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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**COUNTY OF SAN DIEGO**

JENNA NOVOTNY, individually and on behalf )  
of all others similarly situated, )

Plaintiff, )

vs. )

MASSAGE HEIGHTS FRANCHISING, LLC, a )  
Texas limited liability company; and DOES 1- )  
50, inclusive, )

Defendants, )

Case No. 37-2020-00017688-CU-BT-CTL

) [*Case Assigned for all Purposes to*  
) *Hon. Joel R. Wohlfeil, Dept. C-73*]

) **AMENDED SETTLEMENT AGREEMENT**  
) **AND RELEASE**

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1 This Amended Settlement Agreement and Release (“Agreement”) is made and entered into  
2 this \_\_\_ day of March 2022, by and among: (1) Plaintiff Jenna Novotny (“Plaintiff”), for herself and  
3 on behalf of the putative Class she seeks to represent (defined below); and (2) Defendant Massage  
4 Heights Franchising, LLC (“Defendant”). The Agreement is intended by Plaintiff and Defendant  
5 (collectively, the “Parties”) to fully, finally, and forever resolve, discharge, release, and settle the  
6 Released Claims (as defined below) upon and subject to the terms and conditions hereof.

7 **I. RECITALS**

8 WHEREAS, Plaintiff filed a lawsuit against Defendant that is currently pending in the  
9 Superior Court of the State of California, San Diego County, entitled: *Jenna Novotny v. Massage*  
10 *Heights Franchising, LLC*, Case No. 37-2020-00017688-CU-BT-CTL (the “Action”);

11 WHEREAS, Plaintiff has asserted claims, on her own behalf and on behalf of a putative Class  
12 of similarly situated individuals, seeking monetary damages and other statutory and declaratory relief  
13 against Defendant concerning provisions in the Membership Agreement (defined below) that affect  
14 the ability of “Class Members” to use/ redeem “Unutilized Massages” (defined below) upon  
15 Membership (defined below) cancellation, nonrenewal, or termination for nonpayment. Plaintiff  
16 alleges these provisions violate California law;

17 WHEREAS, Defendant denies Plaintiff’s allegations of wrongful conduct, liability, and/or  
18 damages in their entirety, and has asserted numerous procedural and substantive defenses to  
19 Plaintiff’s claims;

20 WHEREAS, Class Counsel (defined below) has conducted a thorough investigation of the  
21 facts and legal theories relating to and forming the basis of the claims alleged in the Action, including  
22 an extensive, multi-phase discovery and fact-finding process in preparation for and as part of a good  
23 faith and an arm’s-length mediation process and subsequent litigation; and

24 WHEREAS, Plaintiff and Class Counsel have concluded, based upon the aforementioned  
25 litigation record and factual investigation, and taking into account the sharply contested issues  
26 involved, the expense and time necessary to prosecute the Action through trial, and subsequent  
27 potential appeals, the risks, costs, and uncertainties of further prosecution of the Action, and the  
28 substantial benefits to be provided to the Class Members pursuant to this Agreement, that a settlement

1 with Defendant on the terms set forth herein is fair, equitable, adequate, reasonable, and in the best  
2 interests of Plaintiff and the Class Members. The Parties have therefore agreed to settle the Action  
3 on the terms set forth herein.

4 **II. AGREEMENT**

5 NOW THEREFORE, intending to be legally bound and acknowledging the sufficiency of  
6 the consideration and undertakings set forth below, Defendant, Defendant’s Counsel (defined  
7 below), Class Counsel, and Plaintiff hereby stipulate and agree that, in consideration of the terms and  
8 conditions set forth in this Agreement and the exhibits contained herein, and subject to and expressly  
9 conditioned upon the Court’s entry of a Final Approval Order and Judgment approving this  
10 Agreement, all Released Claims shall be settled, compromised, released, and fully disposed of upon  
11 the terms and conditions set forth herein.

12 **III. DEFINITIONS**

13 In addition to the terms defined at various points within this Agreement, the following defined  
14 terms apply throughout this Agreement and the attached exhibits:

15 1. “Action” means the class action lawsuit, entitled *Jenna Novotny v. Massage Heights*  
16 *Franchising, LLC*, filed on behalf of Plaintiff and the Class in San Diego Superior Court, Case No.  
17 37-2020-00017688-CU-BT-CTL, which is currently pending before the Honorable Joel R. Wohlfeil.

18 2. “Class” or “Class Members” means for purposes of this Settlement:

19 All individuals who enrolled in a Membership at a Retreat (defined below) at any time  
20 prior to July 19, 2016, and whose Membership terminated as a result of cancellation,  
21 nonrenewal, or nonpayment prior to [date of Preliminary Approval (defined below)]  
with one or more Unutilized Massages.

22 3. “Class Counsel” means the law firm of Johnson Fistel, LLP.

23 4. “Court” means the Superior Court of the State of California, San Diego County.

24 5. “*Cy Pres* Recipient” means the Legal Aid Association of California, subject to  
25 approval by the Court, which shall only be entitled to receive the amount, if any, by which the Fee  
26 and Expense Amount (defined below) may be reduced by the Court.

27 6. “Defendant’s Counsel” means the law firm of Pettit Kohn Ingrassia Lutz & Dolin PC.

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1           7.       “Effective Date” means the earliest of the following: (1) the date of entry of the Final  
2 Approval Order and Judgment if no objections are submitted to the Settlement or if all objections are  
3 withdrawn prior to the Court ruling on them; or (2) thirty-one (31) days after the entry of the Final  
4 Approval Order and Judgment if objections are submitted and overruled and no appeal is taken from  
5 the Final Approval Order and Judgment; or (3) if a timely appeal is made, three (3) business days  
6 after the date of the final resolution of that appeal and any subsequent appeals from Final Approval  
7 of the Settlement.

8           8.       “Fee and Expense Amount” means an award of attorneys’ fees and the reimbursement  
9 of litigation costs and expenses authorized by the Court to be paid to Class Counsel for the services  
10 rendered in representing Plaintiff and the Class in the prosecution of the Action, pursuant to the terms  
11 outlined in Section XI of this Agreement.

12           9.       “Final Approval Date” means the date the Court enters an Order and Judgment  
13 granting final approval of the Settlement.

14           10.      “Final Approval Hearing” means the hearing to be held by the Court to determine  
15 (a) whether the Settlement is fair, adequate, and reasonable; (b) whether the Final Approval Order  
16 and Judgment should be entered; and (c) and whether to approve Class Counsel’s application for their  
17 Fee and Expense Amount and for Plaintiff’s Service Award.

18           11.      “Final Approval Order and Judgment” means the order and judgment that the Court  
19 enters upon finally approving the Settlement.

