

CAUSE NO. \_\_\_\_\_

JANE DOE 1, JANE DOE 2, and  
JANE DOE 3,

*Plaintiffs,*

v.

FBE VENTURES, INC. d/b/a  
MESSAGE ENVY SPA,  
MESSAGE ENVY FRANCHISING, LLC,  
and JOSE BARAJAS FRANCO,

*Defendants.*

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

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JUDICIAL DISTRICT

**PLAINTIFFS' ORIGINAL PETITION**

Plaintiffs, Jane Doe 1, Jane Doe 2, and Jane Doe 3 (collectively "Plaintiffs")<sup>1</sup>, file this Original Petition, complaining of Defendants, FBE Ventures, Inc. d/b/a Massage Envy Spa, Massage Envy Franchising, LLC, and Jose Barajas Franco (collectively "Defendants"), and allege as follows:

**I. DISCOVERY CONTROL PLAN**

1. Plaintiffs intend to conduct discovery under Level 3 of Texas Rule of Civil Procedure 190.4 and request this Court enter an appropriate Scheduling Order so that discovery may be conducted under Level 3.

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.

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<sup>1</sup> Contemporaneously with this Petition, Plaintiffs filed a Motion for Leave to Proceed Anonymously based upon the nature of the allegations in this Petition, which are of an inherently intimate and sensitive nature. That motion is pending. Undersigned counsel will provide Plaintiffs' identity to Defendants upon proper effectuation of service.

## 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, Jane Doe 1, is an individual residing in Montgomery County, Texas. The last three digits of Plaintiff's driver's license are 135; the last three digits of her Social Security number are 491.

5. Plaintiff, Jane Doe 2, is an individual residing in Montgomery County, Texas. The last three digits of Plaintiff's driver's license are 858; the last three digits of her Social Security number are 587.

6. Plaintiff, Jane Doe 3, is an individual residing in Montgomery County, Texas. The last three digits of Plaintiff's driver's license are 559; the last three digits of her Social Security number are 238.

7. Defendant FBE Ventures, Inc. d/b/a Massage Envy Spa ("FBE"), a Texas corporation whose registered office is located in Harris County, Texas at 4008 Louetta Rd. #321, Spring, Texas 77388, may be served with process by serving its registered agent for service of process and president, Mack A. Miller, 4008 Louetta Rd. #321, Spring, Texas 77388. FBE owns and operates 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 spa in question"). At all relevant times, FBE employed Defendant Jose Barajas Franco, who sexually assaulted Plaintiffs.

8. Defendant Massage Envy Franchising, LLC ("Massage Envy") is a limited-liability company organized and existing under the laws of Delaware, whose principal office is located at

14350 N. 87<sup>th</sup> St., Ste. 200, Scottsdale, Arizona 85260. Massage Envy is registered to do business in Texas and may be served with process by serving its registered agent for service, Corporate Creations Network Inc., 5444 Westheimer, #1000, Houston, Texas 77056. Massage Envy is a national massage therapy franchise that has over 1,200 franchised locations across the country, including the spa in question. At all relevant times, Massage Envy retained control over the details or methods of the work performed by the franchised locations, including the spa in question.

9. 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 massage therapist employed by FBE at Massage Envy – Teas Crossing at the time of the sexual assaults underlying this lawsuit.

10. 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**

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

12. 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).

13. Because Plaintiffs’ claims arose or accrued on or after March 3, 2022, any mandatory arbitration provision allegedly signed by Plaintiffs is invalid and unenforceable because this case is related to a sexual assault dispute filed under state law. *See* Ending Forced Arbitration

of Sexual Assault and Sexual Harassment Act of 2021, PL 117-90, March 3, 2022, 136 Stat. 26.

14. Venue is proper in Harris County pursuant to Texas Civil Practice & Remedies Code § 15.002(a)(2) & (3), as Defendant FBE, 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. Facts as to Plaintiff Jane Doe 1

15. On or about July 5, 2022, Jane Doe 1 went to Massage Envy – Teas Crossing for a full-body massage with Franco, who she had seen regularly for massages for approximately one year.

