

**SUPREME COURT STATE OF NEW YORK
COUNTY OF NEW YORK**

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JANE DOE NO. 120,

PLAINTIFF,

v.

**VERIFIED COMPLAINT
INDEX NO. 152515/2018**

**GP NY PARTNERS, LLC, d/b/a
MASSAGE ENVY –SUTTON PLACE, and
SAMUEL ADAM MICHAEL,**

DEFENDANTS.

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Plaintiff, **JANE DOE NO. 120**¹, by and through her undersigned counsel, complaining of the Defendants, upon information and belief, alleges as follows:

PARTIES, JURISDICTION, AND VENUE

1. This Complaint arises from the sexual battery of JANE DOE NO. 120 by her massage therapist, SAMUEL ADAM MICHAEL, on September 9, 2017. This incident occurred while JANE DOE was seeking massage therapy services at the MASSAGE ENVY franchise located at 344 E. 63rd Street, New York, NY 10065.

2. Plaintiff JANE DOE NO. 120 is an adult female resident of the State of New York and is otherwise *sui juris*. Given the nature of the allegations, Plaintiff has elected to proceed as a Jane Doe in this matter. Her identity has been or soon will be made known to Defendants under separate cover.

3. Defendant GP NY PARTNERS, LLC, d/b/a MASSAGE ENVY- SUTTON PLACE, hereafter referred to as "Massage Envy" is a New York Corporation licensed to and doing business in The State of New York with a principal place of business at 344

¹ The number "120" refers to an internal numbering system used by Plaintiff's counsel. Counsel will stipulate that in the event this matter proceeds to jury trial, the Complaint can be amended to remove this number from the caption so as to avoid any potential prejudice to Defendants.

E. 63rd Street in Manhattan.

4. Defendant SAMUEL ADAM MICHAEL, hereafter referred to as "Michael," is an adult male resident of the State of New York.

5. At all times material, Defendant MICHAEL was an agent of Defendant MASSAGE ENVY, where he was employed as a massage therapist to perform massage services.

6. Venue is proper in this Court because the acts and omissions giving rise to this Complaint occurred in New York County.

7. Jurisdiction is proper because this Complaint seeks monetary damages in excess of \$25,000.00, exclusive of interest, costs, and attorney's fees.

FACTUAL ALLEGATIONS

8. On September 9, 2017, Plaintiff Jane Doe No. 120 went to the MASSAGE ENVY located at 344 W. 63rd Street in Manhattan for a pre-arranged massage appointment. MICHAEL was assigned by Defendant MASSAGE ENVY to perform Plaintiff's massage.

9. As instructed by Defendant MICHAEL, Plaintiff disrobed and was mostly nude during the course of the massage. She expected her sensitive areas (buttocks, breasts, genitals, etc.) to be covered by a sheet during the course of the massage.

10. During the course of the massage, MICHAEL used improper draping techniques that left Plaintiff's buttocks and vaginal area exposed as he manipulated her lower body and massaged her.

11. During the course of the massage, MICHAEL also had inappropriate physical contact with Plaintiff's buttocks, as well as her pelvic and groin areas.

12. Due to the position of his body during the course of the massage, Plaintiff also had unwanted physical contact with MICHAEL's body, including, but not limited to, his groin/genitals.

13. Plaintiff felt so embarrassed, shocked, and traumatized that she paid for the massage and left without telling any of the other employees what happened. She was primarily concerned with leaving the spa as quickly as possible to avoid having to interact with MICHAEL again and to get to a place of safety.

14. In October 2017, Plaintiff made a report to Defendant MASSAGE ENVY regarding the unwanted sexual contact. In response to Plaintiff's report, the female MASSAGE ENVY employee she spoke to said of MICHAEL, "...he's only been here three months and we've had so many complaints about him already. I'm thinking like, 'what is wrong with you, dude?'"

15. The employee indicated she would forward Plaintiff's complaint to her manager, along with Plaintiff's contact information.

16. There was no other response to Plaintiff's complaint from MASSAGE ENVY.

17. Upon information and belief, it was the standard practice of MASSAGE ENVY to disregard or otherwise fail to adequately investigate allegations of unwelcome physical contact with clients. Moreover, MASSAGE ENVY failed to respond to such allegations so as to protect other unknowing clients like Plaintiff, as evidenced by the fact that MICHAEL was employed by MASSAGE ENVY on September 9, 2017 and continues to be employed by MASSAGE ENVY today.

18. Upon information and belief, this specific MASSAGE ENVY location was

the subject of two investigations relating to unwelcome sexual contact by the New York Police Department (NYPD) before September 9, 2017.

