

T.G., and M.D.,

Plaintiffs,

v.

FBE VENTURES, INC. d/b/a
MASSAGE ENVY SPA, and
JOSE BARAJAS FRANCO,

Defendants.

IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

152nd JUDICIAL DISTRICT

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PLAINTIFFS' FIRST AMENDED PETITION

Plaintiffs, T.G. and M.D., file this First Amended Petition, complaining of Defendants, FBE Ventures, Inc. d/b/a Massage Envy Spa and Jose Barajas Franco, and allege as follows:

I. DISCOVERY CONTROL PLAN

1. Discovery in this suit is governed by a Level 3 discovery-control plan.
2. Plaintiffs affirmatively plead that this suit is not governed by the expedited-actions process in Texas Rule of Civil Procedure 169 because Plaintiffs seek monetary relief over \$250,000.

II. CLAIM FOR RELIEF

3. Pursuant to Tex. R. Civ. P. 47(c)(5), Plaintiffs seek monetary relief over \$1,000,000.

III. PARTIES

4. Plaintiff, T.G., is an individual residing in Montgomery County, Texas. The last three digits of Plaintiff's driver's license are 762; the last three digits of her Social Security number are 766. Because of the nature of the claims in this lawsuit, this petition and all subsequent

pleadings will identify Plaintiff by her initials only. Plaintiff's identity has been disclosed to Defendants in accordance with the Texas Rules of Civil Procedure.

5. Plaintiff, M.D., is an individual residing in Montgomery County, Texas. The last three digits of Plaintiff's driver's license are 462; the last three digits of her Social Security number are 498. Because of the nature of the claims in this lawsuit, this petition and all subsequent pleadings will identify Plaintiff by her initials only. Plaintiff's identity will be disclosed to Defendants in accordance with the Texas Rules of Civil Procedure.

6. Defendant FBE Ventures, Inc. d/b/a Massage Envy Spa ("Massage Envy"), a Texas corporation whose registered office is located in Harris County, Texas at 4008 Louetta Rd. #321, Spring, Texas 77388. Massage Envy was previously served, answered, and is before this Court. Massage Envy owned and operated the Massage Envy – Teas Crossing, located at 1140 N. Farm to Market 3038 Rd., Suite 900, Conroe, Texas 77304, where the underlying conduct took place ("Massage Envy – Teas Crossing" or "the massage parlor in question"). At all relevant times, Massage Envy employed Defendant Jose Barajas Franco, who sexually assaulted Plaintiffs.

7. Defendant Jose Barajas Franco ("Franco") is an individual residing in Harris County, Texas, and may be served at his home address, 8546 White Plane Pl., Tomball, Texas 77375, or wherever he may be found. Franco was a masseuse employed by Massage Envy at the time of the sexual misconduct underlying this lawsuit.

8. Plaintiffs expressly invoke their right under Rule 28 of the Texas Rules of Civil Procedure to have the true name of any of the above Defendants substituted at a later time upon the motion of any party or of the Court.

IV. JURISDICTION AND VENUE

9. The Court has subject-matter jurisdiction over the lawsuit because the amount in controversy exceeds this Court's minimum jurisdictional requirements.

10. There is no basis for federal-court jurisdiction over this matter, as Plaintiffs have not pleaded, nor do they intend to plead, any claim cognizable under federal law or any federal code, regulation, rule, statute, or otherwise. Moreover, this action may not be removed because one or more Defendants are citizens of Texas. 28 U.S.C. § 1441(b)(2).

11. Venue is proper in Harris County pursuant to Texas Civil Practice & Remedies Code § 15.002(a)(2) & (3), as Defendant Massage Envy, a corporation, maintains its principal office in Harris County, Texas, and Defendant Franco, a natural person, resided in Harris County, Texas at the time the cause of action accrued.

V. FACTS

A. Plaintiff T.G.

12. On July 3, 2022, Plaintiff T.G. went to Massage Envy – Teas Crossing for a full-body massage with Defendant Jose “Joe” Franco (hereafter “Franco”), one of the masseuses at Massage Envy.

13. Although T.G.'s previous massages with Franco were professional, this one was very different. At the end of the massage, Franco inserted his fingers into T.G.'s vagina. T.G. froze. Franco then jumped onto the table, grabbed her hands, and began performing oral sex on T.G. Terrified, T.G. remained frozen on the massage table until the assault ended.

