

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

MARK PIROZZI and KEILA GREEN,)	
individually and on behalf of others)	
similarly situated,)	
)	
Plaintiffs,)	No. 4:19 CV 807 CDP
)	
v.)	
)	
MESSAGE ENVY FRANCHISING, LLC,)	
)	
Defendant.)	

**ORDER OF PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Class Representatives’ Motion for Preliminary Approval of a Class Action Settlement was submitted on November 25, 2019 (the “Motion”). In connection with the Motion, the Court considered the proposed Class Action Settlement Agreement and Release (attached as Exhibit A to the Motion) (the “AGREEMENT”), the Plaintiffs’ Response to Order of March 5, 2020 (ECF 41), the Amended Class Action Settlement Agreement and Release (ECF 43-1) (“AMENDED AGREEMENT”), the submissions of counsel, and all other papers filed in this action. This Order incorporates by reference the definitions in the AMENDED AGREEMENT, and capitalized terms shall have the meaning ascribed to them in the AMENDED AGREEMENT. The matter having been submitted, and good cause appearing,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Class Representatives’ Motion for Preliminary Approval of a Class Action Settlement [34]

is granted.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that:

1. The provisions of the AMENDED AGREEMENT are hereby preliminarily approved.
2. The COURT finds that the SETTLEMENT appears to be fair, adequate, and reasonable to the CLASS MEMBERS, free of collusion or any indicia of unfairness, and within the range of likely judicial approval. The COURT also finds that the SETTLEMENT resulted from arm's-length negotiations and is sufficient to warrant the dissemination of CLASS NOTICE to the CLASS MEMBERS.
3. Pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(3), and for purposes of, and solely in connection with, the SETTLEMENT, the COURT finds that each of the requirements for certification of the CLASS set forth in the CLASS REPRESENTATIVES' Motion are met and hereby conditionally certifies the CLASS comprised of:

All individuals in the State of Missouri who purchased a "1-hour," "1½-hour," or "2-hour" NON-MEMBER MASSAGE SESSION at an ME LOCATION between January 31, 2012, through the date of PRELIMINARY APPROVAL. Excluded from the CLASS are: (1) any person who is an employee, director, officer, or agent of MEF, an ME LOCATION, or any of the RELEASED PARTIES; (2) any judge, justice, judicial officer, or judicial staff of the COURT; and (3) CLASS COUNSEL, MEF's COUNSEL, and any of their attorneys and staff.
4. The COURT, for SETTLEMENT purposes only, finds that certification of the CLASS satisfies the requirements under Federal Rules of Civil Procedure 23(a) and 23(b)(3). In support of this ruling, the COURT conditionally

and preliminarily finds that: (a) the CLASS is so numerous that joinder of all members is impracticable; (b) there are questions of law and fact common to the CLASS; (c) the named CLASS REPRESENTATIVES' claims are typical of the claims of the CLASS; (d) the named CLASS REPRESENTATIVES and CLASS COUNSEL identified below are able to adequately represent the CLASS; (e) questions of law or fact common among CLASS MEMBERS predominate over questions affecting only individual members of the CLASS; and (f) class-wide treatment of the disputes raised in this ACTION is superior to other available methods for adjudicating the controversy.

5. If the AMENDED AGREEMENT is terminated or not consummated pursuant to its terms, the COURT's conditional certification of the CLASS shall be void. In that event, the CLASS REPRESENTATIVES, the CLASS MEMBERS, and MESSAGE ENVY FRANCHISING, LLC ("MEF") shall be returned to their respective statuses as of the date immediately prior to the execution of the AGREEMENT and neither the AGREEMENT, AMENDED AGREEMENT, nor this PRELIMINARY APPROVAL ORDER shall have any bearing on, and shall not be admissible in connection with, (a) any issue in this ACTION or any claim raised under any other state or federal law that was intended to be encompassed within the ACTION; (b) whether certification or decertification would be appropriate in a non-settlement context; (c) MEF's liability for any final judgment or to any CLASS MEMBER; and (d) any judgment ultimately sought to

be entered against MEF or otherwise.

