

IN THE CIRCUIT COURT OF THE  
ELEVENTH JUDICIAL CIRCUIT IN AND  
FOR MIAMI-DADE COUNTY, FLORIDA

JANE DOE,

CASE NO.: 2017-027770-CA-01

Plaintiff,

vs.

FIRST WORLD FINANCIAL CORP. d/b/a  
MESSAGE ENVY OF CORAL GABLES

Defendant.

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**AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL**

Plaintiff, JANE DOE, by and through her undersigned counsel, hereby files this Amended Complaint and Demand for Jury Trial against Defendant, FIRST WORLD FINANCIAL CORP. d/b/a MESSAGE ENVY OF CORAL GABLES, and alleges as follows:

**PARTIES, JURISDICTION, AND VENUE**

1. This Complaint arises from the sexual battery of JANE DOE by her massage therapist, DAVID EGUSQUIZA, on March 12, 2017. This incident occurred while JANE DOE was seeking massage therapy services at the Massage Envy franchise located at 256 Miracle Mile, Coral Gables, FL 33134.

2. DAVID EGUSQUIZA was criminally charged for this act. EGUSQUIZA pleaded guilty to felony battery in October 2017 in Miami-Dade County in Case No. F-17-004924. In addition, the Florida Department of Health issued an Emergency Order restricting the massage therapy license (MA 58336) of DAVID EGUSQUIZA on May 18, 2017.

3. Plaintiff, JANE DOE, is an adult female who is a citizen and resident of the State of Florida. Plaintiff is identified by the pseudonym JANE DOE in that this lawsuit involves facts concerning an incident in which she was the victim of criminal sexual misconduct. JANE DOE's true name is known to the Defendant. Plaintiff also fears psychological injury if her name were publicly disclosed.

4. Defendant, FIRST WORLD FINANCIAL CORP. d/b/a MASSAGE ENVY OF CORAL GABLES (hereinafter "MASSAGE ENVY"), is a Florida business entity registered to doing business in the State of Florida. It is a franchise of Massage Envy, a national company which offers spa services to the public at its franchise locations. At all material times, Defendant owned and operated the Massage Envy franchise located at 256 Miracle Mile, Coral Gables, FL 33134, including its daily operations ranging from the hiring and supervision of employees, risk management, adoption and enforcement of policies relating to the safety of its clients, and the prevention and reporting of sexual misconduct by its employees.

5. At all material times, DAVID EGUSQUIZA (hereinafter "EGUSQUIZA") was an agent of MASSAGE ENVY, where he was employed as a massage therapist. He is a citizen and resident of the State of Florida.

6. Venue properly lies in this judicial circuit in that the sexual misconduct and other tortious acts that are the subject of this lawsuit were committed at MASSAGE ENVY, located in Miami-Dade, Florida.

7. This Court has jurisdiction in that this is a claim for monetary damages far above the fifteen thousand dollar (\$15,000) jurisdictional minimum of this Court, exclusive of interest, costs, and attorney's fees.

## **FACTUAL ALLEGATIONS**

8. On March 12, 2017, JANE DOE went to MASSAGE ENVY to obtain a massage. EGUSQUIZA was assigned to perform her massage.

9. During the massage appointment, EGUSQUIZA placed his hand underneath the massage draping, pushed her panties to the side, and digitally penetrated JANE DOE's vagina.

10. When EGUSQUIZA observed that JANE DOE was in distress and told EGUSQUIZA to stop, he apologized to her and also asked her to keep his actions a secret.

11. JANE DOE reported this incident to law enforcement on the date it occurred.

12. JANE DOE did not invite, induce, ratify, implicitly consent, or comply with this sexual contact. To the contrary, JANE DOE was mortified and in shock at EGUSQUIZA's actions. She was in disbelief at this violation by a licensed massage therapist.

13. At all relevant times, there was an employer-employee relationship between EGUSQUIZA and Defendant, MASSAGE ENVY.

14. The massage industry has a substantial problem that is or should be known to the Defendant. The problem is the sheer number of acts of sexual battery, sexual assaults, acts of sexual malfeasance, and acts of sexual misconduct committed by male massage therapists upon female clients.

15. Sexual battery, sexual assault, sexual misconduct, and sexual malfeasance are generally foreseeable consequences 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 is or should be well known to Massage Envy franchises as the franchisor has collected and otherwise acquired data on the staggering numbers of incidents of sexual misconduct

by massage therapists. The franchisor has alerted all of its franchises as to the extraordinary number and rate of incidents of sexual misconduct.

16. Defendant is also aware that there are a vast number of sexual misconduct victims who have never come forward and never will. In fact, the General Orientation, Manual & Workbook, provided to every MASSAGE ENVY “associate”, including EGUSQUIZA, on their hire date, states the following: “*Only 4% of upset customers will tell you when there is a problem.*”

17. 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.*

18. The “Inappropriate Touch Procedure” lacks any instructions to MASSAGE ENVY to notify law enforcement or the Department of Health to ensure a proper interview of the victim, questioning of the alleged perpetrator, and the gathering of evidence.

