

**SETTLEMENT AGREEMENT BETWEEN
THE UNITED STATES OF AMERICA AND
ME SPE FRANCHISING, LLC/MASSAGE ENVY FRANCHISING, LLC
USAO #2022V00106; DJ #202-66-85**

I. BACKGROUND

1. The parties (“Parties”) to this Settlement Agreement (“Agreement”) are the United States of America (“United States”) and ME SPE Franchising, LLC and Massage Envy Franchising, LLC (collectively, “Massage Envy”).

2. Massage Envy Franchising, LLC is the manager of ME SPE Franchising, LLC, which is a business-format franchisor that grants licenses to independently owned and operated franchisees to operate franchised locations providing massage, stretch, and skin care services using the Massage Envy name, trademark, and standardized business operations in exchange for a franchise fee. There are approximately 1,100 Massage Envy franchised location in 49 states.

3. This matter was initiated by the U.S. Attorney’s Office for the District of Rhode Island (“U.S. Attorney’s Office”), a component of the Department of Justice, after receiving complaints alleging that Massage Envy franchisees discriminated against individuals with disabilities who, because of disability, needed assistance transferring to and from the massage/facial table. The complaints alleged that such individuals were denied services or required to bring their own third-party to assist them with transferring.

II. INVESTIGATION AND DETERMINATIONS

4. The U.S. Attorney’s Office is authorized to investigate alleged violations of Title III of the ADA. 42 U.S.C. § 12188(b)(1)(A); 28 C.F.R. § 36.502.

5. The aggrieved individual has a vision impairment and mobility impairment, and, as such, is an individual with a “disability” within the meaning of the ADA. 42 U.S.C. § 12102; 28 C.F.R. § 36.105.

6. Massage Envy franchised locations are places of “public accommodation” within the meaning of Title III of the ADA, 42 U.S.C. § 12182(a) and its implementing regulations, 28 C.F.R. § 36.104. *See* 42 U.S.C. § 12181(7)(F); 28 C.F.R. § 36.104(6).

7. The ADA prohibits discrimination on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages or accommodations of a public accommodation. 42 U.S.C. § 12182(a); 28 C.F.R. § 36.201(a).

8. The ADA requires that a public accommodation make reasonable modifications to policies, practices, and procedures, when such modifications are necessary to afford goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless it can demonstrate that making such modifications would fundamentally alter the nature of the goods, services, facilities, privileges, advantages or accommodations. 42 U.S.C. § 12182(b)(2)(A); 28 C.F.R. § 36.302(a).

9. The ADA prohibits public accommodations from imposing eligibility criteria that screen out or tend to screen out individuals from fully and equally enjoying its goods, services, facilities, privileges, advantages, or accommodations, when these criteria cannot be shown to be necessary for the provision of the goods, services, facilities, privileges, advantages, or accommodations being offered. 42 U.S.C. § 12182(b)(2)(A)(i); 28 C.F.R. § 36.301(a).

10. In the course of the investigation, the United States was provided information that in March 2021, an individual inquired about a massage membership at a Massage Envy franchised location in Providence, Rhode Island, and explained that she would need assistance transferring to and from the massage table, on account of her vision and mobility disabilities. The manager told the individual that corporate policy prohibited employees from providing transfer assistance, and that the individual would not be able to receive any services unless she brought in a third-party to assist her with transferring. The investigation further determined that Massage Envy requires all of its franchised locations to ensure that the franchisees' employees abide by its Service Provider Standards of Practice. The relevant Service Provider Standards of Practice requires that customers that require assistance with getting on or off the massage/facial table must bring a friend, family member, or other helper to assist them.

11. On the basis of these determinations, the United States concluded the following:

- a. Massage Envy discriminated against individuals with disabilities, in violation of 42 U.S.C. § § 12181-89, and its implementing regulation, 28 C.F.R. Part 36, through Massage Envy's policy of obligating franchisees to require individuals with disabilities who need assistance transferring to and from the massage table to bring a third-party to assist with transfer to and from the tables. 42 U.S.C. § 12182(a); 28 C.F.R. § 36.201.
- b. The Massage Envy franchised location in Providence, Rhode Island failed to reasonably modify the transfer assistance policy for the aggrieved individual, in violation of 42 U.S.C. § 12182(b)(2)(A) and 28 C.F.R. § 36.302(a).
- c. Massage Envy imposed eligibility criteria that screened out or tended to screen out individuals with disabilities from fully and equally enjoying Massage Envy's franchised locations' goods, services, facilities, privileges, advantages, or accommodations when this criteria cannot be shown to be necessary for the provision of the goods, services, facilities, privileges, advantages, or accommodations being offered, in violation of 42 U.S.C. § 12182(b)(2)(A)(i) and 28 C.F.R. § 36.301(a).

