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7
8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**

10 BAERBEL MCKINNEY-DROBNIS,
11 JOSEPH B. PICCOLA, and CAMILLE
BERLESE, individually and on behalf of all
12 others similarly situated,

13 Plaintiffs,

14 v.

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

16 Defendant.
17

Case No. 3:16-CV-6450-MMC (KAW)

**DECLARATION OF JOSEPH B.
PICCOLA IN SUPPORT OF
PLAINTIFFS' MOTION FOR AWARD
OF ATTORNEYS' FEES, EXPENSES,
AND INCENTIVE AWARDS**

Courtroom: 7 – 19th Floor
Judge: Hon. Maxine M. Chesney

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1 I, Joseph B. Piccola, hereby declare and state as follows:

2 1. I am over the age of eighteen and am fully competent to make this declaration. I
3 have personal knowledge of the matters set forth herein, based on my active participation in all
4 material aspects of this litigation. If called upon, I could and would testify competently to the
5 facts herein based upon my personal involvement in this case. I am making this declaration in
6 support of Plaintiffs' Motion for Award of Attorneys' Fees, Expenses, and Incentive Awards.

7 2. I am a resident of the County of Dallas, and a citizen of Texas. I also have been a
8 member of the Massage Envy clinic located at 9440 Garland Road, Suite 174, Dallas, Texas (also
9 known as the Casa Linda Massage Envy Clinic) since approximately June 28, 2010.

10 3. I originally signed a standardized Membership Agreement that provided for a
11 monthly membership fee of \$49.00 during the initial term. My Massage Envy Membership had
12 an initial term of thirteen months (from June 28, 2010 until July 28, 2011), with an automatic
13 renewal clause that continued the contract on a month-to-month basis at a stated fee of \$49.00 per
14 month until my membership is cancelled.

15 4. Prior to filing this lawsuit, my monthly membership fee was increased once in
16 April 2014 (a \$0.99 increase) and again in February 2016 (a \$10.00 increase). I do not remember
17 receiving notice with respect to the first increase. Accordingly, I had paid my Massage Envy
18 Clinic approximately forty-five (45) monthly membership fee installments at \$49.00 each,
19 approximately twenty-one (21) monthly membership fee installments at \$49.99 each, and a
20 \$59.99 membership fee to present.

21 5. Shortly after noticing the February 2016 price increase, I contacted the Casa Linda
22 Massage Envy Clinic to inquire about the increase to my monthly membership dues. I spent a
23 significant amount of time discussing the price increase issue with the owner of the Casa Linda
24 Massage Envy, writing a letter to and telecons with Massage Envy Corporate, educating myself
25 on the options/process of class action lawsuits, and contacting several law firms to discuss the
26 case. Since my independent efforts were to no avail, I ultimately decided in September 2016 to
27 retain Finkelstein & Krinsk law firm due to my discussions with them and their prior
28 experience/success on another Massage Envy case.

1 6. I retired from the Department of Defense having worked their over 37 years in the
2 area of contracting. During that time I was a contract administrator/specialist monitoring contract
3 compliance, authorizing payments, processing delivery extensions, etc. I also served as a
4 Divisional Administrative Contracting Officer and Corporate Administrative Contracting Officer
5 involving large defense contractors responsible for negotiation of labor and overheads rates,
6 business systems' approval/disapprovals (estimating, accounting, purchasing, billing, property,
7 etc.), cost accounting standards, etc. Accordingly, I had significant experience in reading and
8 interpreting contracts. I used this experience to aid my attorneys in prosecuting this case.

9 7. Prior to the filing the Complaint, I provided substantial assistance to Class Counsel
10 in aiding their investigation, including participating in several telephone calls, and email
11 correspondence, to discuss the factual and legal issues involved in my claims. I requested
12 documents from the Casa Linda Massage Envy Clinic, reviewed by own records for relevant
13 documents, and searched my credit card statements for payments to Casa Linda Massage Envy.
14 Prior to the filing of the Complaint, I reviewed drafts for their accuracy and provided Class
15 Counsel with my comments.

16 8. At that time, I understood that I was filing a class action lawsuit and I sought to
17 represent a class of individuals who had their monthly membership dues increased by Massage
18 Envy. Like other members of the class I sought to represent, Massage Envy took the position that
19 it could unilaterally increase my monthly membership dues.

20 9. Therefore, I understand that I have agreed to act as a class representative in this
21 matter. I have neither been promised, nor have accepted or expect to receive any compensation in
22 connection with my role as a class representative in this matter other than that awarded by the
23 Court. I further understand that a class representative is not permitted to compromise, undermine,
24 or dismiss the class action in return for any special consideration not provided to other members
25 of the class. I also understood that as a plaintiff class representative it is my function to
26 periodically monitor and be familiar with matters occurring during the course of this litigation.

