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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

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

Plaintiff,

v.

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

Defendant.

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

Plaintiffs,

v.

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

Defendant.

Case No. 16-cv-00783-DMS-BGS  
Case No. 16-cv-01236-DMS-BGS

~~PROPOSED~~ ORDER GRANTING  
PRELIMINARY APPROVAL OF  
CLASS SETTLEMENT

1 Plaintiffs Donna Zizian, Michelle Bandell, David Eigarsh, Charlene Panos,  
2 Jeanette Rawls, Jennifer Walker, and Alex Zennaro (“CLASS  
3 REPRESENTATIVES”) filed a Motion for Preliminary Approval of a Class Action  
4 Settlement and Proposed Settlement Class (the “Motion”), which was heard on July  
5 1, 2016. In connection with the Motion, the Court considered the proposed class  
6 action Settlement Agreement (attached as **Exhibit 1** to the Declaration of \_\_\_\_\_),  
7 the submissions of counsel, and all other papers filed in these consolidated actions.  
8 This Order incorporates by reference the definitions in the Settlement Agreement  
9 (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  
13 approved. The Court finds that the SETTLEMENT appears to be fair, adequate, and  
14 reasonable to the CLASS MEMBERS, free of collusion or indicia of unfairness, and  
15 within the range of possible judicial approval. The Court also finds that the  
16 SETTLEMENT resulted from arm’s length negotiations and is sufficient to warrant  
17 the dissemination of CLASS NOTICE to the CLASS MEMBERS.

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

23 **“ACTIVE MEMBERS” defined as members of a clinic or spa**  
24 **independently owned and operated by an MEF FRANCHISEE**  
25 **within the United States whose membership was active as of June**  
26 **30, 2016, including members whose MEMBERSHIP was frozen or**  
27 **suspended as of June 30, 2016. Excluded are MEF and any person,**

1 firm, trust, corporation, or other entity related to or affiliated with  
2 MEF, LEGACY MEMBERS,<sup>1</sup> and any member whose membership  
3 was terminated for inappropriate or illegal conduct.

4 “CANCELLED MEMBERS” defined as All members of a clinic or  
5 spa independently owned and operated by an MEF FRANCHISEE  
6 within the United States who had one or more UNUTILIZED  
7 MASSAGES when (i) he/she cancelled his/her MEMBERSHIP;  
8 (ii) he/she elected not to renew his/her MEMBERSHIP; or  
9 (iii) his/her MEMBERSHIP was terminated for non-payment and  
10 such cancellation, termination, or non-renewal occurred between  
11 March 7, 2015, and June 30, 2016. Excluded are MEF and any  
12 person, firm, trust, corporation, or other entity related to or  
13 affiliated with MEF, LEGACY MEMBERS, and any member  
14 whose membership was terminated for inappropriate or illegal  
15 conduct.

16 3. The Court, for SETTLEMENT purposes only, finds that certification of  
17 the CLASSES satisfies the requirements under Federal Rules of Civil Procedure  
18 23(a) and 23(b)(3). In support of this ruling, the Court conditionally and  
19 preliminarily finds that: (a) the CLASS MEMBERS are so numerous that joinder of  
20 all members is impracticable; (b) there are questions of law and fact common to the  
21 CLASS MEMBERS; (c) the named CLASS REPRESENTATIVES’ claims are  
22 typical of the claims of the respective CLASS MEMBERS they seek to represent;  
23 (d) the CLASS REPRESENTATIVES and CLASS COUNSEL identified below are  
24 able to adequately represent the CLASS MEMBERS; and (e) classwide treatment of  
25 the disputes raised in the Amended Complaint in the ZIZIAN ACTION and the  
26 Complaint in the BANDELL ACTION is superior to other available methods for  
27 adjudicating the controversies.

4. If the AGREEMENT is terminated or not consummated, provisional

<sup>1</sup> LEGACY MEMBERS are those members of a clinic or spa independently owned and operated by an MEF FRANCHISEE within the United States whose Membership Agreements expressly state that accrued monthly massages may be used after membership termination, cancellation, or non-renewal. SA ¶ X.