16. While she was lying on her back, Franco massaged her upper legs, then moved to her hips. He then placed his hand on her vaginal area and started rubbing in a circular motion.

17. Jane Doe 1 immediately stopped Franco and asked what he was thinking. When the massage ended, she felt so traumatized and embarrassed that she immediately left and tried to block out the memory.

18. As a result of the sexual assault perpetrated by Franco, an employee of FBE, Jane Doe 1 has suffered severe mental anguish, emotional distress, and trauma.

### B. Facts as to Plaintiff Jane Doe 2

19. In the summer of 2022, Jane Doe 2 went to Massage Envy – Teas Crossing for a full-body massage with Franco. As a long-time client of Franco, she was very trusting of him. However, during the massage, Franco slipped his hands under the draping that covered her breasts and quickly swirled his fingers around her nipples. The contact was so brief that she thought that it may have been an accident, so she tried to ignore it.

20. During her next appointment in July 2022, Jane Doe 2 was lying on her stomach when Franco quickly inserted his fingers into her vagina. When she asked Franco what he was doing, he responded with, “I’m not sure.” He then stopped, handed her a washcloth, and exited the room to let her get dressed.

21. After working up the courage to speak up, Jane Doe 2 planned to confront Franco at her next appointment the following week. However, FBE management contacted her beforehand to notify her that Franco was no longer with the company and her appointment would need to be scheduled with someone else.

22. As a result of the sexual assault perpetrated by Franco, an employee of FBE, Jane Doe 2 has suffered severe mental anguish, emotional distress, and trauma.

### **C. Facts as to Plaintiff Jane Doe 3**

23. In the summer of 2022, Jane Doe 3 went to Massage Envy – Teas Crossing for a full-body massage with Franco.

24. While her previous massages with Franco were professional, this one was very different. During the massage, Franco started massaging her breasts and touching her nipples. Although she was extremely uncomfortable, she did not know what to say or do, so she told him she wanted to turn over onto her stomach.

25. After Franco massaged her back, legs, and feet, he suddenly inserted his fingers into her underwear and touched her vaginal area. She was shocked, but before she could stop him, Franco told her that time was up and walked out of the room.

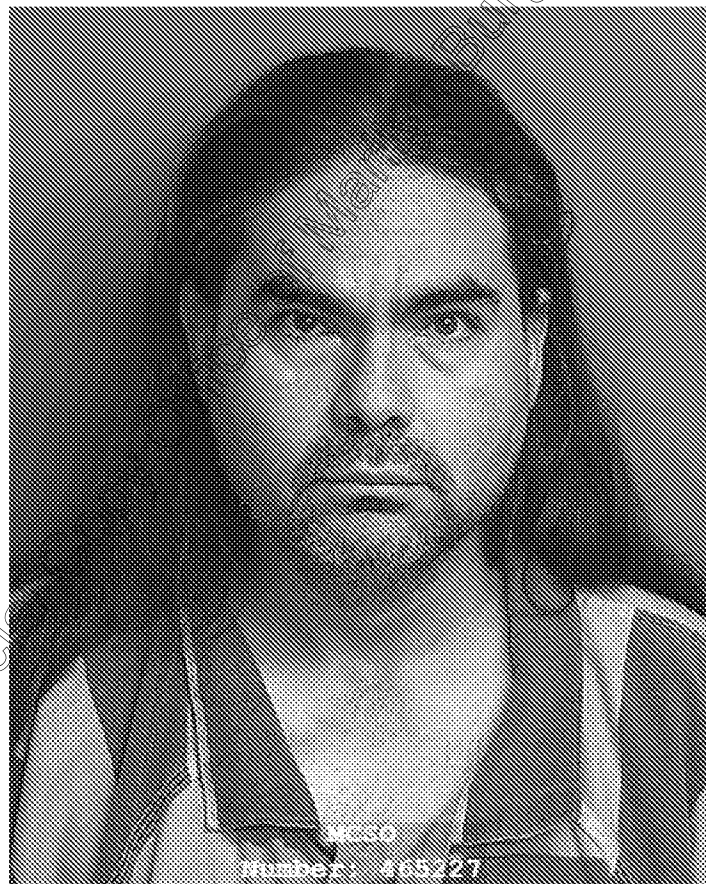
26. When Jane Doe 3 exited the massage room, Franco was waiting for her and said, “I hope I didn’t make you feel uncomfortable.” Confused and distraught by what had just happened to her, she left and tried to forget about the assault.