12. Massage Envy has denied liability and asserted several defenses. In entering into this Agreement, Massage Envy does not admit to wrongdoing under the ADA or any other law.

III. ACTIONS TO BE TAKEN BY MESSAGE ENVY

13. Nondiscrimination. Massage Envy will not discriminate against individuals on

the basis of disability in the full and equal enjoyment of their goods, services, facilities, privileges, advantages, or accommodations. 42 U.S.C. § 12182(a); 28 C.F.R. § 36.201(a).

14. Specific Obligations. Massage Envy will modify its Service Provider Standards of Practice to require that its franchisees ensure their employees will:

- a. Not deny an individual or class of individuals, on the basis of disability, with the opportunity to participate in or benefit from a good, service, facility, privilege, or accommodation, in violation of 42 U.S.C. § 12182(b)(1)(A)(i) and 28 C.F.R. § 36.202(a).
- b. Provide transfer assistance to customers with disabilities on and off the massage/facial table, consistent with Paragraphs 14(c) and 15, below, and as required by 42 U.S.C. § 12182(b)(1)(A)(ii); 28 C.F.R. § 36.202(b).¹
- c. Not require Service Recipients to bring a third-party for transfer assistance, when those individuals, because of disability, need assistance transferring to and from the massage/facial table. 42 U.S.C. § 12182(b)(2)(A)(i); 28 C.F.R. § 36.301(a).

15. Transfer Assistance Policy. Within **thirty (30) days** of the entry of this Agreement, Massage Envy will provide to the United States for its review and approval, not to be unreasonably withheld, a revised policy for Massage Envy and its franchised locations. For any Service Recipient who requests transfer assistance, on account of his/her disability, the Service Provider will engage in an interactive process with such individual. The interactive process will include giving due consideration to the Service Recipient's preference, and conducting an individualized assessment of the Service Recipient's needs in determining what reasonable transfer assistance options can be provided to the Service Recipient in a safe manner. The policy will prioritize transfer assistance that maximizes the independence of the Service Recipient, including, for example, use of and/or guidance to an accessible massage/facial table. The policy will be implemented and distributed to Massage Envy licensed franchised locations no later than **seven (7) days** after the United States' approval..

16. Nondiscrimination Policy. Massage Envy will adopt, maintain, and enforce the attached non-discrimination ADA policy. (Exhibit A). At the same time that the revised transfer assistance policy is distributed to Massage Envy licensed franchised locations, per Paragraph 15, Massage Envy will include on its website a statement of this policy and require its franchisees to post the ADA policy in the franchised locations.

17. Complaints. During the term of this Agreement, Massage Envy will notify the U.S. Attorney's Office if Massage Envy becomes aware that any person files a lawsuit, complaint, or formal charge with a state or federal agency, alleging that Massage Envy or any of its franchised locations failed to provide transfer assistance to an individual who needs and requests such assistance on account of their disability. Such notification must be provided in

¹ Massage Envy will not require franchisees to ensure their employees will provide services of a personal nature, including assistance in dressing or undressing. 28 C.F.R. § 36.306.

writing via certified mail within **twenty-one (21) days** of the date Massage Envy received notice of the allegation and will include, at a minimum, the nature of the allegation, the name of the person making the allegation, and any documentation of the allegation provided by the complainant.

IV. MONETARY RELIEF

18. Compensatory Relief for Aggrieved Individual. Within **thirty (30) days** after receiving the executed Agreement and the aggrieved individual's signed release (a Blank Release Form is at Exhibit B), Massage Envy will send by FedEx, a check in the amount of TEN THOUSAND DOLLARS (\$10,000) made out to the aggrieved individual. This check is compensation to the aggrieved individual pursuant to 42 U.S.C. § 12188(b)(2)(B), for the effects of the alleged discrimination suffered as described in Paragraph 10. The check shall be mailed to the address listed on the signed release. A copy of the check shall be concurrently mailed to:

Amy R. Romero
Assistant United States Attorney
U.S. Attorney's Office for the District of Rhode Island
One Financial Plaza, 17th Floor
Providence, RI 02903

V. ENFORCEMENT AND MISCELLANEOUS PROVISIONS

19. Duration of the Agreement. This Agreement will be in effect for **two (2) years** from the Effective Date. The "Effective Date" of the Agreement shall be the date upon which the last signature hereto was executed.

20. Enforcement. In consideration of the terms of this Agreement as set forth above, the United States agrees to refrain from undertaking further investigation or from filing a civil suit under Title III in this matter or related to complaints, filed prior to the Effective Date, regarding Massage Envy's alleged failure to permit its franchisees to provide transfer assistance to individuals with disabilities, except as provided in this Paragraph 20. Nothing contained in this Agreement is intended or shall be construed as a waiver by the United States of any right to institute proceedings against Massage Envy for violations of any statutes, regulations, or rules administered by the United States or to prevent or limit the right of the United States to obtain relief under the ADA for violations unrelated to this matter.