1 certification of the CLASSES shall be void. In that event, the CLASS  
2 REPRESENTATIVES, the CLASS MEMBERS, and MEF shall be returned to their  
3 respective statuses as of the date immediately prior to the execution of the  
4 AGREEMENT and neither the AGREEMENT nor this PRELIMINARY  
5 APPROVAL ORDER shall have any bearing on, and neither shall be admissible in  
6 connection with, (a) any issue in these ACTIONS or any claim raised under any  
7 other state or federal law that was intended to be encompassed within the Complaint  
8 [Dkt. 1] or Amended Complaint [Dkt. \_\_] in the ZIZIAN ACTION or the Complaint  
9 in the BANDELL ACTION; (b) whether certification or decertification would be  
10 appropriate in a non-settlement context; (c) MEF's liability for any final judgment or  
11 to any CLASS MEMBER; and (d) any judgment ultimately sought to be entered  
12 against MEF or otherwise.

13 5. The Court appoints and designates Donna Zizian as CLASS  
14 REPRESENTATIVE for the ACTIVE MEMBER CLASS. The Court appoints and  
15 designates Michelle Bandell, David Eiglarsh, Charlene Panos, Jeanette Rawls,  
16 Jennifer Walker, and Alex Zennaro as CLASS REPRESENTATIVES for the  
17 CANCELLED MEMBER CLASS.

18 6. The Court appoints and designates the law firm Johnson & Weaver LLP  
19 as CLASS COUNSEL for the ACTIVE MEMBER CLASS and the law firm  
20 Eggatz, Lopatin & Pascucci, LLP as CLASS COUNSEL for the CANCELLED  
21 MEMBER CLASS. CLASS COUNSEL are located at the following addresses:

22 ACTIVE MEMBER CLASS COUNSEL

23 Frank J. Johnson

24 Email: FrankJ@johnsonandweaver.com

25 Brett M. Weaver

26 Email: BrettW@johnsonandweaver.com

27 JOHNSON & WEAVER LLP

600 W. Broadway #1540

San Diego, CA 92101

1 Telephone: (619) 230-0063

2 Facsimile: (619) 255-1856

3 CANCELLED MEMBER CLASS COUNSEL

4 Joshua H. Eggnatz

5 Email: JEggnatz@ELPLawyers.com

6 Michael J. Pascucci

7 Email: MPascucci@ELPLawyers.com

8 Benjamin M. Lopatin

9 BLopatin@ELPLawyers.com

10 EGGNATZ, LOPATIN, PASCUCCI, LLP

11 5400 S. University Dr., Suite 417

12 Davie, FL 33328-5313

13 Telephone: (954) 889-3359

14 Facsimile: (954) 889-5913

15 7. The Court approves, as to form and content, the proposed CLASS  
16 NOTICE, attached as Exhibits 2, 4, and 5 to the AGREEMENT, including the  
17 procedure for the CLASS MEMBERS to object to or request exclusion from the  
18 SETTLEMENT, for CANCELLED MEMBERS to submit a REINSTATEMENT  
19 REQUEST, and for ACTIVE MEMBERS to submit an ELECTION OF BENEFIT  
20 FORM and, accordingly, directs that CLASS NOTICE be given in the form and  
21 manner consistent therewith and this PRELIMINARY APPROVAL ORDER.

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

28 9. The provisions of the AGREEMENT relating to the CLASS NOTICE,  
exclusion from the SETTLEMENT, objection to the SETTLEMENT, a  
REINSTATEMENT REQUEST, an ELECTION OF BENEFIT FORM, and the  
FINAL APPROVAL HEARING are deemed incorporated as if expressly set forth in

1 this PRELIMINARY APPROVAL ORDER and have the full force and effect of an  
2 Order of this Court.

3 10. The Court appoints and designates The Garden City Group, Inc. as the  
4 SETTLEMENT ADMINISTRATOR.

5 11. The Court hereby directs the SETTLEMENT ADMINISTRATOR to  
6 provide the approved CLASS NOTICE to the CLASS MEMBERS in accordance  
7 with the schedule below and using the procedures set forth in the AGREEMENT.