14. After the assault, Franco set out two towels and told her she could wash up with them. T.G. was so shocked and scared that she did not say a word.

15. After leaving Massage Envy, T.G. made a doctor’s appointment with her primary care physician. During the appointment, T.G. reported the assault. With some encouragement from her physician, T.G. contacted law enforcement and filed a police report related to the assault.

16. As a result of the sexual assault perpetrated by Franco, an employee of Massage Envy, T.G. has suffered severe mental anguish, emotional distress, and trauma. Additionally, T.G. contracted HSV-1 (herpes)—an incurable, lifelong infection—as a result of the assault.

B. Plaintiff M.D.

17. On July 15, 2022, Plaintiff M.D. went to Massage Envy – Teas Crossing for a full-body massage with Franco. While lying on the massage therapy table, M.D. noticed that Franco did not tuck the drape securely, as he and other massage therapists had done during past sessions.

18. While standing at the head of the table, Franco began to massage M.D.’s chest area above her breasts. M.D. then felt Franco’s hands skin-to-skin as they moved between her breasts. Suddenly, M.D. felt Franco’s fingers touch her nipples—at which point she froze, feeling stunned. At first, she thought Franco must have touched her nipples by mistake because nothing like that had occurred during any of her previous massage sessions. However, when Franco continued to perform the massage, he glided his fingers across M.D.’s nipples two more times.

19. M.D. went into shock, her body becoming rigid and unable to move. She told Franco she was getting sore from what he was doing, and he instantly moved to her legs and told her that she was “tense” in her chest area.

20. Franco then proceeded to massage higher up M.D.’s thigh than she had experienced during prior massages—specifically, Franco touched the crease between her inner thigh and genital region while working on both of her legs.

21. Franco then lifted M.D.'s leg up higher than normal without properly securing the drape underneath her, leaving M.D.'s hip and underwear exposed for a significant amount of time. When M.D. told Franco she was uncomfortable, he apologized and moved to her other leg without fully re-draping her first leg. As Franco worked on her other leg, M.D. told him again that she felt uncomfortable and asked him to stop working on her legs. Franco then completely covered M.D. with the drape and worked over the drape for the remainder of the session.

22. After the session ended, M.D. rushed to the front desk and tried to get out of the building as quickly as possible. As soon as she exited the massage parlor in question, M.D. called her mother, who told her to report what happened to management. M.D. did so shortly after her session with Franco.

23. As a result of the sexual assault perpetrated by Franco, an employee of Massage Envy, M.D. has suffered severe mental anguish, emotional distress, and trauma.

VI. CAUSES OF ACTION

A. Count 1 – Negligence of Defendant Massage Envy

24. Plaintiffs incorporate the preceding paragraphs as if fully set forth herein.

25. Defendant Massage Envy, a business operator, has a duty to exercise ordinary care in providing massage services to patrons like Plaintiffs.

26. Massage Envy breached this duty of ordinary care to Plaintiffs in many ways, including, but not limited to the following:

- a. Failing to adequately vet Franco prior to hiring him;
- b. Failing to properly train Franco about inappropriate sexual contact with patrons;
- c. Failing to adequately supervise Franco's conduct with patrons;
- d. Failing to appropriately discipline and/or investigate Franco after receiving multiple customer complaints about inappropriate draping;

- e. Retaining Franco despite a customer requesting to never be booked with Franco again due to inappropriate draping;
- f. Failing to create and implement policies and procedures for hiring, training, supervising, and retaining qualified employees;
- g. Failing to adopt policies and procedures for protecting patrons from sexual misconduct by its employees;
- h. Failing to create a safe environment for business patrons; and
- i. Failure to enforce a zero-tolerance policy related to inappropriate behavior.

27. The breaches by Massage Envy proximately caused Plaintiffs' injuries and resulting damages, which were a foreseeable result of such negligence. Sexual malfeasance is a generally foreseeable consequence of the nature of the work involved in the massage industry, and Massage Envy is well-aware of this risk due to significant civil litigation and media coverage arising from client-reported abuse in recent years.

