL ORDER, the SETTLEMENT
10 CLASS MEMBERS are bound by the new template MEMBERSHIP AGREEMENT attached
11 hereto as **EXHIBIT 1**. This new MEMBERSHIP AGREEMENT includes a provision that ME
12 LOCATIONS may increase the MEMBER's stated monthly MEMBERSHIP fee following the
13 initial term only by providing at least forty-five (45) days' advance written notice to the
14 MEMBER's email address on record with the MEMBER's HOME CLINIC or to the
15 MEMBER's last physical address known to the MEMBER's HOME CLINIC, and that such
16 notice shall be effective on the date sent. Forty-five (45) days' advance written notice will
17 allow the CLASS MEMBERS a reasonable opportunity to cancel his/her MEMBERSHIP
18 before incurring a noticed price increase. MEF shall keep this portion of the template
19 MEMBERSHIP AGREEMENT attached hereto as **EXHIBIT 1** in force as a system standard
20 for at least two (2) years after the SETTLEMENT's EFFECTIVE DATE.

21 21. Nothing in this FINAL APPROVAL Order shall restrict MEF or any ME
22 LOCATION from otherwise modifying the terms of a SETTLEMENT CLASS MEMBERS'
23 MEMBERSHIP or the template MEMBERSHIP AGREEMENT attached hereto as **EXHIBIT 1**,
24 including during the two years MEF shall keep the portion of that agreement as a system standard
25 as described in Paragraph 20 of this FINAL APPROVAL ORDER, provided it does not decrease
26 the forty-five (45) days' advance written notice described in Paragraph 20 of this FINAL
27 APPROVAL ORDER.

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1 22. In the event that the SETTLEMENT does not become effective in accordance with
2 the AGREEMENT's terms, then this FINAL APPROVAL ORDER shall be rendered null and
3 void and be vacated, the AGREEMENT and all orders entered in connection therewith shall be
4 rendered null and void *ab initio*, and this ACTION shall be reinstated as it existed prior to the
5 making of the AGREEMENT. In that case, all communications, documents, filings, negotiations,
6 and other actions taken to negotiate and pursue settlement through the AGREEMENT, including
7 the AGREEMENT itself, shall be considered confidential settlement communications that cannot
8 be used as evidence for any purposes whatsoever in the ACTION or any proceedings between the
9 PARTIES or in any other action related to the RELEASED CLAIMS or otherwise involving the
10 PARTIES, any ME LOCATION, or any RELEASED PARTY.

11 23. Nothing in this FINAL APPROVAL ORDER or the AGREEMENT shall be
12 construed as an admission or concession by any Party. The AGREEMENT and this resulting
13 FINAL APPROVAL ORDER simply represent a compromise of disputed allegations.

14 24. All PARTIES to the AGREEMENT and CLASS COUNSEL are directed to carry
15 out their obligations under the AGREEMENT.

16 25. Without impacting the finality of this FINAL APPROVAL ORDER, the COURT
17 hereby retains continuing jurisdiction to assure compliance with all terms of this SETTLEMENT
18 in accordance with the AGREEMENT and this FINAL APPROVAL ORDER.

19 26. CLASS COUNSEL shall serve a copy of this FINAL APPROVAL ORDER on all
20 named PARTIES and their counsel, the Objectors and any of their counsel, and the
21 SETTLEMENT ADMINISTRATOR within seven (7) days of receipt, and the SETTLEMENT
22 ADMINISTRATOR shall post a copy of this Final Order on the SETTLEMENT WEBSITE
23 within five (5) days of receipt.

24 IT IS SO ORDERED

25 DATED: ____ __, 2019

26 _____
27 Hon. Maxine M. Chesney
28 JUDGE OF THE UNITED STATES
 DISTRICT COURT

EXHIBIT 2

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

IF YOU WERE A MEMBER OF A MASSAGE ENVY SPA AT ANY TIME BETWEEN NOVEMBER 4, 2006, AND [PRELIMINARY APPROVAL DATE], THIS CLASS ACTION SETTLEMENT MAY AFFECT YOUR RIGHTS.

A federal court authorized this Notice. This isn't a solicitation from a lawyer and you aren't being sued.

- A proposed Settlement has been reached in a nationwide class action lawsuit that challenges increases in monthly Massage Envy Spa membership fees. Defendant Massage Envy Franchising, LLC (“MEF”) denies the allegations or that it did anything wrong. The Court has not decided who is right in the lawsuit but has preliminarily approved the proposed Settlement.
- If you were a member of a Massage Envy Spa at any time between November 4, 2006, and [DATE OF PRELIMINARY APPROVAL], and your monthly membership fees were increased during that time, you are a Class Member and are eligible to submit a request to receive a voucher that can be used to purchase retail products, massage sessions, enhancements, and/or facial sessions from a Massage Envy Spa. To receive a voucher, you must submit a voucher request at www.messagefeesettlement.com/ [REDACTED] by [NOTICE DATE + 60 DAYS], as explained below.
- If you were a member of a Massage Envy Spa as of [DATE OF PRELIMINARY APPROVAL], you will be bound by a new membership agreement as explained below, unless you exclude yourself from the Settlement, as is also explained below.
- Your legal rights are affected whether you act or do not act. Read this Notice and the information on this settlement website carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:

<p>SUBMIT A TIMELY VOUCHER REQUEST</p>	<p>If you were a member of any Massage Envy Spa in the United States at any time between November 4, 2006 and [DATE OF PRELIMINARY APPROVAL] and your monthly membership fees were increased during that time, this is the only way to receive a voucher under the Settlement. If you were a member of a Massage Envy Spa on [DATE OF PRELIMINARY APPROVAL], you also will be bound by the terms of the new membership agreement described below, unless you decide to exclude yourself from the Settlement.</p>
<p>EXCLUDE YOURSELF FROM THE SETTLEMENT</p>	<p>Get no benefit. But you will not be bound by the Settlement.</p>
<p>OBJECT</p>	<p>Write to the Court about why you object to the Settlement.</p>
<p>GO TO A HEARING</p>	<p>Ask to speak to the Court about the fairness of the Settlement.</p>
<p>DO NOTHING</p>	<p>Give up your rights to sue and be bound by the Settlement. You will not receive a voucher. If you were a member of a Massage Envy Spa on [DATE OF PRELIMINARY APPROVAL], you also will be bound by the terms of the new membership agreement described below.</p>

- These rights and options—**and the deadlines to exercise them**—are explained in this Notice.
- The Court overseeing this lawsuit still has to decide whether to approve the Settlement. Settlement vouchers will be available only if the Court approves the Settlement and after potential appeals, if any, are resolved. Please be patient and check back to www.massagefeesettlement.com to find out when any requested vouchers may be available. However, beginning [DATE OF PRELIMINARY APPROVAL], if you were a member of a Massage Envy Spa as of that date and do not exclude yourself from the Settlement as described below, you will be bound by a new membership agreement available at [hyperlink], the terms of which are further described below.

This notice summarizes the proposed settlement. For the precise terms and conditions of the Settlement, please see the Settlement Agreement available at [HYPERLINK], by contacting class counsel at the address provided below, by accessing the Court docket in this case, for a fee, through the Court’s Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov>, or by visiting the office of the Clerk of the Court for the United States District Court for the Northern District of California, 450 Golden Gate Avenue, San Francisco, CA 94102, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

Basic Information

WHY DID I GET NOTICE OF THE SETTLEMENT?

You received Notice of this Settlement because you were (or are) a member of a Massage Envy Spa in the United States between November 4, 2006, and [DATE OF PRELIMINARY APPROVAL], and records indicate that your monthly membership fees may have increased during that time.

The Court sent you this Notice of the Settlement because you have a right to know about the proposed class action Settlement and all your options before the Court decides whether to approve the Settlement. If the Court approves the Settlement, and after any objections and appeals are resolved, Settlement benefits will be provided. You will be informed of the Settlement’s progress on this website.

This Notice explains the lawsuit, the Settlement, your legal rights, what Settlement benefits are available, who is eligible for them, how to get them, how to object to the Settlement, and how to exclude yourself from the Settlement and what happens if you do nothing and are a Class Member.

The Court in charge of the lawsuit is the United States District Court for the Northern District of California, and the lawsuit is known as *Baerbel McKinney-Drobnis, et al., v. Massage Envy Franchising, LLC*, Case No. 3:16-cv-06450-MMC. The individuals who sued are called Plaintiffs and Class Representatives and the company they sued, MEF, is called the Defendant.

WHAT IS THIS LAWSUIT ABOUT?

The lawsuit asserted that members of Massage Envy Spas signed membership agreements that prohibited increases in their monthly membership fees and that Class Members were harmed when their monthly membership fees were nonetheless increased. The lawsuit asserts claims for (1) Breach of Contract and the Covenant of Good Faith and Fair Dealing; (2) Intentional Interference with Contractual Relations; (3) Violation of the California Consumer Legal Remedies Act; (4) Violation of Cal. Business & Professions Code § 17200 for “Unlawful” Business Acts and Practices; (5) Violation of Cal. Business & Professions Code § 17200 for “Unfair” Business Acts and Practices; (6) Violation of Cal. Business & Professions

Code § 17200 for “Fraudulent” Business Acts and Practices; and (7) Declaratory Relief. MEF denies all allegations in the lawsuit or that it did anything wrong and asserts that it is the franchisor and does not own or operate any of the Massage Envy Spa(s) that you visited.

WHAT IS A CLASS ACTION AND WHO IS INVOLVED?

In a class action lawsuit, the “Class Representatives” (in this case, Baerbel McKinney-Drobnis, Joseph B. Piccola, and Camille Berlese) sued on behalf of themselves and other people who have a similar claim and are located in the United States, who are called “Class Members.” The Court in charge of the lawsuit resolves the issues for all Class Members except those who exclude themselves from the Settlement. U.S. District Judge Maxine Chesney is in charge of this lawsuit.

WHY IS THERE A SETTLEMENT?

The Court did not decide that the Class Representatives were entitled to any recovery from MEF. Instead, both sides agreed to a settlement. That way, they avoid the costs and delay of further legal proceedings and Class Members, the people affected, will get the benefits of the Settlement. The Class Representatives and their attorneys believe the Settlement is best for all Class Members.

HOW DO I KNOW IF I AM PART OF THE SETTLEMENT?

To see if you are affected by the Settlement or have a right to receive the Settlement benefits, you must determine whether you are a Class Member.

You are a Class Member if you were a member of a Massage Envy Spa at any time between November 4, 2006 and [DATE OF PRELIMINARY APPROVAL], and your monthly membership fees were increased during that time.

I’M STILL NOT SURE IF I AM INCLUDED.

If you are still not sure whether you are a Class Member, you can ask for free help. You can call 1-800-000-0000 for more information from the Settlement Administrator or review the Settlement documents on this website.

THE SETTLEMENT BENEFITS—WHAT YOU CAN GET

WHAT DOES THE SETTLEMENT PROVIDE?

The Settlement provides several forms of relief.

Vouchers. If the Court approves the Settlement and after any appeals are resolved, Class Members who submit valid voucher requests by [NOTICE DATE + 60 DAYS] will be emailed vouchers that may be redeemed at any Massage Envy Spa for retail products sold therein, massage sessions, enhancements, and/or facial sessions, as described below.