8 12. The SETTLEMENT ADMINISTRATOR shall be responsible for

- 9 a. Printing and distributing the SUMMARY NOTICE approved by  
10 the Court;
- 11 b. Performing physical home address and email address updates and  
12 verifications prior to the first distribution of the SUMMARY  
13 NOTICE;
- 14 c. Sending mailed SUMMARY NOTICE to those CLASS  
15 MEMBERS who were provided SUMMARY NOTICE via email  
16 and had it returned undeliverable and who have a physical  
17 address in the Millennium Central Office Database;
- 18 d. Performing a single Skip Trace address follow up on any returned  
19 mail or email SUMMARY NOTICES;
- 20 e. Creating and maintaining a toll-free number that CLASS  
21 MEMBERS can contact to request a copy of the AGREEMENT,  
22 a UNIQUE ID CODE, a REINSTATEMENT REQUEST form,  
23 an ELECTION OF BENEFIT FORM, and/or to obtain any other  
24 information concerning this SETTLEMENT or the  
25 AGREEMENT.
- 26 f. Consulting with MEF's COUNSEL and CLASS COUNSEL  
27 concerning any relevant issue, including (without limitation)

1 distribution of the CLASS NOTICE and processing of  
2 REINSTATEMENT REQUESTS and ELECTION OF BENEFIT  
3 FORMS;

4 g. Processing and recording timely and proper requests for  
5 exclusion;

6 h. Processing and recording timely and proper objections;

7 i. Processing and recording ELECTION OF BENEFIT FORMS;

8 j. Processing and recording a change in an ACTIVE MEMBER's  
9 HOME CLINIC designation where appropriate;

10 k. Processing and recording REINSTATEMENT REQUESTS and  
11 the calculation, processing, and recording of reinstated messages;

12 l. Processing and recording requests for a one-time change in  
13 HOME CLINIC designation by CANCELLED MEMBERS  
14 where appropriate;

15 m. Within ten (10) days after the REINSTATEMENT  
16 REQUEST/ELECTION OF BENEFITS DEADLINE, providing  
17 to MEF a list in writing of all CANCELLED MEMBERS who  
18 submitted a REINSTATEMENT REQUEST and the following  
19 information, if available, with respect to each CANCELLED  
20 MEMBER:

21 i. First and last name;

22 ii. Current mailing address;

23 iii. Current email address;

24 iv. UNIQUE ID CODE;

25 v. HOME CLINIC (including any HOME CLINIC re-  
26 designation);

- 1 vi. The number of UNUTILIZED MESSAGES existing as of
- 2 June 30, 2016; and
- 3 vii. The number of reinstated messages.
- 4 n. On a weekly basis beginning the week after the NOTICE DATE,
- 5 providing to MEF a list in writing of all ACTIVE MEMBERS
- 6 who submitted an ELECTION OF BENEFIT FORM and the
- 7 following information, if available, with respect to each such
- 8 ACTIVE MEMBER:
  - 9 i. First and last name;
  - 10 ii. Current mailing address;
  - 11 iii. Current email address;
  - 12 iv. UNIQUE ID CODE; and
  - 13 v. Any HOME CLINIC re-designation;
- 14 o. Preparing, drafting, and serving the Notice pursuant to the Class
- 15 Action Fairness Act, 28 U.S.C. § 1715 (“CAFA”); and
- 16 p. Such other tasks as MEF and the CLASS REPRESENTATIVES
- 17 mutually agree or the Court orders the SETTLEMENT
- 18 ADMINISTRATOR to perform.

19 13. In accordance with the schedule set forth below, the SETTLEMENT  
20 ADMINISTRATOR is directed to establish a website at  
21 www.massagesettlement.com (the “SETTLEMENT WEBSITE”) to provide  
22 information regarding the SETTLEMENT, where the CLASS MEMBERS can  
23 obtain information concerning requesting exclusion from or objecting to the  
24 SETTLEMENT, where CANCELLED MEMBERS may submit a  
25 REINSTATEMENT REQUEST, and where ACTIVE MEMBERS may submit an  
26 ELECTION OF BENEFIT FORM.



1           14. MEF shall pay to the SETTLEMENT ADMINISTRATOR all  
2 reasonable costs associated with the administration of the SETTLEMENT,  
3 distribution of CLASS NOTICE pursuant to the AGREEMENT, and any other tasks  
4 assigned to the SETTLEMENT ADMINISTRATOR by the AGREEMENT, by  
5 MEF's and the CLASS REPRESENTATIVES' mutual agreement in writing, or by  
6 this Court.

7           15. If a CANCELLED MEMBER has moved more than 25 miles from  
8 his/her HOME CLINIC since the date of MEMBERSHIP cancellation, nonrenewal,  
9 or termination for nonpayment and wishes to make a one-time election to designate a  
10 new MEF FRANCHISE as his/her HOME CLINIC for purposes of any reinstated  
11 massages, the CANCELLED MEMBER must provide the required information in  
12 accordance with the instructions set forth in the AGREEMENT and CLASS  
13 NOTICE.

