

CAUSE NO. 348-352233-24

A.C.,

*Plaintiff,*

v.

KNEAD FOR HEALTH ALLIANCE, LLC,  
MESSAGE ENVY FRANCHISING, LLC,  
and JOHN DOE,

*Defendants.*

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IN THE DISTRICT COURT OF

TARRANT COUNTY, TEXAS

\_\_\_\_\_ JUDICIAL DISTRICT

**PLAINTIFF’S ORIGINAL PETITION**

Plaintiff, A.C., files this Original Petition, complaining of Defendants, Knead for Health Alliance, LLC, Massage Envy Franchising, LLC, and John Doe (collectively “Defendants”), and alleges as follows:

**I. DISCOVERY CONTROL PLAN**

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

2. Plaintiff affirmatively pleads that this suit is not governed by the expedited-actions process in Texas Rule of Civil Procedure 169 because Plaintiff seeks monetary relief over \$250,000.

**II. CLAIM FOR RELIEF**

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

### III. PARTIES

3. Plaintiff, A.C., (“Plaintiff” or “A.C.”) is an individual residing in Tarrant County, Texas. The last three digits of Plaintiff’s driver’s license are 384; the last three digits of her Social Security number are 708. Due to the inherently intimate and sensitive 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 timely disclosed to Defendants in accordance with the Texas Rules of Civil Procedure.

4. Defendant Knead for Health Alliance, LLC (“KHA”), a Texas corporation whose registered office is located in Collin County, Texas at 3020 Communications Pkwy., Ste. 100, Plano, Texas 75093, may be served with process by serving its registered agent for service of process, Ambika Khanna, 3020 Communications Pkwy., Ste. 100, Plano, Texas 75093. KHA owns and operates Massage Envy – Alliance Town Center, Clinic #0446, located at 3100 Texas Sage Trail, Fort Worth, Texas 76177, where the underlying conduct took place (“the Massage Envy in question”). At all relevant times, KHA employed Defendant John Doe, who sexually assaulted Plaintiff.

5. 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 Massage Envy 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 Massage Envy in question.

6. Defendant John Doe (“Doe”) is the individual who sexually assaulted Plaintiff while employed by KHA as a massage therapist at the Massage Envy in question. Doe’s true identity and whereabouts are currently unknown, but he may be served wherever he may be found.

7. Plaintiff expressly invokes her 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**

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

9. There is no basis for federal-court jurisdiction over this matter, as Plaintiff has not pleaded, nor does she 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).

10. Because Plaintiff’s claims arose or accrued on or after March 3, 2022, any mandatory arbitration provision allegedly signed by Plaintiff 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.

11. Venue is proper in Tarrant County pursuant to Texas Civil Practice & Remedies Code § 15.002(a)(1), as all or a substantial part of the events or omissions giving rise to this cause of action occurred within Tarrant County, Texas.

## V. FACTS

### A. Facts as to A.C.

12. On or about Saturday, February 3, 2024, Plaintiff, A.C., went to the Massage Envy in question for the first time for a full-body massage using a gift card she received from her husband.

13. After checking in at the front desk, the massage therapist, Defendant John Doe (“Doe”), escorted Plaintiff to the therapy room, told her she could undress, and left the room. Once Plaintiff got undressed and laid down on her stomach on the massage table, Doe came back into the room, turned her over onto her back, and made a remark for her not to “squirt” because a lot of women do so on his sheets. Plaintiff was confused by this comment but tried to brush it off.

14. Doe started massaging Plaintiff and she dozed off. She woke up to Doe groping her breasts. Plaintiff told Doe to stop, saying she “did not like that.” Doe stopped, then turned Plaintiff over onto her stomach.

15. While massaging her arms, neck, and back, Doe told Plaintiff that he does at-home appointments with clients to show significant others how to correctly massage each other. Plaintiff felt uncomfortable but did not know what to say or do.

16. While Plaintiff was still on her stomach, Doe started massaging her buttocks with the sheet completely down. Plaintiff again told him to stop, saying she was “not comfortable with that.”

17. Finally, Doe began to massage Plaintiff’s upper thighs between her legs and attempted to slowly pull her legs apart. At that point, Plaintiff told him to stop and ended the massage.

18. On the way home, Plaintiff had a panic attack. She called her husband crying and told him what happened.

19. On or about Monday, February 5, 2024, Plaintiff contacted the Massage Envy in question to report the assault to management. Additionally, Plaintiff contacted the police to report the assault.

20. As a result of the sexual assault perpetrated by Doe, an employee of KHA, Plaintiff has suffered severe mental anguish, emotional distress, and trauma.

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

21. Sexual assaults committed by predators like Doe 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.

22. 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 1** (“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.*

23. 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.*

24. 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>1</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. *Id.* at 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.

25. 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.