Injunctive Relief: Beginning [DATE OF PRELIMINARY APPROVAL], if you were a member of a Massage Envy Spa on that date and do not exclude yourself from the Settlement as described below, you will be bound by a new membership agreement available at [hyperlink]. This new membership agreement states, in part, that in the future Massage Envy Spas may increase a member’s stated monthly membership

fee only after the initial membership term and upon providing at least forty-five (45) days' advance written notice to the member's email address on record with the member's Massage Envy Spa and that such notice shall be effective on the date his/her notice is sent. Forty-five (45) days' advance written notice will allow you reasonable opportunity to cancel your membership before incurring a noticed price increase. MEF will keep this Injunctive Relief in force as a system standard for at least two (2) years after the Settlement becomes effective.

VOUCHER SETTLEMENT BENEFIT

The face value of the voucher for which you are eligible depends on the total amount of fee increases that you paid while a member of a Massage Envy Spa between November 4, 2006 and [DATE OF PRELIMINARY APPROVAL]. If you are a Class Member and submit a voucher request by [NOTICE DATE + 60 DAYS], you are eligible to receive a voucher in the amount corresponding to your total fee increases you paid as set forth in the table below:

SETTLEMENT VOUCHER VALUES	
Total fee increases paid by Class Member	Voucher face value
\$75.00 or less	\$10.00
\$75.01 to \$125.00	\$20.00
\$125.01 to \$175.00	\$30.00
\$175.01 to \$225.00	\$40.00
\$225.01 or more	\$50.00

Under the Settlement terms, MEF has agreed to issue vouchers with an aggregate face value of at least \$10 Million to Class Members who submit timely and valid voucher requests. If the total face value of vouchers requested by Class Members is less than \$10 Million, the Class Members who submitted timely and valid voucher requests will receive a *pro rata* increase in the value of their issued voucher such that the total face value of issued vouchers equals \$10 Million.

The issued vouchers may be redeemed only at any Massage Envy Spa for the retail products, massage sessions, enhancements, and/or facial sessions you choose. **Issued vouchers may not be redeemed for cash, may not be used to pay monthly Massage Envy Spa membership fees, and may not be used to pay tips to Massage Envy Spa employees.** Issued vouchers are fully transferrable and may be aggregated (that is, you may redeem more than one voucher at a time).

Issued vouchers will expire if not used or redeemed within one hundred and eighty (180) days of the Settlement's Effective Date. The expiration date will be conspicuously stated in the emails you receive issuing the vouchers and will additionally be posted on this website.

HOW TO REQUEST A VOUCHER SETTLEMENT BENEFIT

If you are a Class Member, to receive a voucher, you must submit the voucher request by [NOTICE DATE + 60 DAYS].

To submit a voucher request, you must enter your Unique ID Number found on the Notice you received by email or mail in the space provided on this website, or by clicking [HYPERLINK] and entering the ID Number there. If you do not have your Unique ID Number, you can call [800 number] to obtain it. For a voucher request to be valid, you must also attest that you are a Class

Member (i.e., your monthly membership fees increased over the amount specified in your membership agreement) and did not receive any discretionary accommodations when your monthly membership fees were increased (i.e., free services, delayed fee increases) from the Massage Envy Spa where you signed your membership agreement (or where you later transferred your membership).

If you would like a copy of a voucher request form to mail or email to the Settlement Administrator, you can call [800 number] to obtain it.

VOUCHER REQUESTS MUST BE SUBMITTED ON THIS WEBSITE OR VIA EMAIL NO LATER THAN [NOTICE DATE + 60 DAYS] OR, IF SUBMITTED BY MAIL TO THE SETTLEMENT ADMINISTRATOR, POSTMARKED NO LATER THAN [NOTICE DATE + 60 DAYS].

If you have any unanswered questions or require assistance in submitting a voucher request, you can contact the Settlement Administrator at [PHONE NUMBER] or Class Counsel at (619) 238-1333 (Class Counsel is further explained below). **PLEASE DO NOT CALL THE COURT, DEFENDANT, MEF's COUNSEL, OR ANY MASSAGE ENVY FRANCHISE.**

WHEN WOULD I RECEIVE MY VOUCHER SETTLEMENT BENEFIT?

The Honorable Maxine Chesney will hold a Final Approval Hearing on [DATE], to decide whether to approve the Settlement. The date of the Final Approval Hearing may change without further notice. You should check [HYPERLINK] or the Court's PACER site at <https://ecf.cand.uscourts.gov> to confirm that the date has not been changed.

If Judge Chesney approves the Settlement and there are no appeals, approximately sixty (60) days after the Judge's approval of the Settlement, vouchers will be emailed to Class Members who submitted timely and valid voucher requests. However, it is possible there may be appeals related to the final approval of the Settlement, attorneys' fees or costs awarded, or an incentive award provided to the Class Representatives (described below). It is always uncertain whether and how these appeals will be resolved and resolving them may take time, perhaps more than a year. This website will be updated to provide current Settlement information including if final approval is entered and the date thereof, the date vouchers will be issued, and the date issued vouchers will expire. Please be patient.

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS.

AM I GIVING UP ANY LEGAL RIGHTS BY STAYING IN THE CLASS?

Yes. Unless you exclude yourself from the Settlement, you will agree to release the claims described in the Settlement Agreement. You will remain a member of the Class, which means that you cannot sue, continue to sue, or be part of any other lawsuit against MEF or any Massage Envy Franchise about the factual and legal issues of this lawsuit (*i.e.*, the Released Claims described in the Settlement Agreement). It also means that the Court's orders will apply to you and legally bind you, and that you will be bound by the new membership agreement as described above. You may view the Settlement Agreement [HYPERLINK] for the full language of the legal claims you will give up if you do not exclude yourself from the Settlement.

WHAT HAPPENS IF I DO NOTHING?

If you are a Class Member and do nothing and the Court finally approves the Settlement, you will be part of the Settlement and be bound by the release of claims in this Settlement as described above. If you were a member of a Massage Envy Spa as of [DATE OF PRELIMINARY APPROVAL] and do nothing, you also will be bound by the terms of the new membership agreement as described above. If you are a Class Member and do not timely submit a voucher request as explained above, you will not receive any voucher. **To receive a voucher, you must timely submit a valid voucher request as explained above.**

Excluding Yourself from the Settlement

If you are a Class Member and do not want to receive any of the benefits of the Settlement, but you want to keep the right to sue or continue to sue MEF individually on your own behalf about the legal issues of this lawsuit or do not want to be bound by the terms of the new membership agreement if you were a member of a Massage Envy Spa on [DATE OF PRELIMINARY APPROVAL], then you must take steps to get out of the Settlement and the lawsuit. This is called excluding yourself from the Settlement (also referred to as “opting out”).

HOW DO I EXCLUDE MYSELF FROM THE SETTLEMENT?

To exclude yourself from the Settlement, you must send a written statement, either by First Class U.S. mail or email, to the Settlement Administrator saying that you want to be excluded from the lawsuit entitled *Baerbel McKinney-Drobnis, et al., v. Massage Envy Franchising, LLC*, Case No. 3:16-cv-06450-MMC. Be sure to include your name, address, telephone number, and if you are a Class Member, your unique ID Code. A sample request for exclusion is available at [HYPERLINK].

To be valid, your request for exclusion must be submitted or postmarked (if by mail) by [NOTICE DATE +60 DAYS]:

[SETTLEMENT ADMINISTRATOR]
Attn: Massage Envy Class Action Exclusions
[ADDRESS]
[EMAIL ADDRESS]

If you are a Class Member and ask to be excluded, you will not receive a voucher and cannot object to the Settlement. If you ask to be and are excluded from the Settlement, you will not be bound by the new membership agreement described above and will not be bound by anything else that happens in this lawsuit, even if the Court finally approves the Settlement.

Objecting to the Settlement

If you are a Class Member and have not excluded yourself from the Settlement, you can tell the Court that you do not agree with the Settlement or some part of it. This is called objecting to the Settlement.

HOW DO I OBJECT TO THE SETTLEMENT?

If you are a Class Member and have not excluded yourself, you can object to the Settlement or the Settlement Agreement if you do not like all or any part of it. You can give reasons why you do not think the Court should approve the Settlement. You can also object to the request by Class Counsel for attorneys’ fees and costs or any request by the Class Representatives for an incentive award. You can

provide reasons for the objection and why you think the Court should not approve the Settlement, any request for an award of attorneys' fees and costs to Class Counsel, and/or any request for an incentive award to the Class Representatives. The Court will consider your reasoning.

To object, you must state in writing that you object to the Settlement of the lawsuit, that you object to any request for an award of attorneys' fees and costs to Class Counsel, and/or that you object to any request for an incentive award to the Class Representatives. Please note that it is not sufficient to simply state that you object. Rather, in your written objection, you must include (i) your full name, current address, and, if different, the address used when your membership commenced; (ii) a statement of the position(s) and objection(s) asserted, including the factual and legal basis for each position and objection asserted; and (iii) copies of any documents supporting the position(s) and objection(s) you assert. Your objection must also state whether it applies only to you, to a specific subset of the class, or to the entire class.

To be valid, your written objection also must provide a list of any other objections that you made to any class action settlement in any court in the five (5) years prior to [PRELIMINARY APPROVAL DATE]. If you have not objected to any other class action settlement prior to [PRELIMINARY APPROVAL DATE], you must affirmatively so state in your written objection.

To be considered, any written statement of objection must be postmarked by [NOTICE DATE +60 DAYS] and submitted to Class Counsel at:

Jeffrey Krinsk
Trenton Kashima
FINKELSTEIN & KRINSK LLP
550 W. C Street, Suite 1760
San Diego, California 92101

If you fail to properly submit a written objection prior to [NOTICE DATE +60 DAYS], along with the required information and documentation set forth above, your objection will not be heard during the Final Approval Hearing and your objection(s) will be waived and the Court will not consider them when determining whether to approve the Settlement.

If you submit a written objection in accordance with these procedures, you will be entitled to all of the settlement benefits, shall be bound by all terms of the Settlement (if approved by the Court), and shall be bound by the terms of the new membership agreement described above if you were a member of a Massage Envy Spa on [DATE OF PRELIMINARY APPROVAL]. However, if you are a Class Member, you must still submit a timely and valid voucher request (as described above) to receive a voucher.

WHAT'S THE DIFFERENCE BETWEEN OBJECTING AND EXCLUDING?

Objecting is simply telling the Court that you do not like something about the Settlement. You can object only if you stay in the Class and do not exclude yourself from the Settlement. Excluding yourself from the Settlement is telling the Court that you do not want to be part of the Class, do not want to receive a voucher under the Settlement Agreement, and do not want to be bound by the new membership agreement or release described above. If you exclude yourself, you have no basis to object to the Settlement, any request by Class Counsel for attorneys' fees and costs, or any request for an incentive award by any Class Representative because this lawsuit no longer affects you.

MAY I SPEAK AT THE FINAL APPROVAL HEARING?