27. As a result of the sexual assault perpetrated by Franco, an employee of FBE, Jane Doe 3 has suffered severe mental anguish, emotional distress, and trauma.

#### **D. Criminal Case Against Franco**

28. Unfortunately, these were not the only women who Franco assaulted while working as a massage therapist for FBE.

29. On November 29, 2022, Franco was arrested and charged with sexual assault and indecent assault for acts he committed while working for FBE at Massage Envy – Teas Crossing. Specifically, two other women reported to police that Franco sexually assaulted them during massages in July 2022.



*Jose Franco Mugshot*

30. After learning that Franco assaulted multiple other women during massages at Massage Envy – Teas Crossing, Plaintiffs Jane Doe 1, Jane Doe 2, and Jane Doe 3 (collectively “Plaintiffs”) reported their respective assaults to police.

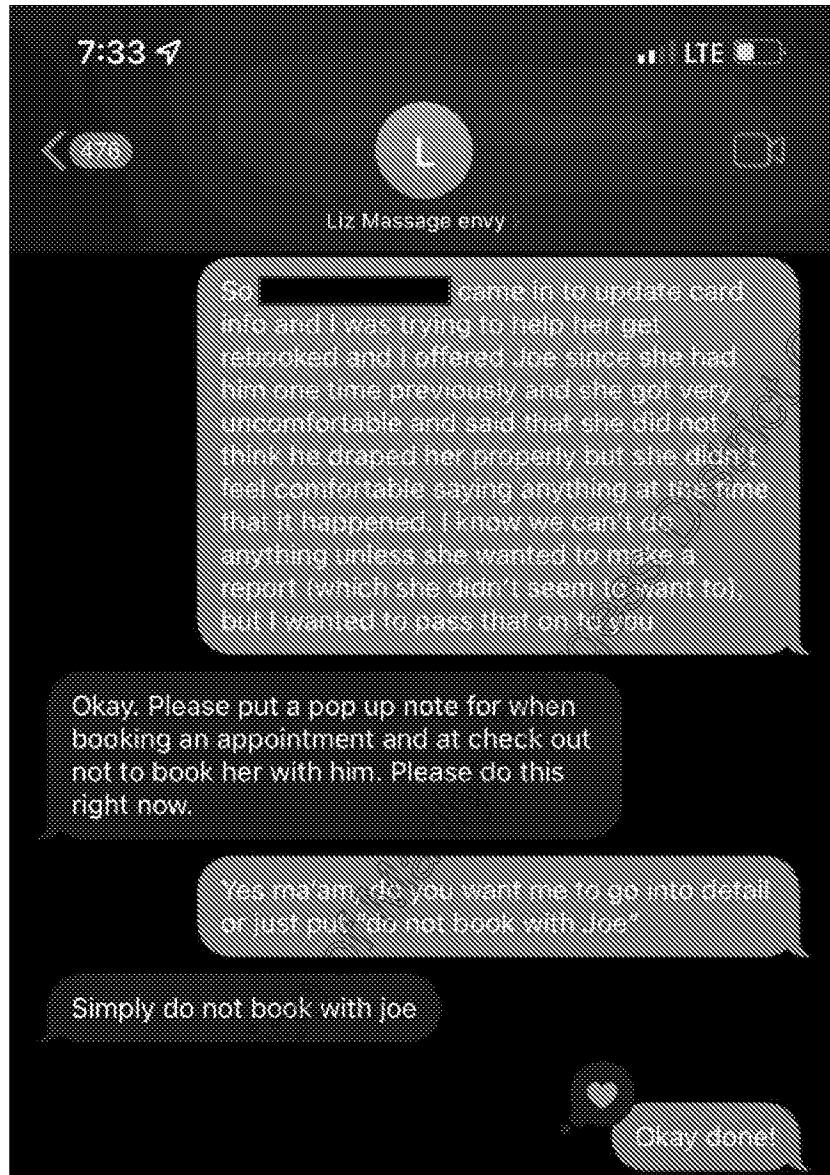
31. Franco is currently out on bond while he awaits his criminal trial.