26. 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

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<sup>1</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 April 23, 2024)).

its franchisees that the goal when investigating claims is “to avoid police and keep membership.”  
*Id.* at p. 6.

27. 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. *See id.* at p. 8.

## **VI. CAUSES OF ACTION**

### **A. Count 1 – Negligence of Defendant KHA**

28. Plaintiff incorporates the preceding paragraphs as if fully set forth herein.

29. Defendant KHA, a business operator, has a duty to exercise ordinary care in providing massage services to patrons like Plaintiff.

30. KHA breached this duty of ordinary care to Plaintiff in many ways, including, but not limited to the following:

- a. Failing to adequately vet, train, supervise, discipline, and investigate Doe;
- b. Failing to enforce policies and procedures for hiring, training, supervising, disciplining, investigating, and retaining employees;
- c. Failing to enforce policies and procedures for protecting patrons from sexual misconduct by its employees;
- d. Failing to create a safe environment for business patrons; and
- e. Failing to enforce a zero-tolerance policy related to inappropriate behavior.

31. The breaches by KHA proximately caused Plaintiff’s 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 KHA (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 KHA**

32. Plaintiff incorporates the preceding paragraphs as if fully set forth herein.

33. Each and all of the foregoing negligent acts and omissions, taken singularly or in combination, constitute grossly negligent conduct on the part of KHA in that such conduct, when viewed objectively from the standpoint of KHA 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 KHA had actual, or subjective awareness of the risk involved, but nevertheless, proceeded with conscious indifference to the rights, safety, and welfare of Plaintiff.

34. KHA's gross negligence was a proximate cause of Plaintiff's injuries, and her injuries were the foreseeable result of such gross negligence.

35. Because KHA's conduct amounts to gross negligence, Plaintiff seeks exemplary damages under Tex. Civ. Prac. & Rem. Code Ann. 41.001 *et seq.*

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

36. Plaintiff incorporates the preceding paragraphs as if fully set forth herein.

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



38. Because Massage Envy exercised control of the details of the specific activity from which Plaintiff's injuries arose—namely, KHA's negligent hiring, training, supervision, and investigation of Doe—Massage Envy is vicariously liable for KHA's conduct.

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

39. Plaintiff incorporates the preceding paragraphs as if fully set forth herein.

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

41. Massage Envy breached this duty of ordinary care to Plaintiff 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 KHA, to ensure that the brand policies and procedures were followed;
- d. Failing to formulate and enforce adequate policies and procedures for hiring, training, supervising, disciplining, investigating, and retaining massage therapists;
- e. Failing to formulate and enforce policies and procedures for protecting patrons from sexual misconduct by its massage therapists;
- f. Failing to create a safe environment for business patrons; and
- g. Failing to enforce a zero-tolerance policy related to inappropriate behavior.

42. The breaches by Massage Envy proximately caused Plaintiff's 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**

43. Plaintiff incorporates the preceding paragraphs as if fully set forth herein.

44. 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 Plaintiff.

45. Massage Envy’s gross negligence was a proximate cause of Plaintiff’s injuries, and her injuries were the foreseeable result of such gross negligence.

46. Because Massage Envy’s conduct amounts to gross negligence, Plaintiff seeks exemplary damages under Tex. Civ. Prac. & Rem. Code Ann. 41.001 *et seq.*

**F. Count 6 – Assault by Defendant John Doe**

47. Plaintiff incorporates the preceding paragraphs as if fully set forth herein.

48. Defendant John Doe (“Doe”) acted intentionally, knowingly, and recklessly in sexually assaulting Plaintiff.

49. When Doe touched Plaintiff’s breasts, buttocks, and upper inner thighs, he made contact with her person.

50. Doe knew or reasonably should have believed that Plaintiff would regard the contact described above as offensive.

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

52. Doe's assault of Plaintiff was a proximate cause of Plaintiff's injuries, and her injuries were the foreseeable result of such assault.

## **VII. DAMAGES**

53. Plaintiff incorporates the preceding paragraphs as if fully set forth herein.

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

- a. Past and future mental anguish;
- b. Past and future loss of earning capacity;
- c. Past and future medical expenses.

55. The sum of Plaintiff's damages is within the jurisdictional limits of the Court.

## **VIII. INTEREST**

56. Plaintiff seeks pre-judgment and post-judgment interest as authorized by law.

57. Plaintiff also claims 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**

58. Plaintiff demands a jury trial and have tendered the appropriate fee.

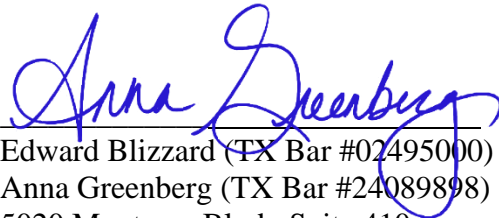
**X. PRAYER**

59. For these reasons, Plaintiff asks that she 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 Plaintiff is entitled.

Respectfully submitted,

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