6. The COURT appoints and designates Mark Pirozzi and Keila Green as CLASS REPRESENTATIVES for the CLASS.

7. The COURT appoints and designates the following law firms and lawyers as CLASS COUNSEL for the CLASS:

Law Office of Richard S. Cornfeld, LLC
Richard S. Cornfeld
Daniel S. Levy
1010 Market Street, Suite 1645
St. Louis, Missouri 63101
Phone: (314) 241-5799

Cuneo Gilbert & Laduca, LLP
Michael J. Flannery
7733 Forsyth Boulevard, Suite 1675
St. Louis, Missouri 63105
Phone: (314) 226-1015

The Bruning Law Firm
Anthony S. Bruning
Anthony S. Bruning, Jr.
Ryan L. Bruning
Edward M. Roth
555 Washington Avenue, Suite 600
St. Louis, Missouri 63101
Phone: (314) 735-8100

8. The COURT approves, as to form and content, the proposed CLASS NOTICE, attached as Exhibits 3 (LONG FORM NOTICE), 4 (ONLINE NOTICE), 6 (PUBLICATION NOTICE), and 7 (SUMMARY NOTICE) to the AMENDED AGREEMENT, including the procedure for the CLASS MEMBERS to object to or request exclusion from the SETTLEMENT, to submit a CLAIM, and to file a Notice of Intention to Appear at the FINAL APPROVAL HEARING and, accordingly, directs that CLASS NOTICE be given in the form and manner consistent therewith and this

PRELIMINARY APPROVAL ORDER.

9. The COURT orders that PUBLICATION NOTICE be published through *PR Newswire* in the State of Missouri.

10. The COURT orders that ONLINE NOTICE be published online through: (a) banner notices via the *Google Display Network*, *Facebook*, and *Instagram* geo-targeted to IP addresses in Missouri only; (b) sponsored search listings on *Google*, *Bing*, and *Yahoo* geo-targeted to individuals in the State of Missouri actively seeking information about this ACTION; and (c) contextually targeted banners to individuals who have shown interest in MEF and/or websites associated with beauty & wellness.

11. The COURT finds that the CLASS NOTICE is the best means practicable of providing notice under the circumstances and constitutes a reasonable manner of notice to all class members who would be bound by the SETTLEMENT; when completed, it shall constitute due and sufficient notice of the ACTION, the SETTLEMENT, and the FINAL APPROVAL HEARING to all persons affected by and/or authorized to participate in the SETTLEMENT in full compliance with Federal Rules of Civil Procedure 23(c) and (e) and the requirements of due process.

12. The provisions of the AMENDED AGREEMENT relating to the CLASS NOTICE, exclusion from the SETTLEMENT, objection to the SETTLEMENT, a CLAIM, Notice of Intention to Appear at the FINAL APPROVAL HEARING, and the FINAL APPROVAL HEARING are deemed

incorporated as if expressly set forth in this PRELIMINARY APPROVAL ORDER and have the full force and effect of an Order of this COURT.

13. The COURT appoints and designates Epiq Class Action & Claims Solutions, Inc., 10300 Southwest Allen Blvd., Beaverton, OR 97005, as the SETTLEMENT ADMINISTRATOR.

14. The COURT hereby directs the SETTLEMENT ADMINISTRATOR to provide the approved CLASS NOTICE to the CLASS in accordance with the schedule below and using the procedures set forth in the AMENDED AGREEMENT.

15. The SETTLEMENT ADMINISTRATOR shall be responsible for:

(A) Printing and distributing the SUMMARY NOTICE approved by the COURT;

(B) Performing mailing address and email address updates and verifications prior to the first distribution of the SUMMARY NOTICE;

(C) Sending mailed SUMMARY NOTICE to those CLASS MEMBERS who were provided SUMMARY NOTICE via email and had it returned undeliverable and who have a mailing address in the MILLENNIUM DATABASE;

(D) Performing a single skip trace address follow up on any returned mail or email SUMMARY NOTICES;

(E) Creating and maintaining the SETTLEMENT WEBSITE and a toll-

free number that CLASS MEMBERS can contact to request a copy of the AGREEMENT, the AMENDED AGREEMENT, a CLAIM form, and/or to obtain any other information concerning the SETTLEMENT;

(F) Consulting with MEF's COUNSEL and CLASS COUNSEL concerning any relevant issues, including (without limitation) distribution of the CLASS NOTICE and processing of a CLAIM;

(G) Processing and recording timely and proper requests for exclusion from or objections to the SETTLEMENT;

(H) Processing and recording ALL CLAIMS;

(I) Preparing, drafting, and serving the CAFA Notice;

(J) Establishing the SETTLEMENT FUND in accordance with the AMENDED AGREEMENT; and

(K) Such other tasks as the PARTIES mutually agree or the COURT orders the SETTLEMENT ADMINISTRATOR to perform in connection with the AMENDED AGREEMENT.