20           12.      “Home Retreat” means (i) the Retreat (defined below) where the Class Member  
21 executed his/her Membership Agreement (defined below), (ii) the Retreat where the Class Member  
22 may have transferred his/her Membership (defined below) prior to the conclusion of his/her  
23 Membership, *or* (iii) the Retreat where the Class Member may otherwise be required to redeem any  
24 Reinstated Massage Credits (defined below) as a result of this Settlement in order to provide the Class  
25 Member with the best means possible to redeem any Reinstated Massage Credits made available  
26 through the Settlement contemplated in this Agreement.

27           13.      “ID Number” means a unique identification number that will be separately assigned  
28 to each Class Member. Each Class Member’s unique ID Number will be provided in the Notice sent

1 to that Class Member. Class Members may also request their unique ID Number by contacting the  
2 Settlement Administrator.

3 14. "July Members" means Class Members with one or more Unutilized Messages that  
4 expired after May 29, 2016.

5 15. "May Members" means Class Members with one or more Unutilized Messages that  
6 expired on or before May 29, 2016.

7 16. "Membership" means the membership that any Class Member had with a Retreat  
8 pursuant to an executed Membership Agreement.

9 17. "Membership Agreement" means the agreement utilized by the Retreats prior to  
10 July 19, 2016, to enroll the Class Members into the Membership.

11 18. "Notice" means the forms of Notice of the Settlement that the Parties shall request the  
12 Court to approve in connection with the Motion for Preliminary Approval of Class Action Settlement,  
13 substantially in the form of Exhibit 1 to the Preliminary Approval Order, Exhibit A hereto.

14 19. "Notice Deadline" means the date by which the Settlement Administrator shall be  
15 required to send out the Notice, which shall not be later than sixty (60) days before the Final Approval  
16 Hearing or as otherwise ordered by the Court.

17 20. "Notice Program" means the methods described in this Agreement and the attached  
18 exhibits for providing Notice to the Class Members, which is further described in Section IX of this  
19 Agreement.

20 21. "Preliminary Approval" means the date that the Court enters an order preliminarily  
21 approving the Settlement substantially in the form of Exhibit A hereto.

22 22. "Reinstated Massage Credits" means massage service credits that Class Members may  
23 elect to have reinstated for redemption at their Home Retreat and pursuant to the terms of the  
24 Settlement.

25 23. "Reinstatement Request" means a Class Member's timely request for reinstatement of  
26 Unutilized Messages in the form of Reinstated Massage Credits consistent with the terms of this  
27 Agreement.

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1           24.     “Reinstatement Request Deadline” means the deadline by which the Class Members  
2 must submit a Reinstatement Request as provided for in this Agreement and is the date 14 calendar  
3 days after the Final Approval Hearing unless the Court orders otherwise.

4           25.     “Released Claims” means all causes of action, purported causes of action, claims, and  
5 demands to be released as specified in Section XIII of this Agreement.

6           26.     “Released Parties” means those individuals and entities released in paragraphs 77–79  
7 of the Agreement.

8           27.     “Releasing Parties” means Plaintiff and all Settlement Class Members, including each  
9 of their respective heirs, assigns, beneficiaries, and successors.

10          28.     “Retreat” means a California Massage Heights franchised massage clinic.

11          29.     “Service Award” means an award authorized by the Court to be paid to Plaintiff in  
12 recognition of her participation and efforts in prosecuting the Action, pursuant to the terms outlined  
13 in paragraph 71 of this Agreement.

14          30.     “Settlement” means the settlement into which the Parties have entered to resolve the  
15 Action. The terms of the Settlement are as set forth in their entirety in this Agreement and the attached  
16 exhibits.

17          31.     “Settlement Administrator” means Phoenix Class Action Administration Solutions or  
18 other third-party agent or administrator appointed by the Court to provide services in the  
19 administration of this Agreement, including providing the Notice to Class Members, the processing,  
20 evaluation, and verification of Reinstatement Requests, and the processing of other documents or  
21 tasks as provided for in this Agreement or as otherwise agreed to by the Parties and the Settlement  
22 Administrator or ordered by the Court.

23          32.     “Settlement Class Members” means all Class Members who do not timely and/or  
24 validly opt out of the Settlement (in accordance with the terms of this Agreement and Preliminary  
25 Approval Order).

26          33.     “Settlement Website” means the website the Settlement Administrator shall create and  
27 establish as soon as practicable following Preliminary Approval, but prior to the commencement of  
28 the Notice Program, as a means for Class Members to obtain information concerning the Settlement,

1 and to complete and submit a Reinstatement Request consistent with this Agreement. The Settlement  
2 Website shall not include any advertising or bear or include Defendant's logos or trademarks.

3 34. "Unutilized Massages" means the monthly 60-minute massage service(s) that accrued,  
4 were available for use during the term of a Class Member's Membership, remained unused, and  
5 therefore expired upon termination of the Membership as a result of cancellation, nonrenewal, or  
6 nonpayment.

7 **IV. CONSIDERATION FOR SETTLEMENT**

8 35. In exchange for the mutual promises and covenants in this Agreement, including,  
9 without limitation, the Releases as set forth in Section XIII of this Agreement, Defendant agrees to  
10 provide substantial and meaningful benefits to the Class by reinstating a significant portion of their  
11 Unutilized Massages in the form of Reinstated Massage Credits. More specifically, each Class  
12 Member who timely submits a Reinstatement Request shall be issued Reinstated Massage Credits  
13 based on the following formula/allocation:

14 A. May Members will be issued/eligible to redeem:

- 15 i. A Reinstated Massage Credit of 60 minutes for the first hour of  
16 Unutilized Massages; and
- 17 ii. A Reinstated Massage Credit of 30 minutes for each additional hour  
of Unutilized Massages.

18 B. July Members will be issued/eligible to redeem:

- 19 i. A Reinstated Massage Credit of 60 minutes for the first hour of  
20 Unutilized Massages; and
- 21 ii. A Reinstated Massage Credit of 45 minutes for each additional hour  
of Unutilized Massages.

22 C. For purposes of this Settlement, Reinstated Massage Credits will be applied to  
23 each Class Member's Membership account in 30-minute increments for every 30  
minutes in which the Class Member is entitled based on the formulas above.

24 The tables below demonstrate how Reinstated Massage Credits will be issued to the May  
25 and July Members, respectively.