21. Compliance Review and Enforcement. The United States may review compliance with this Agreement at any time and can enforce this Agreement if the United States believes that it or any requirement thereof has been violated by instituting a civil action in U.S. District Court. If the United States believes that this Agreement or any portion of it has been violated, it will raise its claim(s) in writing with Massage Envy, and the parties will attempt to resolve the concern(s) in good faith. The United States will allow Massage Envy **thirty (30) days** from the date it notifies Massage Envy of any breach of this Agreement to cure said breach, prior to instituting any court action to enforce the ADA or the terms of the Agreement.

22. Entire Agreement. This Agreement and the attachments hereto constitute the

entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or agents of either party, that is not contained in this written agreement, shall be enforceable. This Agreement can only be modified by mutual written agreement of the parties.

23. Scope. This Agreement does not constitute a finding by the United States that Massage Envy is in full compliance with the ADA. This Agreement is limited to the facts set forth herein and does not purport to remedy any other potential violations of the ADA or any other federal law. Nothing in this Agreement relieves Massage Envy of its obligation to fully comply with the requirements of the ADA.

24. Binding. This Agreement is final and binding on the parties, including all principals, agents, executors, administrators, representatives, successors in interest, beneficiaries, assigns, heirs, and legal representatives thereof. Each party has a duty to so inform any such successor in interest.

25. Severability. If any term of this Agreement is determined by any court to be unenforceable, the other terms of this Agreement shall nonetheless remain in full force and effect, provided, however, that if the severance of any such provision materially alters the rights or obligations of the parties, the United States and Massage Envy shall engage in good faith negotiations in order to adopt mutually agreeable amendments to this Agreement as may be necessary to restore the parties as closely as possible to the initially agreed upon relative rights and obligations.

26. Non-Waiver. Failure by the United States to seek enforcement of this Agreement pursuant to its terms with respect to any instance or provision shall not be construed as a waiver to such enforcement with regard to other instances or provisions.

27. Retaliation. Massage Envy shall not discriminate or retaliate against any person because of his or her participation in this matter.

28. Execution. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement. Electronically transmitted signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

FOR THE UNITED STATES:



Amy R. Romero
Assistant United States Attorney
District of Rhode Island
One Financial Plaza, 17th Floor
Providence, RI 02903
Phone: 401-709-5010
Email: Amy.Romero@usdoj.gov

Date: June 7, 2023

FOR MASSAGE ENVY



Kristin Paiva
General Counsel
14350 N. 87th Street, Suite 200
Scottsdale, AZ 85260

Date: June 6, 2023

EXHIBIT A:
**POLICY ON PROHIBITION OF DISCRIMINATION ON THE BASIS OF
DISABILITY**

Massage Envy will not discriminate against any individual on the basis of disability, with regard to the full and equal enjoyment of its goods, services, facilities, privileges, advantages or accommodations. Massage Envy will make reasonable modifications in policies, practices, or procedures, when the modifications are necessary to avoid discrimination on the basis of disability, unless Massage Envy can demonstrate that making the modifications would fundamentally alter the nature of its goods or services, or pose a safety risk to one of its Service Providers.

**EXHIBIT B:
RELEASE OF CLAIMS**

For and in consideration of the relief offered to me by ME SPE Franchising, LLC and Massage Envy Franchising, LLC (collectively, "Massage Envy"), pursuant to the Settlement Agreement between the United States of America and Massage Envy:

I, _____, hereby release and forever discharge Massage Envy and its current, past, and future officers, employees, agents, successors, and assigns, of and from any Americans with Disabilities Act-related legal and/or equitable claims arising out of the facts identified or allegations made in the Settlement Agreement. As a result, I agree and promise that I will not file any Americans with Disabilities Act-related suit, charge, complaint, proceeding or action at law, in equity, or otherwise (together, Action) or any other Action in any court, or any other judicial or administrative forum, against Massage Envy arising out of the facts identified or allegations made in the Settlement Agreement. Any rights and claims that cannot be waived by law are excluded from this Release.

This Release constitutes the entire agreement between Massage Envy and me, without exception or exclusion.

I acknowledge that a copy of the Settlement Agreement has been made available to me. By signing this Release, I acknowledge that I have been provided the opportunity to review the Settlement Agreement with an attorney of my choosing.

I have read this Release and understand the contents thereof and I execute this Release of my own free act and deed.

Aggrieved Person's Signature _____

Date _____

Aggrieved Person's Full Mailing Address _____