B. Count 2 – Gross Negligence of Defendant Massage Envy

28. Plaintiffs incorporate the preceding paragraphs as if fully set forth herein.

29. Each and all of the foregoing negligent acts and omissions, taken singularly or in combination, constitute grossly negligent conduct on the part of Massage Envy in that such conduct, when viewed objectively from the standpoint of Massage Envy at the time of its occurrence, involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others; and which Massage Envy had actual, or subjective awareness of the risk involved, but nevertheless, proceeded with conscious indifference to the rights, safety, and welfare of Plaintiffs.

30. Massage Envy's gross negligence was a proximate cause of Plaintiffs' injuries, and their injuries were the foreseeable result of such gross negligence.

31. Because Massage Envy's conduct amounts to gross negligence, Plaintiffs seek exemplary damages under Tex. Civ. Prac. & Rem. Code Ann. 41.001 *et seq.*

C. Count 3 – Assault by Defendant Franco

32. Plaintiffs incorporate the preceding paragraphs as if fully set forth herein.

33. Defendant Franco acted intentionally, knowingly, and recklessly in sexually assaulting Plaintiffs.

34. When Franco digitally penetrated T.G.'s vagina and performed oral sex, he made contact with T.G.'s person.

35. When Franco touched M.D.'s breasts, nipples, and the crease between her thigh and genital region, he made contact with M.D.'s person.

36. Franco's contact with Plaintiffs caused bodily injury to Plaintiffs. At a minimum, Franco knew or reasonably should have believed that Plaintiffs would regard the contact as offensive.

37. Plaintiff seeks exemplary damages under Tex. Civ. Prac. & Rem. Code Ann. 41.001 *et seq.*, as Franco acted with malice towards Plaintiff.

38. Franco's assault was a proximate cause of Plaintiffs' injuries, and their injuries were the foreseeable result of such assault.

D. Count 4 – Negligence of Defendant Franco

39. Plaintiffs incorporate the preceding paragraphs as if fully set forth herein.

40. In the alternative, as a professional massage therapist, Franco owed Plaintiffs, his clients, a duty to provide massage therapy in manner compliant with the accepted standards of care in the massage therapy profession.

41. Franco breached this duty of care by failing to act as a reasonably prudent massage therapist would have under the same or similar circumstances. Franco's negligent acts and omissions, include, but are not limited to, the following:

- a. Failing to provide a safe environment for Plaintiffs;
- b. Failing to follow the proper procedures and/or protocols regarding the scope of the massage therapy;
- c. Failing to respect physical boundaries of Plaintiffs while conducting massage therapy as a prudent massage therapist would have done under the same or similar circumstances; and
- d. Failing to provide an environment where Plaintiffs were free from his sexual advances during the massage therapy session.

42. The negligent conduct of Franco on the occasion in question proximately caused Plaintiffs' injuries and resulting damages, which were a foreseeable result of such negligence.

VII. DAMAGES

43. Plaintiffs incorporate the preceding paragraphs as if fully set forth herein.

44. Defendants' conduct proximately caused injury to Plaintiffs, which resulted in the following damages:

- a. Past physical pain;
- b. Past and future mental anguish; and
- c. Past and future medical expenses.

45. The sum of Plaintiffs' damages is within the jurisdictional limits of the Court.

VIII. INTEREST

46. Plaintiffs seek pre-judgment and post-judgment interest as authorized by law.

47. Plaintiffs also claim damages in the amount of legal interest as allowed by law on all pecuniary and non-pecuniary damages as found by the jury at the maximum legal rate allowed

by law: (a) accruing from a date beginning 180 days after the date Defendants received written notice of this claim or on the date of filing suit, whichever occurred first, until the time judgment against the defendant is rendered and (b) after judgment until same is paid.

IX. JURY DEMAND

48. Plaintiffs demand a jury trial and have tendered the appropriate fee.

X. PRAYER

49. For these reasons, Plaintiffs ask that they be awarded a judgment against Defendants for the following:

- a. Actual damages;
- b. Exemplary damages;
- c. Pre-judgment and post-judgment interest;
- d. Court costs; and
- e. All other relief to which Plaintiffs are entitled.

Respectfully submitted,

BLIZZARD LAW, PLLC



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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of June, 2023, a true and correct copy of the above and foregoing has been served by:

certified mail, return receipt requested; overnight delivery; hand delivery;

United States first class mail; facsimile transmission; electronic mail;

E-Service on:

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