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<b>REINSTATED MESSAGE CREDITS TO BE ISSUED TO MAY MEMBERS</b>	
Hours of Unutilized Massages When Membership Ended	Reinstated Massage Credits
One	One 60-minute service
Two	One 90-minute service
Three	Two 60-minute services
Four	One 60-minute massage and One 90-minute massage
Five	Three 60-minute services
Six	Two 60-minute services and One 90-minute service
Seven	Four 60-minute massages
Eight	Three 60-minute services and One 90-minute service
Nine	Five 60-minute services
Ten	Four 60-minute services and One 90-minute service
Eleven or more	$((\text{Number of Unutilized Massages} - 1) \times 0.5) + 1$

<b>REINSTATED MESSAGE CREDITS TO BE ISSUED TO JULY MEMBERS</b>	
Hours of Unutilized Massages When Membership Ended	Reinstated Massage Credits
One	One 60-minute service
Two	One 90-minute service
Three	One 60-minute service and One 90-minute service
Four	Three 60-minute services
Five	Four 60-minute services
Six	Four 60-minute services
Seven	Four 60-minute services and One 90- minute service
Eight	Six 60-minute services
Nine	Seven 60-minute services
Ten	Six 60-minute services and One 90-minute service
Eleven or more	$((\text{Number of Unutilized Massages} - 1) \times .75) + 1$

1           36.     This reinstatement formula/allocation is intended to cumulatively result in the May  
2 Members receiving approximately fifty percent (50%) and the July Members receiving approximately  
3 seventy-five percent (75%) of their Unutilized Massages available for reinstatement and redemption  
4 under the Settlement.

5           37.     Consistent with each Class Member’s Membership Agreement, each massage service  
6 includes ten (10) minutes of dressing and consultation time.

7           38.     Class Members shall have 180 days to redeem Reinstated Massage Credits (the  
8 “Redemption Period”). If the Final Approval Date is on or before July 1, 2022, and there are no  
9 appeals, the Redemption Period shall commence on the first day the Class Member is provided  
10 confirmation of the award of Reinstated Massage Credits as described in paragraph 41, below. If the  
11 Final Approval Date is after July 1, 2022, and there are no appeals, the Redemption Period shall  
12 commence on March 1, 2023. Reinstated Massage Credits may only be redeemed in 60, 90, and 120-  
13 minute intervals per session.

14           39.     All Reinstated Massage Credits are non-transferrable and may only be redeemed at  
15 the Class Member’s Home Retreat, unless at least one of the following exceptions applies to the Class  
16 Member, in which case the Class Member may make a one-time request for a new Home Retreat in  
17 order to redeem his/her Reinstated Massage Credits:

18                   (1)     The Class Member has moved more than 25 miles from his/her Home Retreat  
19 since the termination of his/her Membership.

20                   (2)     The Class Member’s Home Retreat is no longer in operation, does not exist, or  
21 is otherwise exempt from participating in the redemption of Reinstated Massage Credits  
pursuant to the Settlement (in which case the Class Member will be notified of the same  
at the time Notice is sent to the Class).

22           40.     To qualify for Reinstated Massage Credits, Class Members must submit a  
23 Reinstatement Request by the Reinstatement Request Deadline. Any Class Member who timely  
24 submits a valid Reinstatement Request shall automatically have at least one Reinstated Massage  
25 Credit of 60 minutes applied to his/her Membership account consistent with the above chart.

26           41.     Within thirty (30) days after the Final Approval Date, the Settlement Administrator  
27 shall mail a separate notice to each Class Member who submits a Reinstatement Request confirming  
28 (or not) the timeliness and validity of the Reinstatement Request, and providing the Class Member

1 with the number of Reinstated Massage Credits applied to his/her Membership account consistent  
2 with the above chart and the name and location of the Class Member's Home Retreat. In the case of  
3 an untimely and/or invalid Reinstatement Request, the Settlement Administrator shall indicate in such  
4 notice that the Class Member's Reinstatement Request is to be rejected, setting forth the reason(s)  
5 therefore, and shall further indicate that the Class Member may elect to contest such rejection by  
6 serving upon the Settlement Administrator, within fifteen (15) days from receipt of the notice required  
7 under this paragraph, a notice and statement of reasons indicating the Class Member's grounds for  
8 contesting the rejection along with any supporting documentation. If a dispute concerning a rejected  
9 Reinstatement Request cannot otherwise be resolved, Class Counsel and Defendant's Counsel shall  
10 thereafter present the request for review to the Court.

11 42. Reinstatement Requests may be submitted on the Settlement Website, by email, or by  
12 mail to the Settlement Administrator no later than the Reinstatement Request Deadline. For  
13 submissions by mail, the Reinstatement Request must be postmarked by the Reinstatement Request  
14 Deadline.

15 43. Any Class Member who has moved more than 25 miles from his/her Home Retreat  
16 since his/her Membership ended may make a one-time request to designate a new Retreat as his/her  
17 Home Retreat where he/she can redeem any Reinstated Massage Credits. In such a circumstance,  
18 the Class Member must include this request in his/her Reinstatement Request and must also provide  
19 the Settlement Administrator with proof of the Class Member's current home address so as to enable  
20 the Settlement Administrator to confirm the validity of the request. Sufficient proof includes anything  
21 mailed to the Class Member by an independent unaffiliated third party—such as utilities, bills, etc.—  
22 or a current deed or rental agreement showing the Class Member's current home address.

23 44. Any Class Member whose Home Retreat is no longer in operation, does not exist, or  
24 is identified as a Retreat exempt from participating in the redemption of Reinstated Massage Credits  
25 pursuant to the Settlement may make a one-time request to designate a new Retreat as his/her Home  
26 Retreat where he/she can redeem Reinstated Massage Credits. In such a circumstance, the Class  
27 Member must include this request in his/her Reinstatement Request and must also provide the  
28 Settlement Administrator with the name and location of his/her Home Retreat so as to enable the

1 Settlement Administrator to confirm the validity of the request.

2 45. Class Members shall be treated the same as current/active members of a Retreat with  
3 respect to the availability and servicing of massages.

4 46. No person shall have any claims against Defendant, any Retreat, Defendant's Counsel,  
5 Plaintiff, Class Counsel, or the Settlement Administrator based on the mailings, distributions, or  
6 reinstatement process made in accordance with this Agreement or any order of the Court.

7 **V. CERTIFICATION OF THE CLASS**

8 47. Within sixty (60) days of execution of this Agreement, and through the Motion for  
9 Preliminary Approval of Class Action Settlement, Plaintiff and Class Counsel shall seek certification  
10 from the Court of a Class, for settlement purposes only, defined as follows:

11 All individuals who enrolled in a Membership at a MHF Retreat at any time prior to  
12 July 19, 2016, and whose Membership terminated as a result of cancellation,  
13 nonrenewal, or nonpayment prior to [date of Preliminary Approval] with one or more  
14 Unutilized Massages.

15 48. For purposes of this Settlement only, Defendant expressly agrees to the certification  
16 of the Class. Nothing in this Agreement shall be construed as an admission by Defendant or other  
17 Released Persons that the Action is suitable for class certification for purposes of a trial or contested  
18 proceeding. If the Court declines to approve the Settlement, or if the Court changes the Class  
19 composition or the terms of the Settlement in any material way not acceptable to Defendant after  
20 reasonable consultation with Class Counsel, or if certification of the Class or approval of the  
21 Settlement is reversed, or if certification of the Class or approval of the Settlement is changed upon  
22 appeal or review in any material way not acceptable to Defendant after reasonable consultation with  
23 Class Counsel, Defendant shall have the right to terminate the Settlement pursuant to Section XIV of  
24 this Agreement.