19. Plaintiff did not invite, induce, ratify, consent (implicitly or expressly), or comply with any of the sexual conduct. To the contrary, Plaintiff was shocked and mortified by what happened.

20. At all relevant times, there was an employee-employer relationship between MICHAEL and MASSAGE ENVY whereby he was authorized to perform massage therapy services on nude consumers in small, poorly lit and unmonitored environments.

21. At all relevant times, MASSAGE ENVY authorized and expected its employees, including MICHAEL, to touch nude clients on their entire bodies, including their breasts, buttocks, and upper thigh area as part of the massage therapy process.

22. At all relevant times, the massage industry had a substantial problem that was or should have been known to Defendant MASSAGE ENVY before September 9, 2017. That problem is the sheer number of male massage therapists committing acts of unwanted sexual contact upon unsuspecting clients – and primarily female clients – during the course of a regular massage.

23. Unwelcome sexual contact like that experienced by Plaintiff is a generally foreseeable consequence of the nature of work involved in the massage industry and is an unfortunate reality engendered by the type of work MASSAGE ENVY's massage therapists are paid to perform. This fact was or should have been well known to MASSAGE ENVY franchises prior to September 2017 as the franchisor has collected and otherwise acquired data on the staggering numbers of incidents of physical contact

between a masseur and client. The franchisor alerted all of its franchises as to the extraordinary number and rate of incidents of physical contact with a client's breasts and genitals before September 9, 2017.

24. Additionally, Defendant MASSAGE ENVY was well aware that there are a vast number of victims of unwelcome sexual contact who have never come forward and never will prior to September 9, 2017. In fact, the General Orientation, Manual & Workbook, provided to every MASSAGE ENVY "associate", including Defendant MICHAEL, on their hire date, states: "*Only 4% of upset customers will tell you when there is a problem.*"

25. Defendant's "Inappropriate Touch Procedure" in the same manual has a diagram flow chart as to each step to take if a guest member complains that a therapist inappropriately touched them, as follows:

- **Member/Guest – Reports Inappropriate Conduct**
 - *Clinic Owner or Administrator should immediately respond to the member/guest's need and get them to a private room. Let them recover, allow them to explain what happened and document what they say. Have a witness present.*
 - **Do not admit/deny/or make any promise about the allegations other than to promise to investigate and take appropriate action.**
 - Complete **Clinic Incident Report** and gather any additional documentation, notes, etc.
 - **Email a copy of the Incident Report, and any additional documentation, to the Regional Developer and Corporate Office.** *If incident handed (sic) by Clinic Administrator, he/she should make Franchise Owner aware of the incident.*

26. Defendant's policies and procedures failed to define what was to be considered "inappropriate touch" so a massage therapist could not readily identify what physical contact is considered "inappropriate" by MASSAGE ENVY. This suggests

and/or implies that all physical contact was appropriate and authorized by Defendant MASSAGE ENVY except that which the individual massage therapists deemed would be "inappropriate" in each circumstance.

27. Despite the prevalence of unwanted physical contact in the massage therapy industry, Defendant MASSAGE ENVY at all relevant times had a procedure wherein a client who reported an incident of unwelcome sexual contact was to be sent out the door with only the mere "promise to investigate and take appropriate action". The only indicated "appropriate action" in the policy is for the MASSAGE ENVY employee to complete a "Clinic Incident Report" and "Email a copy to the Regional Developer and Corporate Office."

28. The "Inappropriate Touch Procedure" lacked any instructions to MASSAGE ENVY to notify law enforcement (or the State of New York massage therapist licensing division) to ensure a comprehensive interview of the victim by a trained investigator, thorough questioning of the alleged perpetrator, and the gathering of physical evidence.

29. In fact, even in the face of the knowledge that a massage therapist has perpetrated an unwanted sexual act upon a victim, the "Inappropriate Touch Procedure" by its very terms discourages any independent action by an employee and demands that all such attained knowledge be placed immediately in the possession of MASSAGE ENVY only.

30. Upon information and belief, this policy was in effect during the relevant time period because Defendant benefits from the repeat business of women whose massage therapy experience is enhanced by welcomed stimulation of their breasts,

buttocks and genitals as part of their massage treatment. Conversely, Defendant's business interests would be harmed by the negative publicity caused by criminal and/or licensing investigations into potential sexual misconduct perpetrated by its massage therapists.