19. Given the foregoing procedures, Defendant fosters an environment conducive to sexual misconduct by its massage therapists who can commit sexual misconduct without the risk that law enforcement will be notified by their employer and who are actually emboldened by their employer with the wisdom that most clients will never report their incidents of sexual misconduct.

**COUNT I – RESPONDEAT SUPERIOR/VICARIOUS LIABILITY**

20. Plaintiff repeats and re-alleges the allegations set forth in paragraphs 3 through 19 above.

21. At all relevant times, DAVID EGUSQUIZA, the massage therapist assigned to give the massage to Plaintiff, was an employee and agent of MASSAGE ENVY.

22. EGUSQUIZA was authorized and entrusted by Defendant, MASSAGE ENVY, to be alone with Plaintiff in a darkened room while Plaintiff was undressed and in a vulnerable position.

23. The sexual contact described above occurred on a massage table, on premises operated and/or controlled by Defendant, MASSAGE ENVY.

24. The sexual contact described above occurred during the normal business hours of MASSAGE ENVY and occurred in the course and scope of the performance of EGUSQUIZA's duties.

25. The initial physical contact and relationship of EGUSQUIZA with Plaintiff was in furtherance of the business of Defendant, MASSAGE ENVY.

26. EGUSQUIZA was authorized to touch Plaintiff via skin-to-skin contact.

27. The wrongful acts of EGUSQUIZA were committed in the actual or apparent course and scope of his employment or agency with MASSAGE ENVY when EGUSQUIZA extended and converted his authorized touching into sexual contact with Plaintiff.

28. The wrongful acts were committed while EGUSQUIZA was doing what his employment or agency contemplated.

29. The massage services provided by EGUSQUIZA benefitted MASSAGE ENVY.

30. EGUSQUIZA was aided in accomplishing the tort upon Plaintiff by the existence of his agency relationship with MASSAGE ENVY. Specifically, EGUSQUIZA used the authority actually delegated to him by MASSAGE ENVY to make sexual contact with Plaintiff while she was undressed and laying in a prone, vulnerable position in a dark room seeking relaxation. She was in this vulnerable position with EGUSQUIZA precisely because of EGUSQUIZA's agency relationship with MASSAGE ENVY.

31. Under the doctrine of respondeat superior, MASSAGE ENVY is responsible for the actions of its servant committed in the actual or apparent scope of his duties.

32. As a direct and proximate cause of the foregoing, Plaintiff has suffered injury and expense, including but not limited to, psychological and emotional injuries, mental anguish, and the loss of the enjoyment of life.

WHEREFORE, Plaintiff, JANE DOE, demands judgment against Defendant, FIRST WORLD FINANCIAL CORP. d/b/a MASSAGE ENVY OF CORAL GABLES, for compensatory damages, costs, and such other and further relief as this Court deems just and proper.

### **COUNT II – NEGLIGENT HIRING**

33. Plaintiff repeats and re-alleges the allegations set forth in paragraphs 1 through 19 above.

34. At all material times, Defendant owed a duty to Plaintiff to use reasonable care to ensure her safety, care, and well-being while she was obtaining spa services. These duties encompassed the hiring of massage therapists such as EGUSQUIZA.

35. In hiring EGUSQUIZA, Defendant breached this duty by failing to exercise reasonable care to protect the Plaintiff from sexual misconduct and lewd and lascivious acts.

36. Prior to hiring EGUSQUIZA, Defendant knew, or in the exercise of reasonable care, should have known that EGUSQUIZA was unfit for the intimate duties for which he was hired and had a temperament and/or legal history that rendered him unfit to be alone and in a position of trust with unclothed female clients, and/or posed a risk of perpetrating unwanted sexual contact.

37. Despite having such information, Defendant hired EGUSQUIZA without any limitations on his employment or adequate supervision and took no action to warn or otherwise affirmatively protect any of his female clients.

38. At all relevant times, Defendant knew, or in the exercise of reasonable care, should have known that EGUSQUIZA was unfit, dangerous, and/or a threat to the health, safety, and welfare of women entrusted to him for spa services.

39. Despite such actual or constructive knowledge, Defendant hired EGUSQUIZA and thereafter placed Plaintiff in a vulnerable position on the massage table in a darkened room alone with EGUSQUIZA.

40. As a direct and proximate cause of the foregoing, Plaintiff has suffered injury and expense, including but not limited to, psychological and emotional injuries, mental anguish, and the loss of the enjoyment of life.

WHEREFORE, Plaintiff, JANE DOE, demands judgment against Defendant, FIRST WORLD FINANCIAL CORP. d/b/a MASSAGE ENVY OF CORAL GABLES, for compensatory damages, costs, and such other and further relief as this Court deems just and proper.