25 49. In the event Final Approval of this Settlement is not granted by the Court and/or the  
26 Settlement embodied herein does not become effective, the Parties shall be returned to the *status quo*  
27 *ante*, and the Action shall proceed as if this Agreement had never been negotiated or executed and no  
28 Class had been certified.

1 **VI. PRELIMINARY APPROVAL**

2 50. Within sixty (60) days of execution of this Agreement, Plaintiff and Class Counsel  
3 shall file with the Court a Motion for Preliminary Approval of Class Action Settlement seeking an  
4 order from the Court substantially in the form attached hereto as Exhibit A (the “Preliminary  
5 Approval Order”). The motion for Preliminary Approval shall request that the Court: (i) approve the  
6 terms of the Settlement as within the range of fair, adequate, and reasonable; (ii) provisionally certify  
7 the Class pursuant to Cal. Civ. Code § 1781, for purposes of this Settlement purposes only; (iii)  
8 approve the Notice Program set forth herein and approve the form and content of the Notice; (iv)  
9 approve the procedures set forth in and pursuant to this Agreement for Class Members to exclude  
10 themselves from or opt out of the Settlement, or to object to the Settlement; (v) stay the Action  
11 pending final approval of the Settlement; and (vi) schedule a Final Approval Hearing.

12 **VII. DISCOVERY & DISCLOSURE**

13 51. The Parties have engaged in substantial discovery over the course of the Action.  
14 Defendant has cooperated and will continue to cooperate with Class Counsel by providing reasonably  
15 available data to permit the Settlement Administrator and Class Counsel, if necessary, to ascertain  
16 and provide Notice to the Class Members and perform the distributions provided herein. Such  
17 information shall be provided no later than ten (10) calendar days after Preliminary Approval.

18 **VIII. SETTLEMENT ADMINISTRATOR**

19 52. The Settlement Administrator shall administer various aspects of the Settlement as  
20 described in this Agreement and perform such other functions as are otherwise specified for the  
21 Settlement Administrator elsewhere in this Agreement, including, but not limited to (i) providing  
22 Notice, as described in Section IX of this Agreement, and (ii) administering the process and  
23 procedures relating to the reinstatement of Reinstated Massage Credits in accordance with the terms  
24 of this Agreement. Class Counsel and Defendant’s Counsel will jointly oversee the performance of  
25 the Settlement Administrator. The Settlement Administrator shall be subject to the jurisdiction of the  
26 Court with respect to the administration of the Settlement pursuant to the terms of the Agreement.

27 53. All Settlement Administrator fees, charges, and expenses reasonably incurred in the  
28 administration of the Settlement shall be paid separately and directly by or on behalf of Defendant to

1 the Settlement Administrator within thirty (30) days of Class Counsel's and Defendant's Counsel's  
2 mutual receipt and approval of an invoice evidencing the same. Any such fees, charges, and expenses  
3 shall neither reduce nor diminish any other benefits provided under the Settlement.

4 54. The duties of the Settlement Administrator, in addition to other responsibilities that  
5 are described in this Agreement, shall include the following:

6 (i) Obtain the following information from Defendant: (i) each Class Member's  
7 full name, mailing address, and email address (as available), and, to the extent necessary, verify  
8 identify, or update the addresses received through the National Change of Address database, for the  
9 purpose of disseminating the Notice to the Class; (ii) each Class Member's Home Retreat; (iii) the  
10 number of Unutilized Massages each Class Member had at the time of Membership termination; and  
11 (iv) the number of Reinstated Massaged Credits each Class Member will be issued;

12 (ii) Establish and maintain a Post Office box for receipt of any Class Member's  
13 Reinstatement Request, request for a one-time change in Home Retreat designation, request for  
14 exclusion from the Settlement, and/or objection to the Settlement;

15 (iii) Establish and maintain the Settlement Website;

16 (iv) Establish and maintain an automated toll-free telephone line in which Class  
17 Members may call and obtain information related to the Settlement;

18 (v) Respond to any inquiries from Class Members sent via mail;

19 (vi) Process all requests from any eligible Class Member in connection with the  
20 Settlement;

21 (vii) Provide weekly reports and, no later than five (5) days after the deadline for  
22 Class Members to exclude themselves from the Settlement, a final report to Class Counsel and  
23 Defendant's Counsel that summarizes the total number of requests for exclusion and objections  
24 received, and any other pertinent information;

25 (viii) Prepare an affidavit to submit to the Court at Class Counsel's request in  
26 advance of the Final Approval Hearing that, *inter alia*, identifies each Class Member who timely and  
27 properly requested exclusion from the Class;

28

1 (ix) Provide Class Counsel and Defendant’s Counsel a list in writing of all Class  
2 Members who timely and properly submitted a Reinstatement Request within five (5) days after the  
3 Reinstatement Request Deadline, and the following additional information for each said Class  
4 Member: (i) full name; (ii) current mailing address; (iii) email address; (iv) unique ID Number;  
5 (v) Home Retreat (including any election to designate a new Home Retreat); (vi) the number of  
6 Unutilized Massages; and (vii) the number of Reinstated Massage Credits; and

7 (x) Provide written certification of the completion of the administration of the  
8 Settlement within five (5) days of such completion to Class Counsel and Defendant’s Counsel.

9 **IX. NOTICE TO CLASS MEMBERS**

10 55. The Parties agree that distributing Notice directly to the Class via mail and through  
11 the Settlement Website in the manner described herein is the best and most fair and reasonable notice  
12 practicable under the circumstances.

13 56. Upon Preliminary Approval of the Settlement, but not later than sixty (60) days before  
14 the Final Approval Hearing or as otherwise ordered by the Court, the Settlement Administrator shall  
15 implement the Notice Program provided herein and send Notice to the Class. In doing so, the  
16 Settlement Administrator shall use the form of Notice, attached as Exhibit 1 to the Preliminary  
17 Approval Order. Among other information about the Settlement, the Notice shall include:

- 18 (i) a description of the material terms of the Settlement;
- 19 (ii) a deadline by which Class Members may exclude themselves from or opt out  
20 of the Settlement;
- 21 (iii) a deadline by which Class Members may object to the Settlement;
- 22 (iv) a deadline by which Class Members may submit a Reinstatement Request;
- 23 (v) a date for the Final Approval Hearing; and
- 24 (vi) the website domain for the Settlement Website.

25 57. Class Counsel and Defendant’s Counsel shall insert the correct dates and deadlines in  
26 the Notice before the Notice Program commences, based upon those dates and deadlines set by the  
27 Court in the Preliminary Approval Order. The Notice and publications provided under or as part of  
28 the Notice Program shall not bear or include Defendant’s logos or trademarks, Defendant’s return

1 address, or otherwise be styled to appear to originate from Defendant.

2 58. The Notice shall also inform the Class Members how to submit a Reinstatement  
3 Request and the impact and effect of not doing so.

