

1 JOHNSON & WEAVER, LLP
Brett M. Weaver, Esq. (SBN 204715)
2 Frank J. Johnson, Esq. (SBN 174882)
600 West Broadway, Suite 1540
3 San Diego, CA 92101
Telephone: (619) 230-0063
4 Facsimile: (619) 255-1856
E-mail: BrettW@johnsonandweaver.com
5 E-mail: FrankJ@johnsonandweaver.com

6 Attorneys for Plaintiff Donna Zizian and
the proposed ACTIVE MEMBER CLASS
7

8 Joshua H. Eggnatz (Fla. Bar No. 0067926)
Michael J. Pascucci (Fla. Bar No. 0083397)
9 EGGNATZ, LOPATIN & PASCUCCI, LLP
5400 S. University Drive, Suite 417
10 Davie, FL 33328
Tel: (954) 889-3359
11 Fax: (954) 889-5913
Jeggnatz@ELPLawyers.com
12 Mpascucci@ELPLawyers.com

13 Attorneys for Plaintiffs Michelle Bandell,
David Eglarsh, Charlene Panos, Jeanette Rawls,
14 Jennifer Walker and Alex Zennaro and
the proposed CANCELLED MEMBER CLASS
15

16 **UNITED STATES DISTRICT COURT**
17 **SOUTHERN DISTRICT OF CALIFORNIA**

18 DONNA ZIZIAN, Individually and on
behalf of all other similarly situated
19 California Residents,

20 Plaintiff,

21 v.

22 MASSAGE ENVY FRANCHISING,
LLC, a Delaware limited liability
23 company,

24 Defendant.

Case No. 16-cv-00783-DMS-BGS

**PLAINTIFFS' NOTICE OF
MOTION AND MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Date: July 1, 2016
Time: 1:30 p.m.
Crtrm: 13A
Judge: Hon. Dana M. Sabraw

25 [Caption continues on next page.]
26
27
28

1 MICHELE BANDELL, DAVID
2 EIGLARSH, CHARLENE PANOS,
3 JEANETTE RAWLS, JENNIFER
4 WALKER, and ALEX ZENNARO,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

6 MASSAGE ENVY FRANCHISING,
7 LLC, a Delaware Limited Liability
8 Company,

Defendant.

Case No. 16-cv-01236-DMS-BGS

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on July 1, 2016, at 1:30 p.m., in
3 Courtroom 13A of the above-titled Court located at 333 West Broadway, San
4 Diego, California, the Honorable Dana M. Sabraw presiding, Plaintiff Donna
5 Zizian (“Zizian”) in the matter entitled *Donna Zizian, Individually and on behalf*
6 *of all other similarly situated California Residents v. Massage Envy Franchising,*
7 *LLC*, Case No. 3:16-cv-00783-DMS-BGS and Plaintiffs Michele Bandell
8 (“Bandell”), David Eigarsh (“Eigarsh”), Charlene Panos (“Panos”), Jeannette
9 Rawls (“Rawls”), Jennifer Walker (“Walker”), and Alex Zennaro (“Zennaro”) in
10 the matter entitled *Michelle Bandell, David Eigarsh, Charlene Panos, Jeanette*
11 *Rawls, Jennifer Walker and Alex Zennaro, individually and on behalf of all*
12 *others similarly situated v. Massage Envy Franchising, LLC, a Delaware Limited*
13 *Liability Company*, Case No. 3:16-cv-01236-DMS-BGS, which have been
14 consolidated solely for purposes of settlement, will and hereby do move the
15 Court, pursuant to Federal Rule of Civil Procedure 23, for an Order:

- 16 (a) Granting approval of the proposed Class Action SETTLEMENT
17 entered into between the PARTIES;¹
- 18 (b) Provisionally certifying the ACTIVE MEMBER Class and
19 CANCELLED MEMBER Class as defined in the SETTLEMENT;
- 20 (c) Appointing Plaintiff Zizian as Class Representative of the proposed
21 ACTIVE MEMBER Class;
- 22 (d) Appointing Plaintiffs Bandell, Eigarsh, Panos, Rawls, Walker, and
23 Zennaro as Class Representatives of the proposed CANCELLED
24 MEMBER Class;
- 25 (e) Appointing Frank Johnson and Brett Weaver of Johnson & Weaver,
26 LLP as ACTIVE MEMBER CLASS COUNSEL;
- 27 (f) Appointing Joshua H. Eggnatz, Michael J. Pascucci, and Benjamin
28 M. Lopatin of Eggnatz, Lopatin, Pascucci, LLP as CANCELLED
MEMBER CLASS COUNSEL;

¹ See Exhibit A to the Declaration of Brett M. Weaver, filed herewith. The capitalized terms herein have the same definitions as those terms in the SETTLEMENT.