31. In some cases, such as with the Plaintiff, MASSAGE ENVY failed to follow even this inadequate internal policy, and made no reports – internal or otherwise – about customer complaints. Therefore, it is reasonable to conclude that MICHAEL was, indeed, the subject of other complaints regarding his sexual contact with clients, just as the MASSAGE ENVY employee told Plaintiff, that were not investigated, and that he faced no consequences for his actions before, during, or after September 9, 2017.

32. Therefore, Defendant MASSAGE ENVY fosters an environment conducive to unwanted sexual contact by its massage therapists, who can engage in such behavior with the expressed or implied authorization of their employer. The massage therapists know they can touch a client's breasts, buttocks, and genital regions, even if the client does not welcome such contact, without the risk that law enforcement or licensing agencies will be notified by MASSAGE ENVY. The massage therapists are even more emboldened by their employer to commit such acts with the wisdom contained in corporate training policies that most clients will never report incidents of unwanted sexual contact.

33. Upon information and belief, Defendant MASSAGE ENVY, by and through its agents, managers, employees, and directors, knew or, through the exercise of reasonable care, should have known that MICHAEL was a risk to commit unwanted sexual touching of the Plaintiff and/or other clients, yet it took no action to protect

Plaintiff or other women from him. MASSAGE ENVY failed to warn Plaintiff and others outside the inner sanctum of MASSAGE ENVY about his propensity to touch clients in an inappropriate sexual manner as part of the therapeutic process, and about the inadequate MASSAGE ENVY policies that emboldened him to do so even if the client did not welcome such touching.

34. Despite actual or constructive knowledge of MICHAEL's and other masseurs' propensities to engage in unwanted sexual contact with clients, Defendant undertook no meaningful investigation or responsive action to prevent MICHAEL from doing so, instead giving him unfettered access to vulnerable women who came to him for massage therapy, including Plaintiff.

35. That at all times hereinafter mentioned, this action falls within one or more of the exceptions of Section 1602 of the Civil Practice Law and Rules, including, but not limited to, 1602 (2) and (7).

COUNT I- RESPONDEAT SUPERIOR/VICARIOUS LIABILITY
DEFENDANT GP NY PARTNERS, LLC d/b/a MASSAGE ENVY

36. Plaintiff incorporates paragraphs 1 through 35 as if set forth fully herein.

37. Among other duties, Defendant MASSAGE ENVY employed Defendant MICHAEL to perform massage on nude clients, including Plaintiff.

38. MASSAGE ENVY created a master-servant relationship with MICHAEL, employing him to touch and stimulate a nude client's body in a dimly-lit enclosed environment as his primary job function.

39. The sexual contact by MICHAEL upon Plaintiff occurred entirely during his regular working hours and at the place of his employment with Defendant MASSAGE ENVY while performing a massage on behalf of his employer.

40. Defendant MASSAGE ENVY authorized its male massage therapists, including MICHAEL, to touch the nude body of its clients, including on the client's nude chest/breasts, lower back, and upper thigh/groin area.

41. Defendant MASSAGE ENVY directed its massage therapists, including Defendant MICHAEL, to exercise professional judgment on behalf of MASSAGE ENVY when determining an individual client's massage therapy needs, including the areas of the body to be touched during the massage such as the chest (breasts), buttocks and groin areas, and how to touch them.

42. The sexual contact by MICHAEL occurred in the course and scope of his employment with Defendant MASSAGE ENVY.

43. The sexual contact by MICHAEL was generally foreseeable to Defendant MASSAGE ENVY.

44. The sexual contact by MICHAEL was closely connected to what he was employed to do as a massage therapist at Massage Envy, and/or was otherwise naturally incidental to his job duties.

45. MICHAEL's conduct was motivated, at least in part, by a desire to serve his employer's business interests or otherwise meet the objectives of his employment, however misguided, including creating a repeat customer at the Sutton Place location.

46. Alternatively, MICHAEL's conduct constituted an authorized, minor deviation from his employment that was authorized and/or ratified by Defendant MASSAGE ENVY.

47. As a direct and proximate result of Defendant MICHAEL's conduct, Plaintiff has suffered damages for which his employer is now liable.

WHEREFORE, Plaintiff JANE DOE NO. 120 demands judgment against Defendant GP NY PARTNERS, LLC d/b/a MASSAGE ENVY, a sum in excess of the jurisdictional limits of all lower courts, together with the costs and disbursements and other expenses necessary in this action.