4 59. The Notice shall also include a procedure for Class Members to exclude themselves  
5 from or opt out of the Settlement. Any Class Member may opt out of the Settlement so long as he/she  
6 does so no later than nine (9) court days prior to the Final Approval Hearing, or as otherwise ordered  
7 by the Court, and following the process set forth in the Preliminary Approval Order. Any Class  
8 Member who does not submit a timely or valid request for exclusion from the Settlement shall be  
9 considered a Settlement Class Member and be bound by the terms of this Agreement.

10 60. The Notice also shall include a procedure for Class Members to object to the  
11 Settlement, to Class Counsel's application for the Fee and Expense Amount, and/or to Plaintiff's  
12 Service Award. Any such objections must be mailed to the Clerk of the Court, Class Counsel, and  
13 the Settlement Administrator. For an objection to be considered by the Court, the objection must be  
14 received by the Court, Class Counsel, and the Settlement Administrator no later than nine (9) court  
15 days prior to the Final Approval Hearing, or as otherwise ordered by the Court as set forth in the  
16 Preliminary Approval Order. For an objection to be considered by the Court, the objection must set  
17 forth:

- 18 (i) the name of the Action;
- 19 (ii) the objector's full name, address, and telephone number;
- 20 (iii) an explanation of the basis upon which the objector claims to be a Class  
21 Member;
- 22 (iv) all grounds for the objection, accompanied by any legal support for the  
23 objection known to the objector or the objector's counsel;
- 24 (v) the number of times in which the objector has objected to a class action  
25 settlement within the five (5) years preceding the date that the objector submits the objection, the  
26 caption of each case in which the objector has made such objection, and a copy of any orders related  
27 to or ruling upon the objector's prior such objections that were issued by the trial and appellate courts  
28 in each listed case;



1 (vi) the identity of all counsel who represent the objector, including any former or  
2 current counsel who may be entitled to compensation for any reason related to the objection;

3 (vii) the number of times in which the objector’s counsel and/or counsel’s law firm  
4 have objected to a class action settlement within the five (5) years preceding the date that the objector  
5 submits the objection, the caption of each case in which the counsel or the firm has made such  
6 objection, and a copy of any orders related to or ruling upon counsel’s or the firm’s prior such  
7 objections that were issued by the trial and appellate courts in each listed case;

8 (viii) any and all agreements that relate to the objection or the process of objecting  
9 —whether written or verbal—between objector or objector’s counsel and any other person or entity;

10 (ix) the identity of all counsel representing the objector who will appear at the Final  
11 Approval Hearing;

12 (x) a list of all persons who will be called to testify at the Final Approval Hearing  
13 in support of the objection;

14 (xi) a statement confirming whether the objector intends to personally appear  
15 and/or testify at the Final Approval Hearing; and

16 (xii) the objector’s signature (an attorney’s signature is insufficient).

17 61. Notice shall be provided to the Class Members directly by mail and through the  
18 Settlement Website.

19 62. Subject to the Court’s approval, the mail notice shall be substantially in the form of  
20 Exhibit 1 to the Preliminary Approval Order, Exhibit A, hereto.

21 63. By the Notice Deadline, the Settlement Administrator shall mail, via first-class mail,  
22 the mail notice to each Class Member at the mailing address identified in Defendant’s records. Before  
23 doing so, the Settlement Administrator shall verify and update (to the extent necessary) the mailing  
24 addresses received through the United States Postal Service’s National Change of Address Database.

25 64. If a mailed Notice is returned as undeliverable, the Settlement Administrator will use  
26 reasonable efforts to locate a current mailing address for the Class Member and re-mail the Notice to  
27 the current address, if applicable.

28

1           65.     The Settlement Administrator shall provide Class Counsel and Defendant's Counsel  
2 a declaration confirming that the Notice Program was completed in a timely manner and identifying  
3 any opt-outs that were timely received. Class Counsel shall file that declaration with the Court no  
4 less than five (5) court days prior to the commencement of the Final Approval Hearing.

5 **X.     FINAL APPROVAL ORDER AND JUDGMENT**

6           66.     Plaintiff's Motion for Preliminary Approval of Class Action Settlement shall include  
7 a request to the Court for a scheduled date on which the Final Approval Hearing will occur. Plaintiff  
8 and Class Counsel shall file their motion for entry of the Final Approval Order and Judgment in the  
9 form of Exhibit B hereto, not later than sixteen (16) court days before the Final Approval Hearing, or  
10 as otherwise ordered by the Court.

11          67.     At the Final Approval Hearing, the Court will determine whether to enter the Final  
12 Approval Order and Judgment granting final approval of the Settlement, and whether to approve  
13 Class Counsel's request for the Fee and Expense Amount and Plaintiff's Service Award.

14 **XI.    THE FEE AND EXPENSE AMOUNT AND SERVICE AWARD**

15          68.     After negotiating the principal terms of the Settlement concerning the benefits  
16 conferred to the Class, and with the assistance of an experienced and a highly-regarded mediator, Jeff  
17 Kichaven ("Kichaven"), the Parties, acting by and through their respective counsel, separately  
18 negotiated the Fee and Expense Amount in good faith and at arm's-length. After participating in a  
19 full-day mediation, the Parties were not able to reach a final agreement with respect to several material  
20 issues, including on the Fee and Expense Amount. Nonetheless, with Kichaven's continued  
21 assistance over a period of several weeks, the Parties continued their negotiations. To break the  
22 impasse, Kichaven ultimately made a mediator's recommendation based upon what he believed was  
23 fair, adequate, and reasonable to compensate Class Counsel for the benefits conferred upon the Class  
24 and the risk that Class Counsel took in pursuing the Action. After careful consideration with their  
25 clients, the Parties agreed to accept Kichaven's recommendation that Class Counsel should be  
26 awarded a Fee and Expense Amount of Seven Hundred Thousand Dollars (\$700,000). Defendant  
27 has agreed to pay for/cause to be paid the Fee and Expense Amount of Seven Hundred Thousand  
28 Dollars (\$700,000) to Class Counsel, subject to approval of the Court.

1           69.     Payment of the Fee and Expense Amount shall be made into an escrow account  
2 controlled by Class Counsel within fifteen (15) business days after (i) the entry of an order from the  
3 Court preliminarily approving the Settlement, and (ii) the date on which Class Counsel provides  
4 sufficient written payment instructions to Defendant (including (a) bank name, (b) bank address,  
5 (c) account number, (d) account name, and (e) ABA routing number), which shall be immediately  
6 releasable upon the Final Approval Date, notwithstanding the existence of any collateral attacks on  
7 the Settlement, including without limitation, any objections or appeals. In the event the Settlement  
8 is not approved, or is terminated, cancelled, or fails to become effective for any reason, including,  
9 without limitation, in the event the Final Approval Order and Judgment is reversed or vacated or  
10 materially attacked, within ten (10) business days after written notification is sent by Defendant, Class  
11 Counsel shall refund the Fee and Expense Amount to Defendant.