- 1 (g) Approving the PARTIES' proposed notice program, including the
2 proposed forms of notice set forth in the SETTLEMENT, and
directing that notice be disseminated pursuant to such program;
- 3 (h) Appointing The Garden City Group, LLC ("Garden City Group") as
4 SETTLEMENT ADMINISTRATOR, and directing Garden City
5 Group to carry out the duties and responsibilities of the
SETTLEMENT ADMINISTRATOR specified in the
SETTLEMENT;
- 6 (i) Staying all non-SETTLEMENT related proceedings in the
7 ACTIONS and any other actions that may be filed asserting claims
8 similar to those raised in the ACTIONS pending final approval of
the SETTLEMENT;
- 9 (j) Enjoining any members of the proposed classes from pursuing
10 claims subject to the SETTLEMENT in any other judicial,
administrative, arbitral or other forum pending a final determination
regarding whether the SETTLEMENT should be approved; and
- 11 (k) Setting a FINAL APPROVAL HEARING and certain other dates in
12 connection with the final approval of the SETTLEMENT.

13 This motion is based on this notice of motion and motion, the
14 accompanying memoranda of points and authorities, the Settlement, including all
15 exhibits thereto, the accompanying Declarations of Brett M. Weaver, Luanne
16 Sacks, and Joshua H. Eggnatz, the argument of counsel, all papers and records on
17 file in the ACTIONS, and such other matters as the Court may consider.

18 Respectfully submitted,

19 Dated: June 3, 2016

JOHNSON & WEAVER, LLP

20
21 By: *s/ Brett M. Weaver*

BRETT M. WEAVER

22 FRANK J. JOHNSON
23 600 West Broadway, Suite 1540
24 San Diego, CA 92101
25 Tel: 619-230-0063
26 Fax: 619-255-1856
27 brettw@johnsonandweaver.com
28 frankj@johnsonandweaver.com

Attorneys for Plaintiff Donna Zizian and the
proposed ACTIVE MEMBER CLASS

1 Dated: June 3, 2016

EGGNATZ, LOPATIN & PASCUCCI, LLP

2
3 By: *s/ Joshua H. Eggnatz*

JOSHUA H. EGGNATZ

4 MICHAEL J. PASCUCCI
5 BENJAMIN M. LOPATIN
6 5400 S. University Drive, Suite 417
7 Davie, FL 33328
8 Tel: (954) 889-3359
9 Fax: (954) 889-5913
10 Jeggnatz@ELPLawyers.com
11 Mpascucci@ELPLawyers.com

12 Attorneys for Plaintiffs Michele Bandell, David
13 Eigliarsh, Charlene Panos, Jeannette Rawls,
14 Jennifer Walker, and Alex Zennaro and the
15 proposed CANCELLED MEMBER CLASS

16
17
18
19
20
21
22
23
24
25
26
27
28
*Filer's Attestation: Pursuant to Section 2.f.4 of the ECF Administrative
Policies and Procedures Manual for the Southern District of California, Brett M.
Weaver hereby attests that concurrence in the filing of this document has been
obtained.*

PROOF OF SERVICE

I am employed in the County of San Diego. I am over the age of eighteen years and am not a party to the within entitled action. My business address is 600 West Broadway, Suite 1540, San Diego, CA 92101.

On June 3, 2016, I served a copy of the following document:

- 1) **PLAINTIFFS’ NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT;**
- 2) **PLAINTIFFS’ MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT;**
- 3) **DECLARATION OF JOSHUA H. EGGNATZ IN SUPPORT OF PLAINTIFFS’ UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; and**
- 4) **DECLARATION OF BRETT M. WEAVER IN SUPPORT OF PLAINTIFFS’ MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

[BY ELECTRONIC ACCESS] I hereby certify that the foregoing documents were filed electronically with the Clerk of Court to be served by operation of the Court’s electronic filing system upon all parties on the electronic service list maintained for this case.

I declare under penalty of perjury under the law of the United States of America that the foregoing is true and correct.

Executed on June 3, 2016, at San Diego, California.

Bv: s/ Brett M. Weaver
BRETT M. WEAVER