As explained above, Judge Chesney will hold a Final Approval Hearing on [DATE] at [TIME] at the United States District Court for the Northern District of California, San Francisco Courthouse, Courtroom 7 – 19th Floor, 450 Golden Gate Avenue, San Francisco, CA 94102, to decide whether the Settlement is fair, reasonable, and adequate and whether the Settlement (and Settlement Agreement) may be finally approved. At the Final Approval Hearing, Judge Chesney will also decide whether to award any attorneys' fees and costs to Class Counsel and whether to award an incentive payment to any of the participating Class Representatives. If there are objections, the Court will then consider them. Judge Chesney will listen to people who have asked to speak at the hearing, and if the Settlement is approved, the Court will decide whether and how much to award Class Counsel in attorneys' fees and costs and will decide whether and how much to award the Class Representatives as an incentive payment, if at all. If you are a Class Member and have not excluded yourself from the Settlement, you may attend and ask to speak at the Final Approval Hearing, but you do not have to.

At the Final Approval Hearing, Class Counsel will answer any questions that Judge Chesney may have about the Settlement. But you are welcome to attend at your own expense. If you submit an objection, you do not have to attend the Final Approval Hearing to talk about your objection. As long as you submitted your written objection on time and as explained above, the Court will consider it. You may also pay for your own lawyer to attend the Final Approval Hearing, but it is not necessary.

At or after the Final Approval Hearing, Judge Chesney will decide whether to approve the Settlement, whether and how much to award Class Counsel for attorneys' fees and costs, and whether and how much to award any of the Class Representatives as an incentive payment. We do not know how long these decisions will take.

If you intend to speak at the Final Approval Hearing, you must file with the Court a Notice of Intention to Appear before [NOTICE DATE +60 DAYS]. You must include copies of any papers, exhibits, or other evidence that you or your lawyer intend to present to the Court at the Final Approval Hearing. Your Notice of Intention to Appear must be served on all counsel as follows:

CLASS COUNSEL	MESSAGE ENVY FRANCHISING, LLC COUNSEL
Jeffrey Krinsk Trenton Kashima FINKELSTEIN & KRINSK LLP 550 W. C Street, Suite 1760 San Diego, CA 92101	Luanne Sacks Sacks, Ricketts & Case LLP 177 Post Street, Suite 650 San Francisco, CA 94108

If you fail to submit a proper Notice of Intention to Appear before [14 DAYS BEFORE FINAL APPROVAL HEARING], along with copies of any papers, exhibits, or other evidence that you or your counsel intend to present to the Court at the Final Approval Hearing, you will not be heard during the Final Approval Hearing, but any timely objection you submitted will be considered by Judge Chesney in determining whether to approve the Settlement, whether and how much to award Class Counsel for attorneys' fees and costs, and whether and how much to award any of the Class Representatives as an incentive payment.

THE LAWYERS REPRESENTING YOU

DO I HAVE A LAWYER IN THE LAWSUIT?

The Class Representatives and the Class are represented by Jeffrey R. Krinsk and Trenton Kashima of Finkelstein & Krinsk LLP. You will not be charged for their work on the lawsuit. If you want to be represented by your own lawyer, you may hire one at your own expense. You can contact Class Counsel as follows:

Jeffrey R. Krinsk
Email: jrk@classactionlaw.com
Trenton Kashima
Email: trk@classactionlaw.com
FINKELSTEIN & KRINSK LLP
550 W. C Street, Suite 1760
San Diego, California 92101
Telephone: (619) 238-1333
Facsimile: (619) 238-5425

HOW WILL THE LAWYERS BE PAID?

Class Counsel will ask the Court to approve payment to them of a maximum of \$3.3 Million in attorneys' fees and costs, and MEF has agreed not to object to Class Counsel's request provided the request does not exceed \$3.3 Million in total for attorneys' fees and costs. The Class Representatives will ask the Court to approve a payment of a maximum of \$10,000 to each of them and no more than \$30,000 in the aggregate for their respective assistance in prosecuting the lawsuit on the Class's behalf, and MEF has agreed not to object to this request provided it does not exceed \$10,000 for each of the three (3) Class Representatives or \$30,000 in the aggregate. The Court may award less than these amounts. MEF will pay any attorneys' fees and costs that the Court awards to Class Counsel up to a total of \$3.3 Million. MEF also will separately pay any incentive awards to the Class Representatives up to \$10,000 to each of them and no more than \$30,000 in the aggregate. And MEF will separately pay the reasonable costs to administer the Settlement. MEF's payments of these amounts will not diminish the Settlement benefits provided to the Class Members under the Settlement as described herein.

EXHIBIT 3

1 FINKELSTEIN & KRINSK LLP
Jeffrey R. Krinsk (SBN 109234)
2 jrk@classactionlaw.com
Trenton R. Kashima (SBN 291405)
3 trk@classactionlaw.com
550 C Street, Suite 1760
4 San Diego, CA 92101
Telephone: 619-238-1333
5 Facsimile: 619-238-5425
Attorneys for Plaintiffs

6 Attorneys for Plaintiffs

7
8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

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11 Baerbel McKinney-Drobnis, Joseph B. Piccola,
and Camille Berlese, individually and on
12 behalf of all others similarly situated,

13 Plaintiffs,

14 v.

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

16 Defendants.
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CASE NO. 3:16-CV-6450-MMC

**[PROPOSED] ORDER ON CLASS
REPRESENTATIVES' MOTION FOR
PRELIMINARY APPROVAL AND
JOINT MOTION FOR VACATUR**

1 **ORDER ON CLASS REPRESENTATIVES’ MOTION FOR PRELIMINARY**
2 **APPROVAL AND JOINT MOTION FOR VACATUR**

3 Class Representatives’ Motion for Preliminary Approval of a Class Action Settlement and
4 Proposed Settlement Class (the “Motion”) and the Parties’ Joint Motion for Vacatur (“Joint
5 Motion”) were heard on ____, 2019 (the “Motions”). In connection with the Motion and Joint
6 Motion, the Court considered the proposed class action Settlement Agreement (attached as
7 Exhibit 1 to the Declaration of Jeffrey Krinsk), the submissions of counsel, and all other papers
8 filed in this action. This Order incorporates by reference the definitions in the Settlement
9 Agreement (the “AGREEMENT”). The matter having been submitted, and good cause
10 appearing,

11 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:**

12 1. The provisions of the AGREEMENT are hereby preliminarily approved. The
13 COURT finds that the SETTLEMENT appears to be fair, adequate, and reasonable to the CLASS
14 MEMBERS, free of collusion or indicia of unfairness, and within the range of likely judicial
15 approval. The COURT also finds that the SETTLEMENT resulted from arm’s-length
16 negotiations and is sufficient to warrant the dissemination of CLASS NOTICE to the CLASS
17 MEMBERS.

18 2. Pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(3), and for purposes
19 of, and solely in connection with, the SETTLEMENT, the COURT finds that each of the
20 requirements for certification of the CLASS set forth in the CLASS REPRESENTATIVES’
21 Motion for Preliminary Approval are met and hereby conditionally certifies the CLASS
22 comprised of:

23 All Members of an ME LOCATION since November 4, 2006, whose monthly
24 membership fee has been increased above the amount stated in their Membership
25 Agreement (“Fee Increase”) prior to date of this PRELIMINARY APPROVAL
ORDER.

26 3. The COURT, for SETTLEMENT purposes only, finds that certification of the
27 CLASS satisfies the requirements under Federal Rules of Civil Procedure 23(a) and 23(b)(3). In
28 support of this ruling, the COURT conditionally and preliminarily finds that: (a) the CLASS is so

1 numerous that joinder of all members is impracticable; (b) there are questions of law and fact
2 common to the CLASS; (c) the named CLASS REPRESENTATIVES' claims are typical of the
3 claims of the CLASS; (d) the named CLASS REPRESENTATIVES and CLASS COUNSEL
4 identified below are able to adequately represent the CLASS; and (e) class-wide treatment of the
5 disputes raised in this ACTION is superior to other available methods for adjudicating the
6 controversy.

7 4. If the AGREEMENT is terminated or not consummated pursuant to the
8 AGREEMENT's terms, conditional certification of the CLASS shall be void. In that event, the
9 CLASS REPRESENTATIVES, the CLASS MEMBERS, and MEF shall be returned to their
10 respective statuses as of the date immediately prior to the execution of the AGREEMENT and
11 neither the AGREEMENT nor this PRELIMINARY APPROVAL ORDER shall have any
12 bearing on, and neither shall be admissible in connection with, (a) any issue in this ACTION or
13 any claim raised under any other state or federal law that was intended to be encompassed within
14 the ACTION; (b) whether certification or decertification would be appropriate in a non-settlement
15 context; (c) MEF's liability for any final judgment or to any CLASS MEMBER; and (d) any
16 judgment ultimately sought to be entered against MEF or otherwise.

17 5. The COURT appoints and designates Baerbel McKinney-Drobnis, Camille
18 Berlese, and Joseph Piccola as CLASS REPRESENTATIVES for the CLASS.

19 6. The COURT appoints and designates Finkelstein & Krinsk LLP as CLASS
20 COUNSEL for the CLASS. CLASS COUNSEL is located at the following address:

21 Jeffrey R. Krinsk, Esq.
22 Trenton R. Kashima, Esq.
23 Finkelstein & Krinsk LLP
24 550 West C Street, Suite 1760
San Diego, CA 92101
(619) 238-1333

25 7. The COURT approves, as to form and content, the proposed CLASS NOTICE,
26 attached as Exhibits 2 and 4 to the AGREEMENT, including the procedure for the CLASS
27 MEMBERS to object to or request exclusion from the SETTLEMENT, to submit a VOUCHER
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1 REQUEST, and to file a Notice of Intent to Appear at the FINAL APPROVAL HEARING and,
2 accordingly, directs that CLASS NOTICE be given in the form and manner consistent therewith
3 and this PRELIMINARY APPROVAL ORDER.

4 8. The COURT finds that the CLASS NOTICE is the best means practicable of
5 providing notice under the circumstances and when completed shall constitute due and sufficient
6 notice of the ACTION, the SETTLEMENT, and the FINAL APPROVAL HEARING to all
7 persons affected by and/or authorized to participate in the SETTLEMENT in full compliance with
8 Federal Rules of Civil Procedure 23(c) and (e) and the requirements of due process.

9 9. The provisions of the AGREEMENT relating to the CLASS NOTICE, exclusion
10 from the SETTLEMENT, objection to the SETTLEMENT, a VOUCHER REQUEST, Notice of
11 Intent to Appear at the FINAL APPROVAL HEARING, and the FINAL APPROVAL
12 HEARING are deemed incorporated as if expressly set forth in this PRELIMINARY
13 APPROVAL ORDER and have the full force and effect of an Order of this COURT.

14 10. As of the date of this PRELIMINARY APPROVAL ORDER, all CLASS
15 MEMBERS who do not exclude themselves from the SETTLEMENT pursuant to the CLASS
16 NOTICE and the AGREEMENT shall be bound by the new membership agreement attached
17 hereto as **EXHIBIT 1**, regardless of whether the SETTLEMENT is finally approved. This new
18 membership agreement states, in part, that Massage Envy Spas may increase the member's stated
19 monthly membership fee following the initial membership term only by providing at least
20 forty-five (45) days' advance written notice to the member's email address on record with
21 the member's Massage Envy Spa and that such notice shall be effective on the date sent.
22 Forty-five (45) days' advance written notice will allow the CLASS MEMBERS a reasonable
23 opportunity to cancel membership before incurring a noticed price increase.