12           70.     The Fee and Expense Amount is non-reversionary. Defendant shall not be entitled to  
13 recover any of the Fee and Expense Amount payable to Class Counsel, or interest earned thereon,  
14 after the Effective Date of the Agreement. Thus, in the event the Court reduces the Fee and Expense  
15 Amount of Seven Hundred Thousand Dollars (\$700,000), the amount by which the Fee and Expense  
16 Amount is reduced shall be paid to the *Cy Pres* Recipient as approved by the Court.

17           71.     Class Counsel intends to request that the Court approve the Service Award in amount  
18 not to exceed Seven Thousand Five Hundred Dollars (\$7,500) payable to Plaintiff in consideration  
19 for her bringing and prosecuting the Action on behalf of the Class. The Service Award shall be paid  
20 to Plaintiff in addition to any other benefits afforded Plaintiff under the Settlement. Defendant shall  
21 not object to Class Counsel's Service Award request, provided that the Service Award payable does  
22 not exceed Seven Thousand Five Hundred Dollars (\$7,500) to Plaintiff. Defendant has agreed to  
23 separately pay for/cause to be paid the Service Award to Plaintiff, subject to approval of the Court.  
24 Payment of the Service Award shall be made to Class Counsel within five (5) days of the Final  
25 Approval Date and shall be immediately releasable at that time, notwithstanding the existence of any  
26 collateral attacks on the Settlement, including without limitation, any objections or appeals.

27           72.     Payment of the Fee and Expense Amount not to exceed Seven Hundred Thousand  
28 Dollars (\$700,000) and of the Service Award not to exceed Seven Thousand Five Hundred Dollars

1 (\$7,500) to Class Counsel and Plaintiff respectively shall constitute full satisfaction by Defendant of  
2 any obligation to pay any amounts to any person, attorney, or law firm for attorneys' fees, expenses,  
3 or costs in the Action incurred by any attorney on behalf of Plaintiff or any other Class Member and  
4 shall relieve Defendant, Defendant's Counsel, and the Released Parties of any other claims or liability  
5 to any other attorney or law firm for any attorneys' fees, expenses, and/or costs to which any of them  
6 may claim to be entitled on behalf of Plaintiff and/or any other Class Member, or any Released  
7 Claims.

8 73. Notwithstanding any other provision of this Agreement to the contrary, the Fee and  
9 Expense Amount to be awarded to Class Counsel and Service Award to be awarded to Plaintiff shall  
10 be considered by the Court separate and apart from its consideration of the fairness, reasonableness,  
11 and adequacy of the Settlement, and any order or proceeding relating to the Fee and Expense Amount,  
12 or any appeal of any order relating thereto or reversal or modification thereof, shall not operate to, or  
13 be grounds to, terminate or cancel this Agreement or the Settlement, or affect or delay the finality of  
14 the Final Approval Order and Judgment approving this Settlement.

15 **XII. EFFECT OF TERMINATION**

16 74. The grounds upon which this Agreement may be terminated are set forth in  
17 Section XIV of this Agreement. In the event of a termination of this Agreement pursuant to Section  
18 XIV, this Agreement shall be considered null and void; all of Defendant's obligations under the  
19 Settlement shall cease to be of any force and effect; the amounts paid to Class Counsel shall be  
20 returned to Defendant with the terms of this Agreement; and the Parties shall return to the *status quo*  
21 *ante* in the Action as if the Parties had not entered into this Agreement. In addition, in the event of  
22 such a termination, the Parties' respective pre-Settlement claims and defenses will be preserved,  
23 including, but not limited to, Plaintiff's right to seek class certification and Defendant's right to seek  
24 summary judgment or adjudication of issues and oppose class certification.

25 75. This Settlement shall become effective on the Effective Date, unless earlier terminated  
26 in accordance with the provisions of Section XIV of this Agreement.

27 76. In the event the Settlement is terminated in accordance with the provisions of  
28 Section XIV of this Agreement, any discussions, offers, or negotiations associated with this

1 Settlement shall not be discoverable or offered into evidence or used in the Action or any other action  
2 or proceeding for any purpose, without prejudice to Plaintiff's right to seek discovery and class  
3 certification, and Defendant's right to seek dismissal and oppose class certification. In such event,  
4 all Parties to the Action shall stand in the same position as if this Agreement had not been negotiated,  
5 made or filed with the Court.

6 **XIII. RELEASE**

7 77. As of the Effective Date, Plaintiff and each Settlement Class Member, each on behalf  
8 of himself or herself and on behalf of his or her respective heirs, assigns, beneficiaries, and successors,  
9 shall automatically be deemed to have fully and irrevocably released and forever discharged  
10 Defendant and each of its present and former parents, subsidiaries, divisions, affiliates, predecessors,  
11 successors, and assigns, and all others operating under the Defendant trade name in the State of  
12 California (including the Retreats), and their present and former directors, officers, employees,  
13 agents, insurers, shareholders, attorneys, advisors, consultants, representatives, partners, joint  
14 venturers, independent contractors, wholesalers, resellers, distributors, retailers, predecessors,  
15 successors, and assigns of each of them, of and from any and all liabilities, rights, claims, actions,  
16 causes of action, demands, damages, costs, attorneys' fees, losses, and remedies, whether known or  
17 unknown, existing or potential, suspected or unsuspected, liquidated or unliquidated, legal, statutory  
18 or equitable, that result from, arise out of, are based upon, or relate to the conduct, omissions, duties,  
19 or matters during the time period at issue in the Action that were or could have been alleged in the  
20 Action on a class-wide basis, including, without limitation, any claims, actions, causes of action,  
21 demands, damages, losses, or remedies relating to, based upon, resulting from, or arising out of the  
22 Membership Agreement prior to July 19, 2016.

23 78. Plaintiff and the Settlement Class Members expressly waive any and all rights under  
24 Section 1542 of the Civil Code of the State of California, which reads as follows:

25 A general release does not extend to claims that the creditor or releasing party does  
26 not know or suspect to exist in his or her favor at the time of executing the release and  
27 that, if known by him or her, would have materially affected his or her settlement with  
28 the debtor or released party.

1 Plaintiff and the Settlement Class Members acknowledge that the waiver of Section 1542 is an  
2 essential and material term of the Agreement, without which the consideration relating hereto would  
3 not have been delivered by Defendant to Plaintiff and the Settlement Class Members. In connection  
4 with such waiver and relinquishment, Plaintiff and the Settlement Class Members acknowledge that,  
5 after entering into the Agreement, they may discover facts in addition to or different from those which  
6 they now know or believe to be true with respect to the matters related herein, and/or the Agreement  
7 and/or their understanding of those facts; and/or may discover law different from or in addition to the  
8 law that they know or believe to be applicable to the matters related herein, and/or the Agreement.  
9 Notwithstanding, it is Plaintiff's intention (on behalf of herself and the Class) to settle, and release  
10 fully, finally, and forever all civil actions, matters, and things relative to the Action that presently  
11 exist, may exist, or previously existed. In furtherance of such intention, the Releases contained in the  
12 Agreement herein given shall be and remain in effect as full and complete release of any such  
13 additional or different civil actions or facts or law relative to the Action. Plaintiff and the Settlement  
14 Class Members expressly assume the risk that some facts and/or law may later be discovered to be  
15 different than they are now understood to be, but nevertheless agree that the Agreement shall, in all  
16 respects, be effective and shall not be subject to rescission, cancellation, or terminated by reason of  
17 any such different or additional facts and/or law.