14           16. Any CLASS MEMBER may choose to file a written objection to the  
15 SETTLEMENT by mailing an objection to the SETTLEMENT ADMINISTRATOR  
16 in accordance with the instructions set forth in the AGREEMENT and CLASS  
17 NOTICE. CLASS MEMBERS who fail to serve timely objections upon CLASS  
18 COUNSEL shall be deemed to have waived any objections and shall forever be  
19 foreclosed from making any objection (whether by appeal or otherwise) to the  
20 SETTLEMENT and shall be bound by the SETTLEMENT if finally approved unless  
21 the CLASS MEMBER excludes himself/herself from the SETTLEMENT.

22           17. Any CLASS MEMBER may choose to be excluded from the  
23 SETTLEMENT as provided in the AGREEMENT and CLASS NOTICE.

24           18. Any CLASS MEMBER who timely and properly requests to be  
25 excluded from the SETTLEMENT will not be bound by the AGREEMENT or have  
26 any right to object, appeal, or comment thereon.

1           19. CLASS MEMBERS who have not requested exclusion by submitting a  
2 valid and timely written request shall be bound by all determinations of the Court,  
3 the AGREEMENT, and any FINAL APPROVAL ORDER and JUDGMENT  
4 entered.

5           20. The Court orders the following schedule as set forth in the  
6 AGREEMENT:

7           a. No later than five (5) days after the date of this PRELIMINARY  
8 APPROVAL ORDER, the SETTLEMENT ADMINISTRATOR  
9 shall launch the SETTLEMENT WEBSITE.

10           b. No later than fourteen (14) days after the date of this  
11 PRELIMINARY APPROVAL ORDER, MEF shall provide the  
12 SETTLEMENT ADMINISTRATOR with an electronic list or  
13 database that includes the following information with respect to  
14 each CANCELLED MEMBER from the Millennium Central  
15 Office Database as of June 30, 2016: first and last name; last  
16 known mailing address; email address, if available; phone  
17 number, if available; HOME CLINIC; the date of  
18 MEMBERSHIP CANCELLATION; and the number of  
19 UNUTILIZED MESSAGES.

20           c. No later than fourteen (14) days after entry of this  
21 PRELIMINARY APPROVAL ORDER, MEF shall provide the  
22 SETTLEMENT ADMINISTRATOR with an electronic list or  
23 database that includes the following information with respect to  
24 each ACTIVE MEMBER from the Millennium Central Office  
25 Database as of June 30, 2016: first and last name; last known  
26 mailing address; email address, if available; phone number, if  
27 available; and HOME CLINIC.

- 1 d. No later than forty-five (45) days after entry of this  
2 PRELIMINARY APPROVAL ORDER, the SETTLEMENT  
3 ADMINISTRATOR shall complete the initial CLASS NOTICE  
4 to all persons shown by the data from the Millennium Central  
5 Office Database to be CLASS MEMBERS, via email for those  
6 CLASS MEMBERS for whom an email address is available and  
7 via First Class U.S. Mail to all other CLASS MEMBERS.
- 8 e. All CANCELLED MEMBER REINSTATEMENT REQUESTS  
9 and ACTIVE MEMBER ELECTION OF BENEFIT FORMS  
10 must be submitted online on the SETTLEMENT WEBSITE,  
11 emailed, faxed, or mailed to the SETTLEMENT  
12 ADMINISTRATOR postmarked on or before the sixtieth (60th)  
13 day after completion of initial distribution of the SUMMARY  
14 NOTICE by email or First Class U.S. Mail notice to the CLASS  
15 MEMBERS.
- 16 f. All objections must be mailed to the SETTLEMENT  
17 ADMINISTRATOR postmarked no later than the sixtieth (60th)  
18 day after the NOTICE DATE.
- 19 g. All requests for exclusion must be emailed or mailed by First  
20 Class U.S. Mail to the SETTLEMENT ADMINISTRATOR  
21 postmarked on or before the sixtieth (60th) day after initial  
22 distribution of the SUMMARY NOTICE by email or First Class  
23 U.S. Mail notice to the CLASS MEMBERS.
- 24 h. No later than fifteen (15) days following the  
25 OBJECTION/EXCLUSION DEADLINE, the SETTLEMENT  
26 ADMINISTRATOR shall provide a list of CLASS MEMBERS  
27 who submitted valid exclusion requests and any written

1 objections received from CLASS MEMBERS to CLASS  
2 COUNSEL and MEF's COUNSEL.