24 11. The COURT appoints and designates The Garden City Group, Inc. as the
25 SETTLEMENT ADMINISTRATOR.

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1 12. The COURT hereby directs the SETTLEMENT ADMINISTRATOR to provide
2 the approved CLASS NOTICE to the CLASS in accordance with the schedule below and using
3 the procedures set forth in the AGREEMENT.

4 13. The SETTLEMENT ADMINISTRATOR shall be responsible for

- 5 a. Preparing, drafting, and serving the Notice pursuant to the Class Action
6 Fairness Act, 28 U.S.C. § 1715 (“CAFA”);
- 7 b. Printing and distributing the SUMMARY NOTICE approved by the
8 COURT;
- 9 c. Performing physical home address and email address updates and
10 verifications prior to the first distribution of the SUMMARY NOTICE;
- 11 d. Sending mailed SUMMARY NOTICE to those CLASS MEMBERS who
12 were provided SUMMARY NOTICE via email and had it returned
13 undeliverable and who have a physical address in the Millennium Central
14 Office Database (or any successor point of sale database);
- 15 e. Performing a single skip trace address follow-up on any returned mail or
16 email SUMMARY NOTICES;
- 17 f. Creating and maintaining a SETTLEMENT WEBSITE consistent with the
18 AGREEMENT and this PRELIMINARY APPROVAL ORDER and
19 including the LONG FORM NOTICE;
- 20 g. Creating and maintaining a toll-free number that CLASS MEMBERS can
21 contact to request a copy of the AGREEMENT, a UNIQUE ID CODE, a
22 VOUCHER REQUEST form, and/or to obtain any other information
23 concerning this SETTLEMENT or the AGREEMENT;
- 24 h. Consulting with MEF’s COUNSEL and CLASS COUNSEL concerning
25 any relevant issue, including (without limitation) distribution of the
26 CLASS NOTICE and processing of VOUCHER REQUESTS;
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- i. Processing and recording timely and proper requests for exclusion from the SETTLEMENT;
- j. Processing and recording of timely and proper VOUCHER REQUESTS;
- k. Within five (5) days after the VOUCHER REQUEST DEADLINE, providing MEF with a written list of all CURRENT MEMBERS who submitted a timely and valid VOUCHER REQUEST and the following information, if available, with respect to each CURRENT MEMBER:
 - i. First and last name;
 - ii. Current mailing address;
 - iii. Current email address;
 - iv. UNIQUE ID CODE; and
 - v. The amount of FEE INCREASES paid as of the date of PRELIMINARY APPROVAL;
- l. Within five (5) days after the VOUCHER REQUEST DEADLINE, providing MEF with a written list of all FORMER MEMBERS who submitted a timely and valid VOUCHER REQUEST and the following information, if available, with respect to each FORMER MEMBER:
 - i. First and last name;
 - ii. Current mailing address;
 - iii. Current email address;
 - iv. UNIQUE ID CODE; and
 - v. The amount of FEE INCREASES paid as of the date the FORMER MEMBER's MEMBERSHIP was terminated, cancelled, suspended, or not renewed or the FORMER MEMBER's last EFT payment, whichever is later;
- m. Emailing VOUCHERS to CLASS MEMBERS who submit a timely and proper VOUCHER REQUEST and advising CLASS MEMBERS of any

1 increased VOUCHER amount as a result of any necessary pro rata
2 distribution to comply with the AGREEMENT; and

3 n. Such other tasks as MEF and the CLASS REPRESENTATIVES mutually
4 agree or the COURT may order the SETTLEMENT ADMINISTRATOR
5 to perform.

6 14. In accordance with the schedule set forth below, the SETTLEMENT
7 ADMINISTRATOR is directed to establish a website at www.massagefeesettlement.com (the
8 “SETTLEMENT WEBSITE”) to provide information regarding the SETTLEMENT including
9 requesting exclusion from or objecting to the SETTLEMENT, submitting a VOUCHER
10 REQUEST consistent with the AGREEMENT, the date of the FINAL APPROVAL HEARING,
11 and other information related to the SETTLEMENT.

12 15. MEF shall pay the SETTLEMENT ADMINISTRATOR’s reasonable costs
13 associated with the administration of the SETTLEMENT, distribution of CLASS NOTICE
14 pursuant to the AGREEMENT, and any other tasks assigned to the SETTLEMENT
15 ADMINISTRATOR by the AGREEMENT, by MEF’s and the CLASS REPRESENTATIVES’
16 mutual written agreement, or as this COURT may order.

17 16. Before any VOUCHER may be issued, each CLASS MEMBER must submit a
18 valid VOUCHER REQUEST in accordance with the instructions set forth in the AGREEMENT
19 and CLASS NOTICE.

20 17. Any CLASS MEMBER may choose to object to the SETTLEMENT by serving on
21 CLASS COUNSEL an objection to the SETTLEMENT in accordance with the instructions set
22 forth in the AGREEMENT and CLASS NOTICE. CLASS MEMBERS who fail to serve timely
23 objections upon CLASS COUNSEL shall be deemed to have waived any objections and shall
24 forever be foreclosed from making any objection (whether by appeal or otherwise) to the
25 SETTLEMENT.

26 18. Any CLASS MEMBER may choose to be excluded from the SETTLEMENT as
27 provided in the AGREEMENT and CLASS NOTICE.

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1 19. Any CLASS MEMBER who timely and properly requests to be excluded from the
2 SETTLEMENT will not be bound by the AGREEMENT, will not have any right to object to,
3 appeal from, or comment on the SETTLEMENT, and will not receive any benefits under the
4 SETTLEMENT or be bound by the new MEMBERSHIP AGREEMENT attached hereto as
5 **EXHIBIT 1.**

6 20. Any request for exclusion must be signed by the requesting CLASS MEMBER
7 and must comply with the requirements set forth in the AGREEMENT and the CLASS NOTICE.

8 21. CLASS MEMBERS who have not requested exclusion by submitting a valid and
9 timely written request shall be bound by all determinations of the COURT, the AGREEMENT,
10 and any FINAL APPROVAL ORDER and JUDGMENT entered.

11 22. The COURT orders the following schedule as set forth in the AGREEMENT:

12 a. No later than five (5) business days after the date of this PRELIMINARY
13 APPROVAL ORDER, the SETTLEMENT ADMINISTRATOR shall
14 launch the SETTLEMENT WEBSITE.

15 b. No later than ten (10) days after the CLASS REPRESENTATIVES file a
16 motion for PRELIMINARY APPROVAL, the SETTLEMENT
17 ADMINISTRATOR shall serve the notices required to be served pursuant
18 to CAFA.

19 c. No later than thirty (30) days after the date of this PRELIMINARY
20 APPROVAL ORDER, MEF shall provide the SETTLEMENT
21 ADMINISTRATOR with an electronic list or database that includes the
22 following information with respect to each FORMER MEMBER from the
23 Millennium Central Office Database (or any successor point of sale
24 database) as of the date of this PRELIMINARY APPROVAL ORDER:
25 (i) first and last name; (ii) last known mailing address; (iii) email address,
26 if available; (iv) phone number, if available; (v) a UNIQUE ID CODE;
27 (vi) a UNIQUE ID CODE for each membership held by the Former
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Member; (vii) the date the FORMER MEMBER's MEMBERSHIP was terminated, cancelled, suspended, or not renewed; (viii) each date on which the FORMER MEMBER paid a monthly MEMBERSHIP fee that was higher than the prior month; and (ix) the total amount of FEE INCREASES the FORMER MEMBER paid through the date the FORMER MEMBER'S MEMBERSHIP was terminated, cancelled, suspended, or not renewed or the FORMER MEMBER's last EFT payment, whichever is later.

d. No later than thirty (30) days after entry of this PRELIMINARY APPROVAL ORDER, MEF shall provide the SETTLEMENT ADMINISTRATOR with an electronic list or database that includes the following information with respect to each CURRENT MEMBER from the Millennium Central Office Database (or any successor point of sale database) as of the date of this PRELIMINARY APPROVAL ORDER: (i) first and last name; (ii) last known mailing address; (iii) email address, if available; (iv) phone number, if available; (v) UNIQUE ID CODE; (vi) UNIQUE ID CODE for each MEMBERSHIP held by the CURRENT MEMBER; (vii) each date on which the CURRENT MEMBER paid a monthly MEMBERSHIP fee that was higher than the prior month; and (viii) the total amount of FEE INCREASES the CURRENT MEMBER paid through the date of this PRELIMINARY APPROVAL ORDER .

e. No later than twenty-five (25) days before the OBJECTION/EXCLUSION DEADLINE, CLASS COUNSEL shall file a motion requesting an INCENTIVE FEE AWARD for the CLASS REPRESENTATIVES and a FEE AND EXPENSE AWARD.

f. No later than forty-five (45) days after entry of this PRELIMINARY APPROVAL ORDER, the SETTLEMENT ADMINISTRATOR shall complete the initial CLASS NOTICE to all persons shown by the data from

1 the Millennium Central Office Database (or any successor point of sale
2 database) to be CLASS MEMBERS, via email for those CLASS
3 MEMBERS for whom an email address is available and via First Class
4 U.S. Mail to all other CLASS MEMBERS.

5 g. All VOUCHER REQUESTS must be submitted online on the
6 SETTLEMENT WEBSITE or emailed, faxed, or mailed to the
7 SETTLEMENT ADMINISTRATOR postmarked on or before the sixtieth
8 (60th) day after completion of initial distribution of the SUMMARY
9 NOTICE by email or First Class U.S. Mail to the CLASS.

10 h. All objections must be mailed to CLASS COUNSEL on or before the
11 sixtieth (60th) day after completion of the initial distribution of the
12 SUMMARY NOTICE by email or First Class U.S. Mail to the CLASS.

13 i. All requests for exclusion must be emailed or mailed by First Class U.S.
14 Mail to the SETTLEMENT ADMINISTRATOR postmarked on or before
15 the sixtieth (60th) day after initial distribution of the SUMMARY NOTICE
16 by email or First Class U.S. Mail to the CLASS.

17 j. No later than fifteen (15) days following the OBJECTION/EXCLUSION
18 DEADLINE, the SETTLEMENT ADMINISTRATOR shall provide to
19 CLASS COUNSEL and MEF's COUNSEL a list of CLASS MEMBERS
20 who submitted valid and timely exclusion requests.

21 k. No later than fifteen (15) days following the OBJECTION/EXCLUSION
22 DEADLINE, CLASS COUNSEL shall file with the COURT and serve
23 upon MEF's COUNSEL any written objections received from CLASS
24 MEMBERS.