#### **E. FBE’s Prior Notice of Franco’s Inappropriate Conduct**

32. Before Franco assaulted Plaintiffs and at least two other women in the summer of 2022, FBE was on notice of Franco’s inappropriate conduct. Specifically, FBE received multiple client and staff complaints about Franco related to his inappropriate conduct.

33. As seen in Franco’s personnel file, Franco was disciplined repeatedly for failing to adequately cover clients with appropriate draping during massages. One of the complaining women was so uncomfortable that she requested never to be booked with Franco again. Although the Massage Envy policies list improper draping as a “zero tolerance offense” that is grounds for termination, FBE continued to employ Franco and simply “retrained” him on his draping technique after each complaint.

34. A former employee of FBE at Massage Envy – Teas Crossing estimates that FBE staff received between 20-30 complaints from Franco’s clients prior to the assaults underlying this suit. Although the staff would take detailed notes about these women’s complaints in their client files, at least two FBE staff members report that their notes were subsequently deleted by management and replaced with only, “Do not book with Joe [Franco].” This is evidenced by FBE management’s instruction to one of its front desk personnel to limit the complaint documentation about Franco:



35. On one occasion prior to the assaults underlying this suit, an FBE employee consoled a woman who came to her crying after a massage with Franco saying she felt like she had been assaulted. Per protocol, the employee provided the woman with a brochure on sexual assault and notified FBE management. There is no documentation in Franco's personnel file regarding this complaint, and there is no evidence FBE launched an investigation into the allegation, which is a violation of the Massage Envy brand policies.

36. Additionally, prior to the assaults underlying this suit, FBE received multiple complaints from its own staff members about Franco's inappropriate conduct. During a practical



evaluation with an FBE employee, Franco failed to adequately drape the employee and exposed her breasts. The employee reported the incident to FBE management, who responded by merely retraining Franco. The same employee subsequently complained to FBE management that Franco was constantly touching her in an inappropriate manner in the workplace and asked never to be left alone with him. Yet, FBE continued to employ Franco and simply told him to “keep his hands to himself.”

37. Franco’s cascade of client complaints and inappropriate conduct towards coworkers culminated in one of FBE’s long-time massage therapists submitting a request for transfer to another location to escape Franco. In her February 2022 email to FBE’s owner, Mack Miller, this therapist stated as follows:

I have found myself in a sticky situation. The numerous incidents regarding Jose Franco (Joe) and other therapists, front desk associates, and clients have become so upsetting to me that I can no longer work alongside him ... I also mean I CAN’T, not WON’T. This is an important distinction, and it is because **his presence causes such a strong, negative emotional reaction that I believe I cannot perform a quality service.**

**Exhibit 1** (Transfer Email) (emphasis added).

38. In summary, prior to the assaults underlying this suit, FBE had received countless complaints from both clients and its staff members about Franco’s inappropriate behavior. Yet, FBE elected to bury these complaints and continue to employ Franco. This grossly negligent decision by FBE facilitated the assaults of multiple women, including Plaintiffs.