COUNT II- NEGLIGENCE
(Hiring, Retention, Supervision)
DEFENDANT GP NY PARTNERS, LLC d/b/a MASSAGE ENVY

48. Plaintiff repeats and realleges Paragraphs 1 through 35 above as if set forth fully herein.

49. At all material times, Defendant MASSAGE ENVY, by and through its agents, managers, employees, and directors owed a duty to Plaintiff to use reasonable care to protect her safety, care, well-being and health while she was under the care, custody or in the presence of the Defendant. These duties encompassed the use of reasonable care in the hiring, retention and supervision of MICHAEL and otherwise providing a safe environment for clients, many of whom are women made vulnerable to unwanted sexual contact during treatment, including Plaintiff.

50. Prior to the sexual misconduct perpetrated by MICHAEL upon Plaintiff, Defendant MASSAGE ENVY knew, or in the exercise of reasonable care, should have known, of the general problem of massage therapists employed by MASSAGE ENVY engaging in sexual misconduct with clients during massages.

51. Prior to the sexual misconduct perpetrated by MICHAEL upon Plaintiff, Defendant MASSAGE ENVY knew, or in the exercise of reasonable care, should have known, that MICHAEL was unfit for the intimate duties assigned to him, that he did not exhibit appropriate behavior with clients, and otherwise posed a risk of perpetrating unwanted sexual contact upon clients.

52. Given actual or constructive knowledge of MICHAEL'S dangerous propensities specifically, and the problem of massage therapists at this location (and others) committing unwanted sexual contact with clients generally, the Defendant had a duty to act reasonably in all decisions relating to his hiring, supervision, and retention as an employee prior to September 9, 2017.

53. Defendant failed to exercise reasonable care in one or more of its decisions to hire, supervise, and retain MICHAEL and therefore exposed Plaintiff to an unreasonable risk of harm as a consumer.

54. Alternatively, two or more of Defendant MASSAGE ENVY'S co-employees, including, but not limited to, MICHAEL and the front desk employee who had actual knowledge of other complaints against MICHAEL, combined to cause harm to Plaintiff by failing to act reasonably in the provision of services to clients given actual or constructive knowledge of the risk of harm to clients, including, but not limited to, following MASSAGE ENVY policies and procedures for investigating and reporting sexual misconduct.

55. Defendant MASSAGE ENVY affirmed and ratified MICHAEL's misconduct with Plaintiff.

56. Given the actual and constructive knowledge of the likelihood that MICHAEL and other masseurs would engage clients in unwanted sexual contact, the unwanted sexual contact of Plaintiff was reasonably foreseeable to Defendant MASSAGE ENVY.

57. MASSAGE ENVY and its agents had superior knowledge of the likelihood that Plaintiff's massage therapist would engage in unwanted sexual contact with clients

that they encountered in their individual roles as massage therapists and had a duty to take precautions to lessen the risk that Plaintiff would be the victim of unwanted sexual contact. Such precautions could include, but are not limited to, warning Plaintiff of the higher likelihood that she would be the victim of unwanted sexual contact by a massage therapist employed by MASSAGE ENVY, particularly at this Massage Envy location, and particularly by this massage therapist given the amount of complaints against him.

58. At all relevant times, Defendant MASSAGE ENVY's acts and omissions created an environment which fostered unwanted sexual contact and exploitation against the people it had a duty to protect, including Plaintiff.

59. At all relevant times, Defendant MASSAGE ENVY had inadequate policies and procedures to protect clients entrusted to its care and protection, including Plaintiff, which substantially contributed to the creation of a dangerous environment.

60. As a direct and proximate result of the negligence of DEFENDANT, Plaintiff suffered severe and permanent psychological, emotional and physical injuries, shame, humiliation and the inability to lead a normal life, and has incurred and/or will incur costs for treatment and will continue to do so in the future. These injuries are permanent and ongoing in nature.

WHEREFORE, Plaintiff JANE DOE NO. 120 demands judgment against Defendant GP NY PARTNERS, LLC d/b/a MASSAGE ENVY, for compensatory damages, in a sum in excess of the jurisdictional limits of all lower courts, together with the costs and disbursements and other expenses necessary in this action.

COUNT III- NEGLIGENCE
(Premises Liability)
DEFENDANT GP NY PARTNERS, LLC d/b/a MASSAGE ENVY

61. Plaintiff realleges and incorporates paragraphs 1 through 35 as if set forth fully herein.

62. Defendant MASSAGE ENVY was the legal owner and/or tenant/occupier of the retail space located at 344 W. 63rd St. in Manhattan on or about September 9, 2017.

63. Plaintiff was a business invitee of Defendant MASSAGE ENVY who was legally present at the retail space on September 9, 2017, when Defendant MICHAEL engaged her in unwanted sexual contact.