18         79. As of the Effective Date, Defendant will be deemed to have completely released and  
19 forever discharged Plaintiff and her respective heirs, representatives, and assigns, and present and  
20 former attorneys, accountants, experts, consultants, insurers, and agents of each of them, from any  
21 and all liabilities, rights, claims, counterclaims, set-offs, actions, causes of action, demands, damages,  
22 penalties, costs, attorneys' fees, losses, and remedies, whether known or unknown, existing or  
23 potential, suspected or unsuspected, liquidated or unliquidated, legal, statutory, or equitable, that are  
24 based upon, or relate to the institution, prosecution, and settlement of the Action.

25         80. The failure of any Class Member to participate in the Settlement or to receive actual  
26 notice of the Settlement, notwithstanding the good faith efforts of the Settlement Administrator, shall  
27 not affect the scope or binding nature of the Releases under this Agreement.

28

1 **XIV. TERMINATION OF SETTLEMENT**

2 81. This Settlement may be terminated by either Defendant or Plaintiff by serving on  
3 counsel for the other party and filing with the Court a written notice of termination within  
4 fourteen (14) days after any of the following occurrences:

5 (i) the Court rejects, materially modifies, materially amends or changes the  
6 Settlement terms prior to or concurrent with its order to preliminarily approve the Settlement, or  
7 declines to preliminarily or finally approve the Settlement; or

8 (ii) an appellate court reverses the Final Approval Order and Judgment, and the  
9 Settlement is not reinstated without material change by the Court on remand; or

10 (iii) the Effective Date does not occur.

11 82. In the event of a termination of the Settlement, and after payment of any invoices or  
12 other fees or expenses mentioned in this Agreement that have been incurred and are due to be paid,  
13 the balance of any amount paid by Defendant/cause to have been paid shall be refunded and remitted  
14 to Defendant.

15 **XV. NO ADMISSION OF LIABILITY**

16 83. Defendant denies the claims alleged in the Action and further denies the  
17 appropriateness of the Action being suitable for class treatment at trial. By entering into this  
18 Agreement, Defendant expressly denies any liability or wrongdoing of any kind, and has agreed to  
19 this Settlement and Agreement solely to avoid further time, expense, and inconvenience of  
20 burdensome and protracted litigation, and to be completely free of any further claims that were  
21 asserted or could have been asserted in the Action.

22 84. Class Counsel and Plaintiff believe the claims asserted in the Action have merit, and  
23 they have examined and considered the benefits to be obtained under the proposed Settlement set  
24 forth in this Agreement, the risks associated with the continued prosecution of this complex, costly,  
25 and time-consuming litigation, and the likelihood of success on the merits in the Action. Class  
26 Counsel has fully investigated the facts and law relevant to the merits of the claims, have conducted  
27 extensive formal and informal discovery, and have conducted an independent investigation of the  
28 challenged practices. Class Counsel and Plaintiff have concluded that the proposed Settlement set

1 forth in this Agreement is fair, adequate, reasonable, and in the best interests of the Class.

2 85. The Parties understand and acknowledge that this Agreement constitutes a  
3 compromise and settlement of disputed claims. No action taken by the Parties either previously or in  
4 connection with the negotiations or proceedings connected with this Agreement shall be deemed or  
5 construed to be an admission of the truth or falsity of any claims or defenses heretofore made, or an  
6 acknowledgment or admission by any party of any fault, liability or wrongdoing of any kind  
7 whatsoever.

8 86. Neither the Settlement, nor any act performed or document executed pursuant to or in  
9 furtherance of the Settlement: (i) is or may be deemed to be, or may be used as, an admission of, or  
10 evidence of, the validity of any claim made by Plaintiff or any Class Member, or of any wrongdoing  
11 or liability of the Released Parties; or (ii) is or may be deemed to be, or may be used as, an admission  
12 of, or evidence of, any fault or omission of any of the Released Parties, in the Action or in any  
13 proceeding in any court, administrative agency or other tribunal.

14 87. In addition to any other defenses Defendant may have at law, in equity, or otherwise,  
15 and to the extent permitted by law, this Agreement may be pleaded as a full and complete defense to,  
16 and may be used as the basis for an injunction against, any action, suit or other proceeding that may  
17 be instituted, prosecuted or attempted in breach of this Agreement or the Releases contained herein.

18 **XVI. MISCELLANEOUS PROVISIONS**

19 88. Gender and Plurals. As used in this Agreement, the masculine, feminine, or neutral  
20 gender, and the singular or plural number, shall each be deemed to include the others whenever the  
21 context so indicates.

22 89. Binding Effect. This Agreement shall be binding upon, and inure to the benefit of, the  
23 successors and assigns of the Releasing Parties and the Released Parties.

24 90. Cooperation of Parties. The Parties agree to cooperate in good faith to prepare and  
25 execute all documents, to seek Court approval, defend Court approval, and to do all things reasonably  
26 necessary to complete and effectuate the Settlement described in this Agreement. This obligation of  
27 the Parties to support and complete the Settlement shall remain in full force and effect regardless of  
28 events that may occur, or court decisions that may be issued, in the San Diego Superior Court or in



1 any other case in any court.

2 91. Exhibits. Each and every exhibit to this Agreement is an integral and material part of  
3 this Agreement and is incorporated herein by this reference as though fully set forth herein.

4 92. Obligation to Meet and Confer. Before filing any motion with the Court raising a  
5 dispute arising out of or related to this Agreement, the Parties shall consult with each other and certify  
6 to the Court that they have consulted.

7 93. Non-disparagement. The Parties agree that they shall not engage in making or  
8 publishing written statements which are disparaging to the reputation of the other.

9 94. Integration. This Agreement and the exhibits referenced herein constitute a single,  
10 integrated written contract expressing the entire Agreement between the Parties relative to the subject  
11 matter hereof. No covenants, agreements, representations, or warranties of any kind whatsoever have  
12 been made by any Party hereto, except as provided for herein. This Agreement supersedes and  
13 replaces any prior agreements between the Parties, including the fully executed Settlement  
14 Agreement and Release by and between Defendant and Plaintiff, and their respective counsel, dated  
15 January 5, 2022.

16 95. No Conflict Intended. Any inconsistency between the headings used in this  
17 Agreement and the text of the paragraphs of this Agreement shall be resolved in favor of the text.