25 l. No later than fifteen (15) days following the OBJECTION/EXCLUSION
26 DEADLINE, the SETTLEMENT ADMINISTRATOR shall provide
27 CLASS COUNSEL and MEF's COUNSEL with a Declaration of
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Compliance to be filed with the COURT in connection with the FINAL APPROVAL motion.

m. No later than thirty (30) days following the OBJECTION/EXCLUSION DEADLINE, CLASS COUNSEL shall file the CLASS REPRESENTATIVES' Motion for FINAL APPROVAL.

n. Any written opposition to the CLASS REPRESENTATIVES' Motion for FINAL APPROVAL shall be filed within twenty (20) days of the filing of the CLASS REPRESENTATIVES' Motion for FINAL APPROVAL and any reply in support of the CLASS REPRESENTATIVES' Motion for FINAL APPROVAL shall be filed within twenty (20) days of the filing of any opposition.

o. Any written opposition to any request for a FEE AND EXPENSE AWARD and/or INCENTIVE AWARD shall be filed within twenty (20) days of the filing of any request for a FEE AND EXPENSE AWARD and/or INCENTIVE AWARD and any reply in support of any request for a FEE AND EXPENSE AWARD and/or INCENTIVE AWARD shall be filed within twenty (20) days of the filing of any opposition.

23. A FINAL APPROVAL Hearing shall be held before this COURT on _____, 2019, at ___ a.m./p.m. at the United States District Court for the Northern District of California, San Francisco Courthouse, Courtroom 7 – 19th Floor, 450 Golden Gate Avenue, San Francisco, CA 94102, to determine all necessary matters concerning the AGREEMENT, including whether the proposed SETTLEMENT is fair, adequate, and reasonable, whether this COURT should grant FINAL APPROVAL, whether there should be any FEE AND EXPENSE AWARD and/or INCENTIVE AWARD, and the amounts of any such awards.

24. Any objecting CLASS MEMBER may appear, in person or by counsel, at the FINAL APPROVAL HEARING to show cause why the SETTLEMENT and the AGREEMENT

1 should not be approved as fair, adequate, and reasonable, or to object to any request for a FEE
2 AND EXPENSE AWARD and/or INCENTIVE AWARD. To appear in person or by counsel,
3 the objecting CLASS MEMBER must file with the COURT and serve upon all counsel
4 designated in the CLASS NOTICE, a Notice of Intention to Appear on or before the fourteenth
5 (14th) day prior to the FINAL APPROVAL HEARING. The Notice of Intention to Appear must
6 include the required information in accordance with the AGREEMENT, the CLASS NOTICE,
7 and the SETTLEMENT WEBSITE.

8 25. Any CLASS MEMBER who fails to timely submit a proper Notice of Intention to
9 Appear will not be heard during the FINAL APPROVAL HEARING.

10 26. Pursuant to Federal Rule of Civil Procedure 54(b), the COURT may vacate or
11 revise non-final orders when it is consonant with equity to do so. *In re Cathode Ray Tube (CRT)*
12 *Antitrust Litig.*, No. 14-CV-2058 JST, 2017 WL 2481782, at *5 (N.D. Cal. June 8, 2017) (“Courts
13 in this circuit have frequently vacated non-final orders in furtherance of settlements.”). The
14 COURT finds that vacatur of the Order Denying Defendant’s Motion for Judgment on the
15 Pleadings or, Alternatively to Strike Class Allegations; Granting in Part and Denying in Part
16 Plaintiffs’ Motion to Strike Affirmative Defenses entered on April 5, 2017 [Doc. 49] and the
17 Order Denying Defendant’s Motion for Certification of Order for Interlocutory Appeal and
18 Motion to Stay; Vacating Hearing entered on May 17, 2017 [Doc. 68] (collectively, the “MJOP
19 Order”) in the ACTION, solely for purposes of approval of this SETTLEMENT, is “consonant
20 with equity” as vacatur will better serve the CLASS MEMBERS, the CLASS
21 REPRESENTATIVES, the public, and allow the SETTLEMENT to proceed. Accordingly, the
22 MJOP Order is hereby vacated in its entirety subject to the terms of the AGREEMENT.

23 27. Nothing in this PRELIMINARY APPROVAL ORDER is, or may be construed as,
24 an admission or concession on any point of fact or law by or against the CLASS
25 REPRESENTATIVES or MEF.
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28. CLASS COUNSEL, MEF, and the SETTLEMENT ADMINISTRATOR are directed to carry out their obligations under the AGREEMENT.

IT IS SO ORDERED

DATED: _____, 2019

Hon. Maxine M. Chesney
JUDGE OF THE UNITED STATES
DISTRICT COURT

EXHIBIT 4

IF YOU WERE A MEMBER AT A MASSAGE ENVY SPA BETWEEN NOVEMBER 4, 2006, AND [Preliminary Approval Date], A CLASS ACTION SETTLEMENT MAY AFFECT YOU

The sole purpose of this notice is to inform you of the settlement so that you may decide what to do.

A proposed settlement has been reached in the nationwide class action lawsuit, *Baerbel McKinney-Drobnis, et al., v. Massage Envy Franchising, LLC*, Case No. 3:16-cv-06450-MMC. The lawsuit claims that members of Massage Envy Spas signed membership agreements that prohibited increases in their monthly membership fees and that Class Members were harmed when their monthly membership fees were increased. Massage Envy Franchising, LLC denies all allegations and that it did anything wrong.

If the settlement is approved and you are a Class Member, you may submit a request for a voucher, which may be redeemed at any Massage Envy Spa for retail products, massage sessions, enhancements, and/or facial sessions. If you were a member of a Massage Envy Spa on [Preliminary Approval Date], you also will be bound by a new membership agreement, which requires at least forty-five (45) days' notice before any future monthly membership fee increases, among other things. You may choose to exclude yourself from or object to the settlement with the option of appearing at the final approval hearing. If you submit a voucher request, do nothing, or object to the settlement, you will be bound by its terms and cannot later sue on your own behalf for any claims related to the claims or the factual predicates asserted in this case. If you exclude yourself, you will not receive anything from the settlement, but will retain your right to sue and will not be bound by the settlement if it is approved.

If you choose not to exclude yourself, you can submit a voucher request by entering your unique ID number <<[UNIQUE ID]>> at the website below or by requesting a voucher request form from the 800 number below. All voucher requests, requests to be excluded from the settlement, and objections to the settlement must be submitted by [NOTICE DATE + 60 days].

For more information about the lawsuit, the settlement, procedures for making a voucher request, requesting exclusion, or filing an objection, please visit www.massagefeesettlement.com or call 1-800-xxx-xxxx.

PLEASE DO NOT CONTACT MASSAGE ENVY FRANCHISING LLC,
ANY MASSAGE ENVY SPA, OR THE COURT FOR INFORMATION

Massage Envy
Settlement Administrator c/o
[SETTLEMENT
ADMINISTRATOR]
P.O. Box XXXXXX
[ADDRESS]

**NOTICE OF PROPOSED CLASS
ACTION SETTLEMENT
INVOLVING Massage Envy
Membership**

This notice advises you of a proposed
class action settlement with Massage
Envy Franchising, LLC

This notice may affect your legal rights

Please read it carefully

THIS CARD PROVIDES A WEBSITE
AND TELEPHONE NUMBER WHERE
YOU CAN OBTAIN ADDITIONAL
INFORMATION AND/OR SUBMIT A
VOUCHER REQUEST IF YOU ARE A
CLASS MEMBER.

>>BARCODE<<

Postal Service: Please Do Not Mark Barcode

**UNIQUE CLASS MEMBER
ID CODE: <<UNIQUE ID>**

<<FName>> <<LName>>

<<Addr1>> <<Addr2>>

<<City>>, <<State>> <<Zip>>

EXHIBIT 5



Global ID #: _____

Message Envy
 [Clinic Location Name]
 1234 This Street or That
 This City, That State 12345

Name: _____

Email: _____

Address: _____

The words "you" and "your" mean the Member listed above (and the Buyer signing below with respect to payment). The words we, our, and us refer to

d/b/a Massage Envy

an independently owned and operated Massage Envy® franchise. This contract is between you and us. Neither Massage Envy Franchising, LLC, the entity who granted us contractual authority to independently own and operate our franchised location, nor any of its past, present, or future affiliates or subsidiaries and their respective officers, directors, incorporators, members, partners, owners, agents, management, controlling parties, entities under common control, vendors, service providers, attorneys, employees, or representatives (all of the foregoing hereafter collectively referred to as "MEF") is a party to your Wellness Agreement or the Wellness Program. You understand and agree that neither MEF nor any of its affiliates are responsible for any acts or omissions related in any way to this Agreement or the services provided to you under this Agreement. At our sole discretion, we may change any terms or conditions of this Agreement or the features, services, or benefits provided under this Agreement or the Wellness Program. We will notify you, at the email or other address you provide in this Agreement or any updated address you subsequently provide, at least 45 days in advance of such changes becoming effective.

Wellness Benefits

You are entitled to the Wellness Benefits on the terms and conditions described below.

- One 60-minute Wellness Massage, Total Body Stretch or Healthy Skin Facial session monthly.
- Additional 60-minute Wellness Massage, Total Body Stretch or Healthy Skin Facial sessions at a discounted member rate.
- Discounts on other additional services and specified retail products. For services such as Microderm Infusion, Chemical Peel, or other advanced skin care services you may use a specific quantity of accrued but unused Wellness Benefits for payment of services.

Additional Benefit Details

Session Length: All sessions include up to a total of 10 minutes for client consultation and dressing, which occurs both pre and post service.

Cancel/Reschedule Sessions: You may cancel or reschedule an appointment with no charge by giving us notice no less than 24 hours preceding your appointment. Same day cancellations or appointment may be charged at 50% of the scheduled service price or half of one accrued but unused monthly session. If you do not call to cancel and do not show up for a scheduled appointment, you may be charged the full-service price at the rate specified in this Agreement or one full accrued but unused session.

National Reciprocity: While you are an active member, you may use your Wellness Benefits at any nationwide Massage Envy® independently owned and operated location; however, prices and services offered at each location may vary and may require additional payments. You are an active member if you have timely made all monthly Wellness Agreement payments, we have not terminated or suspended this Agreement, and you have not cancelled or frozen this Agreement.

Transfer Services: While you are an active member, you can transfer one accrued but unused Wellness Massage, Total Body Stretch or Healthy Skin Facial each month to another person by paying a \$10 transfer fee. You may transfer only one accrued but unused Wellness Massage, Total Body Stretch or Healthy Skin Facial to the same person during a six (6) month period.

Initials: _____

Payment Terms

Initial Term: Your Wellness Agreement Initial Term begins on _____ and ends on _____. Your Wellness Agreement will thereafter automatically renew and continue on a month-to-month basis until cancelled by you or terminated by us in accordance with the terms of this Agreement.

Enrollment Fee: Your enrollment fee of \$ _____ is due upon signing this Agreement.

Payment(s): You've elected to pay for your Wellness Agreement:

- On a **monthly basis** in the amount of \$ _____ which will be automatically charged to your credit card on file on the _____ day of each month until this Agreement is cancelled by you or terminated by us in accordance with this Agreement. Following the initial term, we will give you at least 45 days' advance written notice of any increase in the monthly payment to your email address on record with us or to your last physical address known to us and such notice shall be effective on the date sent.
- Paid in full** in the total amount of \$ _____. You will be able to redeem all Wellness Benefits immediately.