#### **F. Massage Envy’s Systemic Problem with Sexual Assault**

39. Sexual assaults committed by predators like Franco at Massage Envy franchises is a national problem, with hundreds of known reports of sexual assaults and exploitation by Massage Envy therapists occurring across the country.

40. According to an investigative report by *Buzzfeed* in November 2017, “more than 180 people have filed sexual assault lawsuits, police reports, and state board complaints against Massage Envy spas, their employees, and the national company.” **Exhibit 2** (“Hands Off – A BuzzFeed Investigation: More than 180 Women Have Reported Sexual Assaults at Massage Envy” by Katie Baker, *Buzzfeed*, November 26, 2017), p. 2. This number is likely the tip of the iceberg, as only a fraction of sexual assault victims report being assaulted. *Id.*

41. In multiple cases, victims learned that other women had previously reported the same massage therapist to Massage Envy for sexual misconduct. *Id.* at pp. 2 & 11. Yet, the Massage Envy franchises continued to employ the predatory massage therapists, either completely ignoring the victims’ allegations or merely transferring the therapists to other franchise locations. *Id.*

42. Massage Envy formulates all policies and procedures that its franchisees are required to follow, including, but not limited to those relating to the prevention, investigation, reporting, and handling of sexual assault allegations.<sup>2</sup> Massage Envy regularly trains its franchisees on how to comply with those policies and procedures. The company also supervises its franchisees via inspections by regional directors to ensure compliance with the brand policies in the day-to-day operations. Franchisees who fail to comply with such policies will be disciplined, sanctioned and/or have their franchise agreement terminated. **Exhibit 2**, p. 5. In other words, franchisees have no discretion in how they operate the business. They must follow Massage Envy protocol, they are supervised and inspected regularly to ensure they are following the protocol, and they can be disciplined for failing to comply.

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<sup>2</sup> According to Massage Envy, “we require strict enforcement of our Code of Conduct and Zero Tolerance Policy by our franchisees. And we vigorously monitor and ensure compliance by franchisees.” (Massage Envy Website, 2016, <http://web.archive.org/web/20161013045003/http://www.massageenvy.com/about-massage-envy.aspx> (last visited Nov. 30, 2023)).

43. Through its policies related to sexual misconduct, Massage Envy fosters an environment of secrecy that puts the company's image ahead of the needs of victims and the safety of future clients. Specifically, Massage Envy does not require its franchisees to report allegations of sexual assault to law enforcement or state regulatory boards; instead, the company initiates internal investigations into allegations of sexual misconduct. *Id.* at p. 3.

44. According to one former operations director, who oversaw more than a dozen Massage Envy spas from 2010 to 2016, the internal investigation process is not in place to protect the client. *Id.* "It's in place to protect the company. It's centered around defusing the situation, so the client doesn't call the police. You don't want cop cars showing up at your location the next day." *Id.* This is evidenced by at least one risk management training, in which Massage Envy told its franchisees that the goal when investigating claims is "to avoid police and keep membership." *Id.* at p. 6.

45. Based on the above, Massage Envy formulated policies and trained its franchisees to deter women from reporting their assaults to law enforcement and/or state massage therapy boards in order to protect the brand and help ensure profits were not adversely affected. The company's internal investigation process, which includes a credibility assessment of the victim by untrained franchise managers, often leads to continued employment of predators who go on to assault multiple women.

## VI. CAUSES OF ACTION

### A. Count 1 – Negligence of Defendant FBE

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

47. Defendant FBE, a business operator, has a duty to exercise ordinary care in providing massage services to patrons like Plaintiffs.