3 i. No later than the date on which PLAINTIFFS file their motion  
4 for FINAL APPROVAL of class action settlement, CLASS  
5 COUNSEL shall file with the Court any written objections  
6 received from CLASS MEMBERS.

7 j. No later than forty-five (45) days following the  
8 OBJECTION/EXCLUSION DEADLINE, CLASS COUNSEL  
9 shall file the CLASS REPRESENTATIVES' Motion for FINAL  
10 APPROVAL and any request for a FEE AND EXPENSE  
11 AWARD and/or INCENTIVE AWARD.

12 k. The SETTLEMENT ADMINISTRATOR shall provide CLASS  
13 COUNSEL and MEF's COUNSEL with a Declaration of  
14 Compliance to be filed with the Court in connection with the  
15 FINAL APPROVAL motion.

16 l. Any oppositions and replies to the CLASS  
17 REPRESENTATIVES' Motion for FINAL APPROVAL and any  
18 request for a FEE AND EXPENSE AWARD and/or  
19 INCENTIVE AWARD shall be filed in accordance with this  
20 Court's Local Civil Rule 7.1(e).

21 21. A FINAL APPROVAL Hearing shall be held before this Court on  
22 JANUARY 13, <sup>2016</sup>~~2016~~, at 1:30 a.m./p.m. at the United States District Court for  
23 the Southern District of California, Courtroom 13A (13th Floor-Annex), 333 West  
24 Broadway, Suite 1310, San Diego, California 92101, to determine all necessary  
25 matters concerning the AGREEMENT, including whether the proposed  
26 SETTLEMENT is fair, adequate, and reasonable, whether this Court should grant  
27 final approval, whether there should be any FEE AND EXPENSE AWARD and/or

1 INCENTIVE AWARD, and the amounts of any such awards.

2 22. Any objecting CLASS MEMBER may appear, in person or by counsel,  
3 at the FINAL APPROVAL HEARING to show cause why the SETTLEMENT and  
4 the AGREEMENT should not be approved as fair, adequate, and reasonable, or to  
5 object to any request for a FEE AND EXPENSE AWARD or INCENTIVE  
6 AWARD.

7 23. Nothing in this PRELIMINARY APPROVAL ORDER is, or may be  
8 construed as, an admission or concession on any point of fact or law by or against the  
9 CLASS REPRESENTATIVES or MEF.

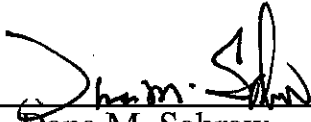
10 24. Pending the final determination of whether the SETTLEMENT should  
11 be approved, all proceedings in these ACTIONS, except as may be necessary to  
12 implement the SETTLEMENT or comply with the terms of the SETTLEMENT, are  
13 hereby stayed.

14 25. Pending the final determination of whether the SETTLEMENT should  
15 be approved, CLASS REPRESENTATIVES and each CLASS MEMBER, and any  
16 person purportedly acting on behalf of any CLASS MEMBER(S), are hereby  
17 enjoined from commencing, pursuing, maintaining, enforcing, or prosecuting, either  
18 directly or indirectly, any RELEASED CLAIMS in any judicial, administrative,  
19 arbitral, or other forum, against any of the RELEASED PARTIES, provided that this  
20 injunction shall not apply to the claims of any CLASS MEMBERS who have timely  
21 and validly requested to be excluded from the CLASS. Such injunction shall remain  
22 in force until the EFFECTIVE DATE or until such time as the PARTIES notify the  
23 Court that the SETTLEMENT has been terminated. This injunction is necessary to  
24 protect and effectuate the SETTLEMENT, this Preliminary Approval Order and this  
25 Court's authority regarding the SETTLEMENT, and is ordered in aid of this Court's  
26 jurisdiction and to protect its judgments.

1           26. CLASS COUNSEL, MEF, and the SETTLEMENT  
2 ADMINISTRATOR are directed to carry out their obligations under the  
3 AGREEMENT.

4 **IT IS SO ORDERED**

5 DATED: 7-1, 2016

  
\_\_\_\_\_  
Hon. Dana M. Sabraw  
JUDGE OF THE UNITED STATES  
DISTRICT COURT