Cancellation/Use and Accrual of Wellness Benefits

During the Initial Term, you may cancel this Agreement if: (a) you provide written proof (e.g., executed mortgage or rental agreement, utility bill, car insurance) that you have moved more than 25 miles from your residence on the date you signed this Agreement and such relocation also puts you more than 25 miles away from any Massage Envy® location; or (b) you provide a written statement from your medical provider certifying that you are unable to receive massages for medical reasons; or (c) other extenuating circumstances exist that we decide in our sole discretion permit you to cancel during the Initial Term.

After the Initial Term, you may cancel this Agreement at any time upon written notice as provided herein. All cancellation requests must be submitted in writing to us at the above address or by email at Clinic0000@MassageEnvy.com and will become effective ten (10) days after the cancellation request is received by us. Any payments due under this Agreement prior to the cancellation effective date will be charged by us as scheduled. Some state laws may provide you with additional cancellation rights.

Accrual of Wellness Benefits: If you pay in full prior to or at the time of signing of this Agreement, you will be able to redeem all Wellness Benefits immediately. If you pay on a monthly basis, your Wellness Benefits will accrue monthly and may be used after each monthly payment is received provided you are an active member.

Use of Accrued but Unused Wellness Benefits: If your Agreement is not renewed, is cancelled, or is terminated for any reason (other than for any inappropriate conduct by you), you will have a 60-day period after such nonrenewal, cancellation, or termination to redeem any accrued but unused Wellness Benefits. **UPON EXPIRATION OF THE SIXTY (60) DAY PERIOD AFTER NONRENEWAL, CANCELLATION OR TERMINATION, ALL ACCRUED BUT UNUSED WELLNESS BENEFITS SHALL EXPIRE AND YOU WILL NO LONGER HAVE THE RIGHT TO USE ANY ACCRUED BUT UNUSED WELLNESS BENEFITS. YOU ACKNOWLEDGE AND AGREE THAT YOU HAVE NO RIGHT TO RECEIVE ANY REFUNDS OR CREDITS OF ANY KIND UNDER ANY CIRCUMSTANCES FOR ANY UNUSED WELLNESS BENEFITS, INCLUDING WITHOUT LIMITATION ANY UNUSED MESSAGES.** We may, in our sole discretion, extend the time period for you to redeem accrued but unused Wellness Benefits, but we are not obligated to do so. Any such extension must be in writing signed by you and us.

To the best of our knowledge, only professional massage therapists and estheticians who comply with state, city, and/or local licensing or certification requirements are hired by us. Ask us if you would like to see a particular massage therapist's or esthetician's license or certification. Stretch services may be provided by massage therapists or, if your state and local law permit, certified personal trainers. You understand that the services we provide are not a replacement for medical care, should not be construed as a substitute for medical examination, diagnosis, or treatment, that no medical diagnosis will be made, and that you should see a medical provider for any medical issues you may have. You should consider consulting your physician before participating in any massage, skin care, stretch service, or stretching regimen. It is your responsibility to inform us of any pre-existing conditions, limitations, or specific sensitivities. Male/female genitalia and women's breasts will not be exposed or massaged at any time. Modest draping will be used during each of your services. If you do experience discomfort or pain or are uncomfortable for any reason during a service, you agree to immediately ask the therapist or esthetician to adjust the manipulation, draping, pressure, heat, or environment (or, if you prefer, you can ask the therapist or esthetician to end the service at any time). If the therapist or esthetician is unable to relieve your discomfort after you request an adjustment, you will inform the therapist or esthetician you would like to end the service immediately. If you have any concerns about your therapist or esthetician, you agree to bring it to our attention immediately following your service. Inappropriate or illegal conduct will not be tolerated in any manner. We may, in our sole discretion, refuse or discontinue a service if we determine such service may be unsafe or cause discomfort for you or if you engage in any inappropriate conduct as determined by us in our sole discretion.

We reserve the right to terminate or refuse to renew your Agreement for any reason not prohibited by law including, but not limited to, an unsatisfactory payment history. We reserve the right to collect at any time any delinquent or outstanding balance(s) that has not been paid for any services provided or monthly payments owed. For purposes of identification and billing, you agree to provide us with current, accurate, complete, and updated information including your name, address, telephone number, and applicable payment data. You agree to notify us promptly of any changes in your information, including your payment data.

We may delay enforcing any of our rights without losing them. We can enforce this Agreement against your heirs and legal representatives. We may assign or transfer this Agreement or any of our rights under it without notice to you, except as otherwise required by law. Your rights or obligations under this Agreement cannot be assigned by you to anyone else without our prior written consent. In the event of our closure, you will be directed to another Massage Envy® franchise. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect. You understand and agree that this Agreement does not grant you the privilege of exclusive or preferred access to our or any other Massage Envy® location or to any service offered at our or any other Massage Envy® location. You or any other individual may obtain access to and purchase any and all services offered by us or at any Massage Envy® location without entering into an Agreement, and you understand that this Agreement only entitles you to the benefits set forth herein.

For residents of all U.S. states except California, Maine, and Utah residents: YOU ARE ENTITLED TO A COPY OF THIS AGREEMENT AT THE TIME YOU SIGN IT. YOU MAY CANCEL THIS AGREEMENT AT ANY TIME BEFORE MIDNIGHT OF THE THIRD OPERATING DAY AFTER RECEIVING A COPY OF THIS AGREEMENT. IF YOU CANCEL THIS AGREEMENT WITHIN THE THREE-DAY PERIOD, YOU ARE ENTITLED TO A FULL REFUND OF YOUR MONEY LESS A FEE EQUAL TO THE VALUE OF ANY SERVICES RECEIVED. IF THE THIRD OPERATING DAY FALLS ON A SUNDAY OR A HOLIDAY, NOTICE IS TIMELY GIVEN IF MAILED OR DELIVERED AS SPECIFIED IN THIS NOTICE ON THE NEXT OPERATING DAY. REFUNDS MUST BE MADE WITHIN THIRTY (30) OPERATING DAYS OF RECEIPT OF THE CANCELLATION NOTICE BY US. "OPERATING DAY" MEANS ANY DAY ON WHICH PATRONS MAY INSPECT AND USE OUR FACILITIES AND SERVICES DURING A PERIOD OF AT LEAST EIGHT (8) HOURS. ALL CANCELLATION REQUESTS MUST INCLUDE A SIGNED AND DATED WRITTEN NOTICE OF CANCELLATION PERSONALLY DELIVERED OR SENT BY REGISTERED MAIL, RETURN RECEIPT REQUESTED, TO US. IF YOU DO NOT CANCEL WITHIN THE THREE-DAY PERIOD, YOU SHALL BE BOUND BY ALL THE TERMS OF THIS AGREEMENT INCLUDING THOSE RELATED TO CANCELLATION.

By signing below, you authorize us to automatically charge the card you have specified. Monthly payments will be automatically charged on or after the same day of each month until you cancel this Agreement in accordance with its terms. You understand we may continue to automatically charge your card or terminate this Agreement in accordance with its terms. Additionally, you authorize us to automatically charge your card in lieu of presenting it for any services received.

Payment Method: [redacted] Credit Card ending in: [redacted] ID Checked: [redacted] (Member's Initials) [redacted]

ASSUMPTION OF RISK, RELEASE, WAIVER OF LIABILITY, AND INDEMNIFICATION

By signing below, you understand, acknowledge, agree and hereby voluntarily accept all risk and responsibility associated with the services provided and use of any of the facilities at any Massage Envy® location. You hereby waive all claims, assume all liability, and release, hold harmless, indemnify, and agree to defend us (including our affiliates, agents, and employees), MEF, MEF's affiliates, and any other Massage Envy® location you may visit, from liability for any injury, claim, cause of action, suit, demand, and damages (including, without limitation, personal, bodily, or mental injury; property damage, economic loss, consequential damages, and punitive damages), arising from or related to (1) your failure to disclose any pre-existing conditions, limitations, or sensitivities; (2) your failure to inform your therapist or esthetician of discomfort or pain during or at the end of the service; (3) your presence on the premises of any Massage Envy® location; and/or (4) any negligence on our part (including our employees) or on the part of any other Massage Envy® franchise. You further expressly agree that this Assumption of Risk, Release, Waiver of Liability, and Indemnification is intended to be as broad and inclusive as permitted by law and that if any portion of it is held invalid, the balance shall be valid and continue in full legal force and effect. These provisions are binding on your estate, family, heirs, administrators, personal representatives, and assigns.

YOU ACKNOWLEDGE AND AGREE THAT YOU UNDERSTAND THE PROVISIONS CONTAINED WITHIN THIS AGREEMENT, HAVE HAD ADEQUATE TIME TO REVIEW SUCH PROVISIONS BEFORE SIGNING, ACKNOWLEDGE AND AGREE THAT YOUR CONSENT TO THESE PROVISIONS IS GIVEN IN EXCHANGE FOR OUR RENDERING OF SERVICES, AND AGREE THAT THESE PROVISIONS APPLY AT EACH VISIT TO ANY MASSAGE ENVY® LOCATION. YOU ACKNOWLEDGE AND AGREE THAT EACH MASSAGE ENVY® LOCATION IS INDEPENDENTLY OWNED AND OPERATED AND YOUR AGREEMENT IS WITH US AND NOT WITH MEF OR ANY OF ITS AFFILIATES. YOU UNDERSTAND AND AGREE THAT OUR THERAPISTS AND ESTHETICIANS ARE OUR EMPLOYEES AND ARE NOT EMPLOYED BY AND ARE NOT EMPLOYEES OF MEF OR ANY OF ITS AFFILIATES. YOU ACKNOWLEDGE AND AGREE THAT AT NO TIME SHALL YOU HAVE A RIGHT TO, NOR SHALL YOU, ASSERT OR BRING ANY CLAIM, DEMAND, OR LEGAL ACTION AGAINST MEF OR ANY OF ITS AFFILIATES RELATING TO THIS AGREEMENT OR THE SERVICES PROVIDED UNDER THIS AGREEMENT. YOU FURTHER ACKNOWLEDGE AND AGREE THAT NEITHER MEF NOR ANY OF ITS AFFILIATES SHALL HAVE ANY LIABILITY FOR (i) ANY OBLIGATIONS OR LIABILITIES RELATING TO OR ARISING FROM THIS AGREEMENT; (ii) ANY CLAIM BASED ON, IN RESPECT OF, OR BY REASON OF THE RELATIONSHIP BETWEEN YOU AND US; OR (iii) ANY CLAIM BASED UPON ANY ALLEGED UNLAWFUL ACT OR OMISSION BY US OR ANY OTHER MASSAGE ENVY® LOCATION.