27 10. Throughout the course of the litigation, I was contacted by Class Counsel to
28 review documents produced by Defendants and to seek out and produce documents responsive to

1 Defendants' numerous discovery requests. I would also periodically contact my attorneys for
2 clarification on issues and to inquire about the status of the case.

3 11. I provided Class Counsel with insight on my understanding of and personal
4 experience with Massage Envy's business operations to aid in my attorneys' efforts. For
5 example, I would continuously forward various documents provided to me by my Massage Envy
6 Clinic, including forms that included legal waivers which were provided during my visits to the
7 Clinic.

8 12. In addition, on July 14, 2017, I sat for more than seven and a half hours to testify
9 for a deposition in this action. This deposition required me to travel to San Francisco, California,
10 at the request of Defendant. I testified extensively about my personal life, my business life and
11 my understanding of various facts and issues relevant to this case.

12 13. Defendant also sought discovery from my wife Kathleen B. Piccola and served a
13 subpoena on her. I did not believe that my wife should have been subpoenaed in a dispute
14 between myself and Defendant. I worked with both my wife and my attorneys to successfully
15 challenge her subpoena in Court.

16 14. On October 27, 2017, I understand that my attorneys met with Defendant's
17 counsel to discuss their respective settlement positions. During these negotiations, I made myself
18 available by telephone as necessary to discuss any settlement options.

19 15. On February 8, 2018, I understand that my attorneys held a mediation before Mr.
20 David A. Rotman. Again, I made myself available by telephone as necessary to discuss any
21 settlement options during the February 8, 2018 mediation. I spoke with my attorneys after the
22 mediation, and I understood that the parties were unable to reach an agreement.

23 16. Over the next few months, I would periodically discuss the parties' settlement
24 negotiation with my attorneys. Particularly, we would discuss the structure of the settlement,
25 claims administration, the language of the release, and injunctive relief.

26 17. I understood that these negotiations had progressed to the point that parties agreed
27 to a second mediation with Mr. Rotman on August 8, 2018. I also prepared to make myself
28 available for this second mediation. However, I understand mediation was cancelled a few days

1 prior to the session.

2 18. After the aborted August 8, 2018 mediation, I was in contact with my attorneys'
3 regarding the status of the case. I discussed the preparation of the motion for summary judgment
4 and the motion for class certification with my attorneys and the risks associated with further
5 litigation.

6 19. On November 11, 2018, I understand that the parties agreed to return to mediation
7 before Mr. Rotman. Prior to this Mediation, I discussed the settlement parameters with my
8 attorneys. I also made myself available for this second mediation by telephone. Shortly, after the
9 mediation, I was informed that the parties had been able to come to a settlement in principle, but
10 still had to work out a number of additional terms. My attorneys contacted me to inform me of a
11 proposed settlement and explained the proposed terms to me as well as the proposed relief that
12 would be afforded to the Class. I consented to counsel continuing the settlement efforts.

13 20. Over the next few months, the parties exchanged several draft settlement
14 agreements and worked out additional details. I reviewed the draft settlement agreements
15 provided by counsel and provided my input. I found the proposed terms and relief to be fair,
16 reasonable and in the best interests of absent Class members. In March 2019, I received and
17 signed a copy of the final Settlement Agreement.

18 21. Prior to the settlement of this action, I made contemporaneous notes regarding the
19 time I spent prosecuting this case on behalf of the class. After reviewing these notes and
20 speaking with my attorney, I estimate that I have spent over 120 hours of my personal time on
21 this action. Additionally, my wife and I also spend a number of hours addressing Defendant's
22 subpoena.

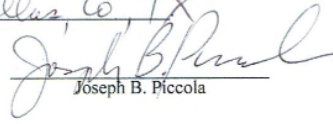
23 22. Since signing the Settlement Agreement, I understand that the Settlement has been
24 preliminarily approved and that I have been conditionally appointed Class Representative for
25 settlement purposes. However, throughout this litigation, I have worked to protect and advance
26 the rights of other members of the class. I am aware of no conflicts of interest that would render
27 me unqualified to carry out my duties and responsibilities to the class as a plaintiff class
28 representative for this Settlement.

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23. Despite wanting to avoid the intrusions caused by this litigation into my personal life and the significant time commitment prosecuting this case, I committed to ending what I believed were harmful corporate practices and seeking relief for my fellow class members. It is for these reasons, I sought to be appointed Class Representative and now support the settlement.

I declare under penalty of perjury under the laws of the United States, that the forgoing statements made by me are true and correct to the best of my knowledge and belief.

Executed on August 16, 2019 in Dallas, Co TX



Joseph B. Piccola