16. In accordance with the schedule set forth below, the SETTLEMENT ADMINISTRATOR is directed to establish a website at www.missourimassagesessions.com (the "SETTLEMENT WEBSITE") to provide information regarding the SETTLEMENT including requesting exclusion from or objecting to the SETTLEMENT, submitting a CLAIM consistent

with the AMENDED AGREEMENT, the date of the FINAL APPROVAL HEARING, and other information related to the SETTLEMENT.

17. MEF shall pay the SETTLEMENT ADMINISTRATOR's reasonable costs associated with the administration of the SETTLEMENT, distribution of CLASS NOTICE pursuant to the AMENDED AGREEMENT, and any other tasks assigned to the SETTLEMENT ADMINISTRATOR by the AMENDED AGREEMENT, by MEF's and the CLASS REPRESENTATIVES' mutual written agreement, or as this COURT may order.

18. Before any CASH PAYMENT may be issued, each CLASS MEMBER must submit a valid CLAIM in accordance with the instructions set forth in the AMENDED AGREEMENT and CLASS NOTICE.

19. Any CLASS MEMBER may choose to object to the SETTLEMENT by serving on CLASS COUNSEL an objection to the SETTLEMENT in accordance with the instructions set forth in the AMENDED AGREEMENT and CLASS NOTICE. CLASS MEMBERS who fail to serve timely objections upon CLASS COUNSEL shall be deemed to have waived any objections and shall forever be foreclosed from making any objection (whether by appeal or otherwise) to the SETTLEMENT.

20. Any CLASS MEMBER may choose to be excluded from the SETTLEMENT as provided in the AMENDED AGREEMENT and CLASS NOTICE.

21. Any CLASS MEMBER who timely and properly requests to be

excluded from the SETTLEMENT will not be bound by the AMENDED AGREEMENT; will not have any right to object to, appeal from, or comment on the SETTLEMENT; and will not receive any benefits under the SETTLEMENT, including, but not limited to, any CASH PAYMENT.

22. Any request for exclusion must be signed by the requesting CLASS MEMBER and must comply with the requirements set forth in the AMENDED AGREEMENT and CLASS NOTICE.

23. CLASS MEMBERS who have not requested exclusion by submitting a valid and timely written request shall be bound by all determinations of the COURT, the AMENDED AGREEMENT, and any FINAL APPROVAL ORDER and JUDGMENT entered.

24. Any CLASS MEMBER who requests exclusion by submitting a valid and timely written request and also objects to the SETTLEMENT by submitting a timely objection shall be excluded from the SETTLEMENT and the objection shall be waived.

25. The COURT orders the following schedule as set forth in the AMENDED AGREEMENT:

- a. No later than thirty (30) days after the date of this PRELIMINARY APPROVAL ORDER, MEF shall provide the SETTLEMENT ADMINISTRATOR with an electronic list or database that includes the following information with respect to each CLASS MEMBER from the MILLENNIUM DATABASE (and any successor point of sale database) as

of the date of this PRELIMINARY APPROVAL ORDER: (i) first and last name; (ii) last known mailing address (if available); and (iii) last known email address (if available).

- b. No later than forty-five (45) days after entry of this PRELIMINARY APPROVAL ORDER, the SETTLEMENT ADMINISTRATOR shall:
- (i) launch the SETTLEMENT WEBSITE; (ii) distribute ONLINE NOTICE;
 - (iii) cause the PUBLICATION NOTICE to be published in the manner ordered by COURT; and (iv) complete the distribution of initial SUMMARY NOTICE to all persons shown by the data from the MILLENNIUM DATABASE (and any successor point of sale database) to CLASS MEMBERS, via email for those CLASS MEMBERS for whom an email address is available and via First Class U.S. Mail to all other CLASS MEMBERS for whom a mailing address is available (but for whom no email address is available).
- c. Within twenty-five (25) days following the NOTICE DATE, CLASS COUNSEL shall file a motion requesting an INCENTIVE FEE AWARD for the CLASS REPRESENTATIVES and a motion requesting a FEE AND EXPENSE AWARD.
- d. All CLAIMS must be submitted online on the SETTLEMENT WEBSITE or emailed, faxed, or mailed to the SETTLEMENT ADMINISTRATOR postmarked on or before the sixtieth (60th) day after completion of initial

distribution to the CLASS of the SUMMARY NOTICE by email or First Class U.S. Mail.