[redacted]

MEMBER SIGNATURE

[redacted]

MEMBER NAME PRINTED

[redacted]

BUYER SIGNATURE (if different than Member)

[redacted]

BUYER NAME PRINTED

EXHIBIT 6

EXHIBIT 6

**GENERAL RELEASE OF ALL CLAIMS
BY
PLAINTIFF BAERBEL MCKINNEY-DROBNIS**

1. In consideration of the payment of any Incentive Award approved by the Court, which sum shall not exceed Ten Thousand Dollars (\$10,000), BAERBEL MCKINNEY-DROBNIS (“MCKINNEY-DROBNIS”), on her own behalf and on behalf of her heirs, executors, administrators, legal representatives, successors, and assigns, hereby completely releases and forever discharges Massage Envy Franchising, LLC (“MEF”); Massage Envy, LLC; Massage Envy Acquisitions Holdings, LLC, a Delaware limited liability company; Golub Capital Partners Coinvestment Ltd., a Delaware corporation; Sentinel Capital Partners IV-A, L.P., a Delaware limited partnership; Roark Capital Management, LLC, a Delaware limited liability company; RC III ME LLC, a Georgia limited liability company; ME Holding Corporation, a Delaware corporation; Massage Envy Clinic Operations, LLC, an Arizona limited liability company; Massage Envy FLW, LLC, an Arizona limited liability company; Massage Envy Elements, LLC, a Delaware limited liability company; Massage Envy Co-op Marketing, LLC, a Delaware limited liability company; ME Equity, LLC, a Georgia limited liability company; and Massage Envy Gift Card Funding, LLC, an Arizona limited liability company, and each and every independently owned and operated Massage Envy[®] franchised location located anywhere in the United States (“ME LOCATION”) at any time since November 4, 2006, and each of their respective current and former parent companies, subsidiaries, divisions, and current and former affiliated individuals and entities, legal successors, predecessors (including companies they have acquired, purchased, or absorbed), assigns, joint venturers, and each and all of their respective officers, partners, directors, servants, agents, shareholders, members, managers, principals, investment advisors, consultants, employees, representatives, attorneys, accountants, lenders, underwriters, and insurers (collectively, the “RELEASED PARTIES”), from any and all injuries, demands, losses, damages, costs, loss of service, expenses,

compensation, claims, suits, causes of action, obligations, rights, and liabilities of any nature, type, or description, whether known or unknown, contingent or vested, in law or in equity, based on direct or vicarious liability, and regardless of legal theory, which MCKINNEY-DROBNIS has, may now have, or has ever had, against the RELEASED PARTIES, or any of them, based on direct or vicarious liability, and regardless of legal theory, that:

(a) relate to, are based on, concern, or arise out of any allegation that MEF is a party to or has any liability under MCKINNEY-DROBNIS's MEMBERSHIP AGREEMENT or any other express or implied contract including any obligation of good faith and fair dealing; is otherwise in privity with MCKINNEY-DROBNIS; interfered with MCKINNEY-DROBNIS's MEMBERSHIP AGREEMENT; induced any ME LOCATION to breach any MEMBERSHIP AGREEMENT; required any ME LOCATION to use any specific terms or language in any MEMBERSHIP AGREEMENT; or that MEF has any obligation to pay, repay, disgorge, or redress any alleged wrongdoing under MCKINNEY-DROBNIS's MEMBERSHIP AGREEMENT;

(b) were asserted or could have been asserted (whether individually or on a class-wide basis) in the ACTION or any other action or proceeding relating to (i) any monies MCKINNEY-DROBNIS paid to or at an ME LOCATION or (ii) MCKINNEY-DROBNIS's MEMBERSHIP AGREEMENT, that was brought or could have been brought on or prior to the date hereof including, but not limited to, claims that MEF engaged in unfair and/or deceptive business practices and/or violated applicable consumer protection statutes or other common laws or statutes of all fifty (50) states and the United States; and/or, without limiting the foregoing, (c) are based, in any way, on any one or more of the following factual predicates, which the claims asserted in the ACTION are based upon and depend upon:

(i) the terms and conditions of MCKINNEY-DROBNIS's MEMBERSHIP AGREEMENT that concern the monthly MEMBERSHIP fees and/or other monies MCKINNEY-DROBNIS paid to or at an ME LOCATION,

a FEE INCREASE, an increased fee and/or price, and/or an increase of the monthly MEMBERSHIP fee additional to the amount initially stated by the MEMBERSHIP AGREEMENT including, not by way of limitation, the initial execution of MCKINNEY-DROBNIS's MEMBERSHIP AGREEMENT;

(ii) the prices charged by MEF or any ME LOCATION, including but not limited to, any fees paid under MCKINNEY-DROBNIS's MEMBERSHIP AGREEMENT (in the initial term or as extended), increased fees or prices, and any increase in the monthly MEMBERSHIP fee additional to the amount initially stated in MCKINNEY-DROBNIS's MEMBERSHIP AGREEMENT;

(iii) MEF's receipt of undue profits related in any way to MEMBERSHIP fees and/or other monies MCKINNEY-DROBNIS paid to or at any ME LOCATION;

(iv) the impact of MEF's and any ME LOCATION's alleged business procedures, methods, and/or systems on MCKINNEY-DROBNIS's ability to avoid paying MEMBERSHIP fees, in either initial or increased amounts, because of the prepaid massage model and the corresponding restrictions on MEMBERSHIP cancellation, resulting in MCKINNEY-DROBNIS potentially having a bank of accrued but unused MEMBER massage sessions that must be used within sixty (60) days of MEMBERSHIP cancellation or termination unless the ME LOCATION otherwise agrees; and/or

(v) misrepresentations, omissions, and/or inadequate disclosures by MEF or any ME LOCATION contained within MCKINNEY-DROBNIS's MEMBERSHIP AGREEMENT, advertising and/or marketing by MEF and/or any ME LOCATION regarding prices, services, and/or MEMBERSHIP terms

or conditions

(collectively, the “RELEASED CLAIMS”). The RELEASED CLAIMS shall not release MCKINNEY-DROBNIS’s right to enforce the Stipulation of Class Action Settlement and Release in the ACTION (the “SETTLEMENT AGREEMENT”), of which this GENERAL RELEASE is a material part. The RELEASED CLAIMS shall be accorded the broadest preclusive scope and effect permitted by law against MCKINNEY-DROBNIS and this definition of RELEASED CLAIMS is a material term of this GENERAL RELEASE and the SETTLEMENT AGREEMENT.

2. Waiver of Unknown Claims. MCKINNEY-DROBNIS has read Section 1542 of the Civil Code of the State of California, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

MCKINNEY-DROBNIS hereby voluntarily waives the rights described in Section 1542 and elects to assume all risks for claims that now exist in her favor, whether known or unknown, against the RELEASED PARTIES. Accordingly, this GENERAL RELEASE includes within its effect claims and causes of action which MCKINNEY-DROBNIS does not know or suspect to exist in her favor at the time of her execution hereof concerning the RELEASED CLAIMS.

3. MCKINNEY-DROBNIS warrants and represents that she is the sole and lawful owner of all rights, title, and interest in and to all of the claims described above and that she has not heretofore voluntarily, by operation of law or otherwise, sold, assigned, or transferred or purported to sell, assign, or transfer to any other person or entity such claims or any part or portion thereof.

4. MEF shall issue MCKINNEY-DROBNIS a Form 1099 reflecting the payment of any Incentive Award, which payment shall not exceed Ten Thousand Dollars (\$10,000).

5. MCKINNEY-DROBNIS agrees that she alone is responsible for the tax consequences,

including any penalties or interest, relating to the payment of any Incentive Award.

6. MCKINNEY-DROBNIS and the RELEASED PARTIES expressly agree that any and all force and effectiveness of this GENERAL RELEASE is entirely contingent upon final approval of the SETTLEMENT AGREEMENT. If the SETTLEMENT AGREEMENT does not become final for any reason, then this General Release shall be null and void *ab initio*. Neither a modification of nor a reversal on appeal of any Incentive Award shall constitute grounds for cancellation or termination of this GENERAL RELEASE, however.

Dated: _____, 2019

BARBEL MCKINNEY-DROBNIS

EXHIBIT 7

EXHIBIT 7

**GENERAL RELEASE OF ALL CLAIMS
BY
PLAINTIFF CAMILLE BERLESE**

1. In consideration of the payment of any Incentive Award approved by the Court, which sum shall not exceed Ten Thousand Dollars (\$10,000), CAMILLE BERLESE (“BERLESE”), on her own behalf and on behalf of her heirs, executors, administrators, legal representatives, successors, and assigns, hereby completely releases and forever discharges Massage Envy Franchising, LLC (“MEF”); Massage Envy, LLC; Massage Envy Acquisitions Holdings, LLC, a Delaware limited liability company; Golub Capital Partners Coinvestment Ltd., a Delaware corporation; Sentinel Capital Partners IV-A, L.P., a Delaware limited partnership; Roark Capital Management, LLC, a Delaware limited liability company; RC III ME LLC, a Georgia limited liability company; ME Holding Corporation, a Delaware corporation; Massage Envy Clinic Operations, LLC, an Arizona limited liability company; Massage Envy FLW, LLC, an Arizona limited liability company; Massage Envy Elements, LLC, a Delaware limited liability company; Massage Envy Co-op Marketing, LLC, a Delaware limited liability company; ME Equity, LLC, a Georgia limited liability company; and Massage Envy Gift Card Funding, LLC, an Arizona limited liability company, and each and every independently owned and operated Massage Envy® franchised location located anywhere in the United States (“ME LOCATION”) at any time since November 4, 2006, and each of their respective current and former parent companies, subsidiaries, divisions, and current and former affiliated individuals and entities, legal successors, predecessors (including companies they have acquired, purchased, or absorbed), assigns, joint venturers, and each and all of their respective officers, partners, directors, servants, agents, shareholders, members, managers, principals, investment advisors, consultants, employees, representatives, attorneys, accountants, lenders, underwriters, and insurers (collectively, the “RELEASED PARTIES”), from any and all injuries, demands, losses, damages, costs, loss of service, expenses, compensation, claims,

suits, causes of action, obligations, rights, and liabilities of any nature, type, or description, whether known or unknown, contingent or vested, in law or in equity, based on direct or vicarious liability, and regardless of legal theory, which BERLESE has, may now have, or has ever had, against the RELEASED PARTIES, or any of them, based on direct or vicarious liability, and regardless of legal theory, that:

(a) relate to, are based on, concern, or arise out of any allegation that MEF is a party to or has any liability under BERLESE's MEMBERSHIP AGREEMENT or any other express or implied contract including any obligation of good faith and fair dealing; is otherwise in privity with BERLESE; interfered with BERLESE's MEMBERSHIP AGREEMENT; induced any ME LOCATION to breach any MEMBERSHIP AGREEMENT; required any ME LOCATION to use any specific terms or language in any MEMBERSHIP AGREEMENT; or that MEF has any obligation to pay, repay, disgorge, or redress any alleged wrongdoing under BERLESE's MEMBERSHIP AGREEMENT;

(b) were asserted or could have been asserted (whether individually or on a class-wide basis) in the ACTION or any other action or proceeding relating to (i) any monies BERLESE paid to or at an ME LOCATION or (ii) BERLESE's MEMBERSHIP AGREEMENT, that was brought or could have been brought on or prior to the date hereof including, but not limited to, claims that MEF engaged in unfair and/or deceptive business practices and/or violated applicable consumer protection statutes or other common laws or statutes of all fifty (50) states and the United States; and/or, without limiting the foregoing, (c) are based, in any way, on any one or more of the following factual predicates, which the claims asserted in the ACTION are based upon and depend upon:

(i) the terms and conditions of BERLESE's MEMBERSHIP AGREEMENT that concern the monthly MEMBERSHIP fees and/or other monies BERLESE paid to or at an ME LOCATION, a FEE INCREASE, an increased fee and/or price, and/or an increase of the monthly MEMBERSHIP

fee additional to the amount initially stated by the MEMBERSHIP AGREEMENT including, not by way of limitation, the initial execution of BERLESE's MEMBERSHIP AGREEMENT;

(ii) the prices charged by MEF or any ME LOCATION, including but not limited to, any fees paid under BERLESE's MEMBERSHIP AGREEMENT (in the initial term or as extended), increased fees or prices, and any increase in the monthly MEMBERSHIP fee additional to the amount initially stated in BERLESE's MEMBERSHIP AGREEMENT;

(iii) MEF's receipt of undue profits related in any way to MEMBERSHIP fees and/or other monies BERLESE paid to or at any ME LOCATION;

(iv) the impact of MEF's and any ME LOCATION's alleged business procedures, methods, and/or systems on BERLESE's ability to avoid paying MEMBERSHIP fees, in either initial or increased amounts, because of the prepaid massage model and the corresponding restrictions on MEMBERSHIP cancellation, resulting in BERLESE potentially having a bank of accrued but unused MEMBER massage sessions that must be used within sixty (60) days of MEMBERSHIP cancellation or termination unless the ME LOCATION otherwise agrees; and/or

(v) misrepresentations, omissions, and/or inadequate disclosures by MEF or any ME LOCATION contained within BERLESE's MEMBERSHIP AGREEMENT, advertising and/or marketing by MEF and/or any ME LOCATION regarding prices, services, and/or MEMBERSHIP terms or conditions

(collectively, the "RELEASED CLAIMS"). The RELEASED CLAIMS shall not release BERLESE's right to enforce the Stipulation of Class Action Settlement and Release in the

ACTION (the "SETTLEMENT AGREEMENT"), of which this GENERAL RELEASE is a material part. The RELEASED CLAIMS shall be accorded the broadest preclusive scope and effect permitted by law against BERLESE and this definition of RELEASED CLAIMS is a material term of this GENERAL RELEASE and the SETTLEMENT AGREEMENT.

2. Waiver of Unknown Claims. BERLESE has read Section 1542 of the Civil Code of the State of California, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

BERLESE hereby voluntarily waives the rights described in Section 1542 and elects to assume all risks for claims that now exist in her favor, whether known or unknown, against the RELEASED PARTIES. Accordingly, this GENERAL RELEASE includes within its effect claims and causes of action which BERLESE does not know or suspect to exist in her favor at the time of her execution hereof concerning the RELEASED CLAIMS.

3. BERLESE warrants and represents that she is the sole and lawful owner of all rights, title, and interest in and to all of the claims described above and that she has not heretofore voluntarily, by operation of law or otherwise, sold, assigned, or transferred or purported to sell, assign, or transfer to any other person or entity such claims or any part or portion thereof.

4. MEF shall issue BERLESE a Form 1099 reflecting the payment of any Incentive Award, which payment shall not exceed Ten Thousand Dollars (\$10,000).

5. BERLESE agrees that she alone is responsible for the tax consequences, including any penalties or interest, relating to the payment of any Incentive Award.

6. BERLESE and the RELEASED PARTIES expressly agree that any and all force and effectiveness of this GENERAL RELEASE is entirely contingent upon final approval of the SETTLEMENT AGREEMENT. If the SETTLEMENT AGREEMENT does not become final for any reason, then this General Release shall be null and void *ab initio*. Neither a modification

of nor a reversal on appeal of any Incentive Award shall constitute grounds for cancellation or termination of this GENERAL RELEASE, however.

Dated: _____, 2019

CAMILLE BERLESE

EXHIBIT 8

EXHIBIT 8

**GENERAL RELEASE OF ALL CLAIMS
BY
PLAINTIFF JOSEPH PICCOLA**

1. In consideration of the payment of any Incentive Award approved by the Court, which sum shall not exceed Ten Thousand Dollars (\$10,000), JOSEPH PICCOLA (“PICCOLA”), on his own behalf and on behalf of his heirs, executors, administrators, legal representatives, successors, and assigns, hereby completely releases and forever discharges Massage Envy Franchising, LLC (“MEF”); Massage Envy, LLC; Massage Envy Acquisitions Holdings, LLC, a Delaware limited liability company; Golub Capital Partners Coinvestment Ltd., a Delaware corporation; Sentinel Capital Partners IV-A, L.P., a Delaware limited partnership; Roark Capital Management, LLC, a Delaware limited liability company; RC III ME LLC, a Georgia limited liability company; ME Holding Corporation, a Delaware corporation; Massage Envy Clinic Operations, LLC, an Arizona limited liability company; Massage Envy FLW, LLC, an Arizona limited liability company; Massage Envy Elements, LLC, a Delaware limited liability company; Massage Envy Co-op Marketing, LLC, a Delaware limited liability company; ME Equity, LLC, a Georgia limited liability company; and Massage Envy Gift Card Funding, LLC, an Arizona limited liability company, and each and every independently owned and operated Massage Envy® franchised location located anywhere in the United States (“ME LOCATION”) at any time since November 4, 2006, and each of their respective current and former parent companies, subsidiaries, divisions, and current and former affiliated individuals and entities, legal successors, predecessors (including companies they have acquired, purchased, or absorbed), assigns, joint venturers, and each and all of their respective officers, partners, directors, servants, agents, shareholders, members, managers, principals, investment advisors, consultants, employees, representatives, attorneys, accountants, lenders, underwriters, and insurers (collectively, the “RELEASED PARTIES”), from any and all injuries, demands, losses, damages, costs, loss of service, expenses, compensation, claims,

suits, causes of action, obligations, rights, and liabilities of any nature, type, or description, whether known or unknown, contingent or vested, in law or in equity, based on direct or vicarious liability, and regardless of legal theory, which PICCOLA has, may now have, or has ever had, against the RELEASED PARTIES, or any of them, based on direct or vicarious liability, and regardless of legal theory, that:

(a) relate to, are based on, concern, or arise out of any allegation that MEF is a party to or has any liability under PICCOLA's MEMBERSHIP AGREEMENT or any other express or implied contract including any obligation of good faith and fair dealing; is otherwise in privity with PICCOLA; interfered with PICCOLA's MEMBERSHIP AGREEMENT; induced any ME LOCATION to breach any MEMBERSHIP AGREEMENT; required any ME LOCATION to use any specific terms or language in any MEMBERSHIP AGREEMENT; or that MEF has any obligation to pay, repay, disgorge, or redress any alleged wrongdoing under PICCOLA's MEMBERSHIP AGREEMENT;

(b) were asserted or could have been asserted (whether individually or on a class-wide basis) in the ACTION or any other action or proceeding relating to (i) any monies PICCOLA paid to or at an ME LOCATION or (ii) PICCOLA's MEMBERSHIP AGREEMENT, that was brought or could have been brought on or prior to the date hereof including, but not limited to, claims that MEF engaged in unfair and/or deceptive business practices and/or violated applicable consumer protection statutes or other common laws or statutes of all fifty (50) states and the United States; and/or, without limiting the foregoing, (c) are based, in any way, on any one or more of the following factual predicates, which the claims asserted in the ACTION are based upon and depend upon:

(i) the terms and conditions of PICCOLA's MEMBERSHIP AGREEMENT that concern the monthly MEMBERSHIP fees and/or other monies PICCOLA paid to or at an ME LOCATION, a FEE INCREASE, an increased fee and/or price, and/or an increase of the monthly MEMBERSHIP

fee additional to the amount initially stated by the MEMBERSHIP AGREEMENT including, not by way of limitation, the initial execution of PICCOLA's MEMBERSHIP AGREEMENT;

(ii) the prices charged by MEF or any ME LOCATION, including but not limited to, any fees paid under PICCOLA's MEMBERSHIP AGREEMENT (in the initial term or as extended), increased fees or prices, and any increase in the monthly MEMBERSHIP fee additional to the amount initially stated in PICCOLA's MEMBERSHIP AGREEMENT;

(iii) MEF's receipt of undue profits related in any way to MEMBERSHIP fees and/or other monies PICCOLA paid to or at any ME LOCATION;

(iv) the impact of MEF's and any ME LOCATION's alleged business procedures, methods, and/or systems on PICCOLA's ability to avoid paying MEMBERSHIP fees, in either initial or increased amounts, because of the prepaid massage model and the corresponding restrictions on MEMBERSHIP cancellation, resulting in PICCOLA potentially having a bank of accrued but unused MEMBER massage sessions that must be used within sixty (60) days of MEMBERSHIP cancellation or termination unless the ME LOCATION otherwise agrees; and/or

(v) misrepresentations, omissions, and/or inadequate disclosures by MEF or any ME LOCATION contained within PICCOLA's MEMBERSHIP AGREEMENT, advertising and/or marketing by MEF and/or any ME LOCATION regarding prices, services, and/or MEMBERSHIP terms or conditions

(collectively, the "RELEASED CLAIMS"). The RELEASED CLAIMS shall not release PICCOLA's right to enforce the Stipulation of Class Action Settlement and Release in the

ACTION (the "SETTLEMENT AGREEMENT"), of which this GENERAL RELEASE is a material part. The RELEASED CLAIMS shall be accorded the broadest preclusive scope and effect permitted by law against PICCOLA and this definition of RELEASED CLAIMS is a material term of this GENERAL RELEASE and the SETTLEMENT AGREEMENT.

2. Waiver of Unknown Claims. PICCOLA has read Section 1542 of the Civil Code of the State of California, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

PICCOLA hereby voluntarily waives the rights described in Section 1542 and elects to assume all risks for claims that now exist in his favor, whether known or unknown, against the RELEASED PARTIES. Accordingly, this GENERAL RELEASE includes within its effect claims and causes of action which PICCOLA does not know or suspect to exist in his favor at the time of his execution hereof concerning the RELEASED CLAIMS.

3. PICCOLA warrants and represents that he is the sole and lawful owner of all rights, title, and interest in and to all of the claims described above and that he has not heretofore voluntarily, by operation of law or otherwise, sold, assigned, or transferred or purported to sell, assign, or transfer to any other person or entity such claims or any part or portion thereof.

4. MEF shall issue PICCOLA a Form 1099 reflecting the payment of any Incentive Award, which payment shall not exceed Ten Thousand Dollars (\$10,000).

5. PICCOLA agrees that he alone is responsible for the tax consequences, including any penalties or interest, relating to the payment of any Incentive Award.

6. PICCOLA and the RELEASED PARTIES expressly agree that any and all force and effectiveness of this GENERAL RELEASE is entirely contingent upon final approval of the SETTLEMENT AGREEMENT. If the SETTLEMENT AGREEMENT does not become final for any reason, then this General Release shall be null and void *ab initio*. Neither a modification

of nor a reversal on appeal of any Incentive Award shall constitute grounds for cancellation or termination of this GENERAL RELEASE, however.

Dated: _____, 2019

JOSEPH PICCOLA