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

- a. Failing to adequately vet, train, and supervise Franco;
- b. Failing to appropriately discipline and/or investigate Franco after receiving multiple client and staff complaints about his inappropriate conduct;
- c. Retaining Franco after receiving multiple client and staff complaints about his inappropriate conduct;
- d. Failing to enforce policies and procedures for supervising, disciplining, investigating, and retaining employees;
- e. Failing to enforce policies and procedures for protecting patrons from sexual misconduct by its employees;
- f. Failing to create a safe environment for business patrons; and
- g. Failing to enforce a zero-tolerance policy related to inappropriate behavior.

49. The breaches by FBE proximately caused Plaintiffs' injuries and resulting damages, which were a foreseeable result of such negligence. Sexual misconduct is a generally foreseeable consequence of the nature of the work involved in the massage industry, and FBE (a Massage Envy franchisee) 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 FBE**

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

51. Each and all of the foregoing negligent acts and omissions, taken singularly or in combination, constitute grossly negligent conduct on the part of FBE in that such conduct, when viewed objectively from the standpoint of FBE 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

FBE had actual, or subjective awareness of the risk involved, but nevertheless, proceeded with conscious indifference to the rights, safety, and welfare of Plaintiffs.

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

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

### **C. Count 3 – Vicarious Liability of Defendant Massage Envy**

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

55. At all relevant times, Massage Envy retained control over the details or methods of the work performed by the franchised locations, including the spa in question. Specifically, Massage Envy retained control over the training, supervision, investigation, discipline, and retention of massage therapists related to sexual misconduct.

56. Because Massage Envy exercised control of the details of the specific activity from which Plaintiffs' injuries arose—namely, FBE's negligent training, supervision, investigation, discipline, and retention of Franco—Massage Envy is vicariously liable for FBE's conduct.

57. Additionally, based on information and belief, Massage Envy had access to the data on FBE's computer system at the spa in question—including the complaint documentation about Franco—and consequently knew about Franco's inappropriate conduct, knew the conduct would continue, did nothing to prevent future attacks, and permitted FBE to continue employing him. Thus, Massage Envy ratified FBE and Franco's conduct, and Massage Envy is vicariously liable for Plaintiffs' assaults.

### **D. Count 4 – Negligence of Defendant Massage Envy**

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

59. Defendant Massage Envy, a franchisor, has a duty to exercise ordinary care in operating a national franchise that provides massage services to patrons like Plaintiffs.

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

- a. Failing to formulate and enforce standards for reporting acts of sexual misconduct by its massage therapists to law enforcement and state licensing boards;
- b. Negligently training its franchisees to use internal investigations to deter victims of assault from contacting law enforcement;
- c. Failing to adequately supervise its franchisees, including FBE, to ensure that the brand policies and procedures were followed;
- d. Knowingly permitting FBE to retain Franco after the franchisee received multiple client and staff complaints about his inappropriate conduct, or negligently failing to discover those complaints;
- e. Failing to formulate and enforce adequate policies and procedures for supervising, disciplining, investigating, and retaining massage therapists;
- f. Failing to formulate and enforce policies and procedures for protecting patrons from sexual misconduct by its massage therapists;
- g. Failing to create a safe environment for business patrons; and
- h. Failing to enforce a zero-tolerance policy related to inappropriate behavior.

61. The breaches by Massage Envy proximately caused Plaintiffs' injuries and resulting damages, which were a foreseeable result of such negligence. Sexual misconduct 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.

#### **E. Count 5 – Gross Negligence of Defendant Massage Envy**

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

63. 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.

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

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

**F. Count 6 – Assault by Defendant Franco**

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

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

68. When Franco touched Jane Doe 1's vaginal area, he made contact with her person.

69. When Franco touched Jane Doe 2's nipples and digitally penetrated her vagina, he made contact with her person.

70. When Franco touched Jane Doe 3's vaginal area, he made contact with her person.

71. Franco knew or reasonably should have believed that Plaintiffs would regard the contact described above as offensive.

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

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

#### **VII. DAMAGES**

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

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

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

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

#### **VIII. INTEREST**

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

78. 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**

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

#### **X. PRAYER**

80. 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,

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