- e. All objections, whether to the AMENDED AGREEMENT, request for FEE AND EXPENSE AWARD, and/or request for INCENTIVE AWARD, must be mailed to the SETTLEMENT ADMINISTRATOR on or before the sixtieth (60th) day after the NOTICE DATE.
- f. All requests for exclusion must be emailed or mailed by First Class U.S. Mail to the SETTLEMENT ADMINISTRATOR postmarked on or before the sixtieth (60th) day after the NOTICE DATE.
- g. No later than fifteen (15) days following the OBJECTION/EXCLUSION DEADLINE, the SETTLEMENT ADMINISTRATOR shall provide to CLASS COUNSEL and MEF's COUNSEL a list of CLASS MEMBERS who submitted valid and timely exclusion requests.
- h. No later than fifteen (15) days following the OBJECTION/EXCLUSION DEADLINE, the SETTLEMENT ADMINISTRATOR shall file with the COURT and serve upon MEF's COUNSEL any written objections received from CLASS MEMBERS.
- i. No later than fifteen (15) days following the OBJECTION/EXCLUSION DEADLINE, the SETTLEMENT ADMINISTRATOR shall provide CLASS COUNSEL and MEF's COUNSEL with a Declaration of Compliance to be filed with the COURT in connection with the FINAL

APPROVAL motion.

- j. No later than forty-five (45) days following the OBJECTION/EXCLUSION DEADLINE, CLASS COUNSEL shall file the CLASS REPRESENTATIVES' Motion for FINAL APPROVAL.
- k. Any written opposition to the CLASS REPRESENTATIVES' Motion for FINAL APPROVAL shall be filed within twenty (20) days of the filing of the CLASS REPRESENTATIVES' Motion for FINAL APPROVAL and any reply in support of the CLASS REPRESENTATIVES' Motion for FINAL APPROVAL shall be filed within twenty (20) days of the filing of any opposition.

26. A FINAL APPROVAL HEARING shall be held before this COURT on **Friday, November 13, 2020** at **9:30 a.m.** at the United States District Court for the Eastern District of Missouri, 111 South 10th Street, St. Louis, MO 63102, to determine all necessary matters concerning the AMENDED AGREEMENT, including whether the proposed SETTLEMENT is fair, adequate, and reasonable; whether this COURT should grant FINAL APPROVAL; whether there should be any FEE AND EXPENSE AWARD and/or INCENTIVE AWARD, and the amounts of any such awards.

27. Any objecting CLASS MEMBER may appear, in person or by counsel, at the FINAL APPROVAL HEARING to show cause why the SETTLEMENT and the AMENDED AGREEMENT should not be approved as fair, adequate, and reasonable, or to


object to any request for a FEE AND EXPENSE AWARD and/or INCENTIVE AWARD. To appear in person or by counsel, the objecting CLASS MEMBER must file with the COURT and serve upon all counsel designated in the CLASS NOTICE, a Notice of Intention to Appear on or before the fourteenth (14th) day prior to the FINAL APPROVAL HEARING. The Notice of Intention to Appear must include the required information in accordance with the AMENDED AGREEMENT, the CLASS NOTICE, and the SETTLEMENT WEBSITE.

28. Any CLASS MEMBER who fails to timely submit a proper Notice of Intention to Appear will not be heard during the FINAL APPROVAL HEARING.

29. Nothing in this PRELIMINARY APPROVAL ORDER is, or may be construed as, an admission or concession on any point of fact or law by or against the CLASS REPRESENTATIVES or MEF.

30. CLASS COUNSEL, MEF, and the SETTLEMENT ADMINISTRATOR are directed to carry out their obligations under the AMENDED AGREEMENT.

IT IS SO ORDERED.



CATHERINE D. PERRY
UNITED STATES DISTRICT JUDGE

Dated this 13th day of April, 2020.