64. Defendant MASSAGE ENVY owed Plaintiff a duty to protect her from dangerous conditions on its premises that it knew about, or in the exercise of reasonable care could have discovered.

65. Defendant MASSAGE ENVY owed Plaintiff a duty to provide a reasonably safe environment where she would be free from the threat of unwanted sexual contact while on Defendant MASSAGE ENVY's premises.

66. Defendant MASSAGE ENVY owed Plaintiff a duty to take reasonable precautions to ensure her safety while on the premises of Defendant MASSAGE ENVY.

67. Prior to the sexual misconduct perpetrated by MICHAEL upon Plaintiff, Defendant MASSAGE ENVY knew, or in the exercise of reasonable care, should have known, of the general problem of massage therapists employed by MASSAGE ENVY engaging in sexual misconduct with clients during massages.

68. Prior to the sexual misconduct perpetrated by MICHAEL upon Plaintiff, Defendant MASSAGE ENVY knew, or in the exercise of reasonable care, should have known, that MICHAEL was unfit for the intimate duties assigned to him, that he did not

exhibit appropriate behavior with clients, and otherwise posed a risk of perpetrating unwanted sexual contact upon clients.

69. Defendant MASSAGE ENVY breached the duty owed to Plaintiff by failing to make the premises reasonably safe for Plaintiff despite what it knew or should have known about the existence of a potential threat of harm Plaintiff on its premises.

70. Defendant MASSAGE ENVY breached the duty it owed to Plaintiff by failing to warn Plaintiff of the dangers and risks involved in patronizing MASSAGE ENVY given its superior knowledge of the potential risk of harm to her.

71. At all relevant times, Defendant MASSAGE ENVY had inadequate policies and procedures to protect clients entrusted to its care and protection, including Plaintiff, which substantially contributed to the creation of a dangerous environment.

72. As a direct and proximate result of the negligence of DEFENDANT, Plaintiff suffered severe and permanent psychological, emotional and physical injuries, shame, humiliation and the inability to lead a normal life, and has incurred and/or will incur costs for treatment and will continue to do so in the future. These injuries are permanent and ongoing in nature.

WHEREFORE, Plaintiff JANE DOE NO. 120 demands judgment against Defendant GP NY PARTNERS, LLC d/b/a MASSAGE ENVY, for compensatory damages, costs and such other and further relief as this Court deems proper.

COUNT IV- NEGLIGENCE
DEFENDANT SAMUEL ADAM MICHAEL

73. Plaintiff hereby realleges and incorporates paragraphs 1 through 35 as if set forth fully herein.

74. At all material times, Defendant MICHAEL owed a duty to Plaintiff to

reasonable care in the performance of massage/spa services on September 9, 2017.

75. These duties included exercising reasonable care to prevent inadvertent, negligent, or careless touching of Plaintiff's breasts, buttocks, and genitals.

76. Defendant MICHAEL breached his duty of care by negligently using lax or inappropriate draping procedures and/or negligently, inadvertently, or carelessly causing uninvited contact between his hand and Plaintiff's buttocks and genitalia.

77. As a direct and proximate result of the negligence of Defendant MICHAEL, Plaintiff suffered severe and permanent psychological, emotional and physical injuries, shame, humiliation and the inability to lead a normal life, and has incurred and/or will incur costs for treatment and will continue to do so in the future. These injuries are permanent and ongoing in nature.

WHEREFORE, Plaintiff Jane Doe No. 120 demands judgment against Defendant SAMUEL ADAM MICHAEL for compensatory damages, in a sum in excess of the jurisdictional limits of all lower courts, together with the costs and disbursements and other expenses necessary in this action.

New York, New York
Dated: May 1, 2018

Yours, etc.,

Jessica D. Arbour
(*pro hac vice* admission pending)
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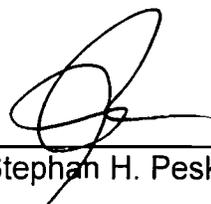

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VERIFICATION

STEPHAN H. PESKIN, an attorney duly admitted to practice before the Courts of this State affirms under penalty of perjury that he is local counsel for the plaintiff herein and has read the foregoing COMPLAINT and know the contents thereof; the same is true to my own knowledge, except as to the matters therein to be alleged on information and belief, and as to those matters I believe it to be true. That the source of my information and knowledge are investigations, communications with lead counsel and records in the file.

The reason that this verification is made by me and not by plaintiff is to protect the identity of the plaintiff under The New York Civil Rights Law.


Stephan H. Peskin

Dated: May 1, 2018