18 96. Statements to the Media. The Parties and their counsel agree not to assert in any  
19 statement made to any media representative (whether or not for attribution) that the Action was  
20 commenced or prosecuted by Plaintiff or defended by Defendant in bad faith or without a reasonable  
21 basis, nor will they deny that the Action was commenced and prosecuted and defended in good faith  
22 and is being settled voluntarily after consultation with competent legal counsel. In all events, the  
23 Parties and their counsel shall not make any accusations of wrongful or actionable conduct by any  
24 party concerning the prosecution, defenses, and resolution of this Action, and shall not otherwise  
25 suggest that the Settlement constitutes any admission of any claim or defense alleged. The Parties  
26 and their counsel reserve their right to rebut, in a manner that such party determines to be appropriate,  
27 any contention made in any public forum regarding the Action, including that the Action was brought  
28 or defended in bad faith or without a reasonable basis.

1           97.    Governing Law. The Agreement shall be construed in accordance with, and be  
2 governed by, the laws of the State of California, without regard to the principles thereof regarding  
3 choice of law.

4           98.    Counterparts. This Agreement may be executed in any number of counterparts, each  
5 of which shall be deemed an original, but all of which together shall constitute one and the same  
6 instrument, even though all Parties do not sign the same counterparts. Original signatures are not  
7 required. Any signature submitted by facsimile or through email of an Adobe PDF shall be deemed  
8 an original.

9           99.    Jurisdiction. The Court shall retain jurisdiction over the implementation, enforcement,  
10 and performance of this Agreement, and shall have exclusive jurisdiction over any suit, action,  
11 proceeding, or dispute arising out of or relating to this Agreement that cannot be resolved by  
12 negotiation and agreement by counsel for the Parties. The Court shall retain jurisdiction with respect  
13 to the administration, consummation, and enforcement of the Agreement and shall retain jurisdiction  
14 for the purpose of enforcing all terms of the Agreement pursuant to California Code of Civil  
15 Procedure Section 664.6. The Court shall also retain jurisdiction over all questions and/or disputes  
16 related to the Notice Program and performance of the Settlement Administrator. As part of its  
17 agreement to render services in connection with this Settlement, the Settlement Administrator shall  
18 be subject to the jurisdiction of the Court for this purpose.

19           100. Notices. All notices to counsel for the Parties shall be sent by email and by overnight  
20 mail in hard copy to:

21 As to Plaintiff:

22 Frank J. Johnson  
23 Chase M. Stern  
24 [FrankJ@johnsonfistel.com](mailto:FrankJ@johnsonfistel.com)  
25 [chases@johnsonfistel.com](mailto:chases@johnsonfistel.com)  
26 **Johnson Fistel, LLP**  
27 501 West Broadway, Suite 800  
28 San Diego, CA 92101  
Tel: (619) 230-0063

1 As to Defendant:

2 Thomas S. Ingrassia

3 Christopher Reilly

4 [tingrassia@pettitkohn.com](mailto:tingrassia@pettitkohn.com)

5 [creilly@pettitkohn.com](mailto:creilly@pettitkohn.com)

6 **Pettit Kohn Ingrassia Lutz & Dolin PC**

7 11622 El Camino Real, Suite 300

8 San Diego, CA 92130

9 Tel: (858) 345-8513

10 The recipients and addresses designated above may be changed by written notice. Upon the request  
11 of any of the Parties, the Parties agree to promptly provide each other with copies of objections,  
12 requests for exclusion, or other filings received as a result of the Notice Program.

13 101. Modification and Amendment. This Agreement may be amended or modified only  
14 by a written instrument signed by the Parties and their respective counsel and approved by the Court.

15 102. No Waiver. The waiver by any party of any breach of this Agreement by another  
16 Party shall not be deemed or construed as a waiver of any other breach, whether prior, subsequent, or  
17 contemporaneous, of this Agreement.

18 103. Authority. The Parties represent and warrant that the persons signing this Agreement  
19 on their behalf have full power and authority to bind every person, partnership, corporation, or entity  
20 included within the definitions of Plaintiff and Defendant to all terms of this Agreement. Any person  
21 executing this Agreement in a representative capacity represents and warrants that he or she is fully  
22 authorized to do so and to bind the Party on whose behalf he or she signs this Agreement to all of the  
23 terms and provisions of this Agreement.

24 104. Agreement Mutually Prepared. Neither Defendant nor Plaintiff, nor any of them, shall  
25 be considered to be the drafter of this Agreement or any of its provisions for the purpose of any  
26 statute, case law, or rule of interpretation or construction that would or might cause any provision to  
27 be construed against the drafter of this Agreement.

28 105. Independent Investigation and Decision to Settle. The Parties understand and  
acknowledge that they: (a) have performed an independent investigation of the allegations of fact and  
law made in connection with this Action; and (b) that even if they may hereafter discover facts in  
addition to, or different from, those that they now know or believe to be true with respect to the

1 subject matter of this Action as reflected in this Agreement, that will not affect or in any respect limit  
2 the binding nature of this Agreement. Defendant has provided and will provide information sufficient  
3 to identify and notify Class Members and determine the benefits to which they are entitled to under  
4 the terms of this Agreement. It is the Parties' intention to resolve their disputes in connection with  
5 this Action pursuant to the terms of this Agreement.

6           106. Receipt of Advice of Counsel. Each Party acknowledges, agrees, and specifically  
7 warrants that she or it has fully read this Agreement and the Releases contained in Section XIII of  
8 this Agreement, received independent legal advice with respect to the advisability of entering into  
9 this Agreement and the Releases, and the legal effects of this Agreement and the Releases, and fully  
10 understands the effect of this Agreement and the Releases.

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FOR PLAINTIFF:

Dated: 3/16/2022

DocuSigned by:  
*Jenna Novotny*

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Jenna Novotny

Dated: 3/16/2022

*Frank J. Johnson*

Frank J. Johnson  
Chase M. Stern  
Class Counsel

FOR DEFENDANT:

Dated: \_\_\_\_\_

Message Heights Franchising, LLC  
By: Cecilia Johnson  
Its: Chief Financial Officer

Dated: \_\_\_\_\_

Thomas S. Ingrassia  
Christopher Reilly  
Defendant's Counsel

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FOR PLAINTIFF:

Dated: \_\_\_\_\_ Jenna Novotny

Dated: \_\_\_\_\_ Frank J. Johnson  
Chase M. Stern  
*Class Counsel*

FOR DEFENDANT:

Dated: 3/16/2022 \_\_\_\_\_  
DocuSigned by:  
*Cecilia Johnson*  
066B213822CC4E5...  
Massage Heights Franchising, LLC  
By: Cecilia Johnson  
Its: Chief Financial Officer

Dated: March 16, 2022 \_\_\_\_\_  
*Christopher Reilly*  
Thomas S. Ingrassia  
Christopher Reilly  
*Defendant's Counsel*