### **COUNT III – NEGLIGENT RETENTION**

41. Plaintiff repeats and re-alleges the allegations set forth in paragraphs 1 through 19 above.

42. At all material times, Defendant owed a duty to Plaintiff to use reasonable care to ensure her safety, care, and well-being while she was obtaining spa services. These duties encompassed the employment of massage therapists such as EGUSQUIZA.

43. Defendant breached this duty by failing to exercise reasonable care to protect the Plaintiff from sexual misconduct and lewd and lascivious acts committed by its agent, EGUSQUIZA.

44. After hiring EGUSQUIZA but prior to the sexual misconduct perpetrated on the Plaintiff, Defendant knew, or in the exercise of reasonable care, should have known that EGUSQUIZA was unfit for the intimate duties assigned, did not exhibit appropriate boundaries with women, had a legal history and/or temperament that rendered him unfit to be alone and in a position of trust with an unclothed female, was sexually inappropriate with clients, and/or posed a risk of perpetrating unwanted sexual contact.

45. Despite having such information, Defendant retained EGUSQUIZA as a massage therapist without any limitations on his employment and took no action to warn or otherwise protect any of his female clients.

46. As a direct and proximate cause of the foregoing, Plaintiff has suffered injury and expense, including but not limited to, psychological and emotional injuries, mental anguish, and the loss of the enjoyment of life.

WHEREFORE, Plaintiff, JANE DOE, demands judgment against Defendant, FIRST WORLD FINANCIAL CORP. d/b/a MASSAGE ENVY OF CORAL GABLES, for compensatory damages, costs, and such other and further relief as this Court deems just and proper.

**COUNT IV – NEGLIGENT SUPERVISION**

47. Plaintiff repeats and re-alleges the allegations set forth in paragraphs 1 through 19 above.

48. At all material times, Defendant owed a duty to Plaintiff to use reasonable care to ensure her safety, care, and well-being while she was obtaining spa services. These duties encompassed the supervision of massage therapists whom it employed such as EGUSQUIZA.

49. Defendant breached this duty by failing to exercise reasonable supervision and oversight to protect the Plaintiff from sexual misconduct and lewd and lascivious acts committed by its agent, EGUSQUIZA.

50. After hiring EGUSQUIZA but prior to the sexual misconduct perpetrated on the Plaintiff, Defendant knew, or in the exercise of reasonable care, should have known that EGUSQUIZA was unfit for the intimate duties assigned, did not exhibit appropriate boundaries with women, had a legal history and/or temperament that rendered him unfit to be alone and in a position of trust with an unclothed female, was sexually inappropriate with clients, and/or posed a risk of perpetrating unwanted sexual contact.

51. Despite having such information, Defendant retained EGUSQUIZA as a massage therapist without any limitations on his employment and failed to provide adequate supervision and oversight of EGUSQUIZA, and otherwise took no action to mitigate the risk of harm or otherwise protect any of his female clients.

52. As a direct and proximate cause of the foregoing, Plaintiff has suffered injury and expense, including but not limited to, psychological and emotional injuries, mental anguish, and the loss of the enjoyment of life.

WHEREFORE, Plaintiff, JANE DOE, demands judgment against Defendant, FIRST WORLD FINANCIAL CORP. d/b/a MASSAGE ENVY OF CORAL GABLES, for compensatory damages, costs, and such other and further relief as this Court deems just and proper.

**COUNT V – NEGLIGENCE (PROTOCOL/POLICIES/TRAINING)**

53. Plaintiff repeats and re-alleges the allegations set forth in paragraphs 1 through 19 above.

54. At all material times, Plaintiff was an invitee and/or an authorized visitor and paying client of the Defendant.

55. At all material times, Defendant owed a duty to Plaintiff to use reasonable care to ensure her safety, care, and well-being while she was on their premises to obtain massage therapy services.

56. Prior to Plaintiff's massage appointment, Defendant knew that male massage therapists at Massage Envy franchises were committing sexual assault and/or engaging in sexual contact with female massage clients at extraordinary rates and these facts were not generally known to the public.

57. The high rate of sexual contact in the spa setting constitutes a dangerous condition of which its female clients, including Plaintiff, were unaware and which should have been disclosed by Defendant to its female patrons, together with instructions on how to prevent, be prepared for, and respond to such incidents.

58. Defendant had a duty to implement reasonable policies and procedures to protect its guests, particularly with respect to a person employed on Defendant's premises, who was placed in a position of control over a vulnerable guest and was in a position to do intentional harm to that guest.

59. Defendant did not have reasonable policies and procedures in place to protect its female guests from a sexual misconduct by a person performing services at MASSAGE ENVY. In particular, Defendant failed to take reasonable steps to ensure that female clients who received massages from male therapists were sufficiently warned of and protected from foreseeable harm. Further, Defendant did not have adequate measures in place to deter foreseeable harm such as panic buttons in the massage therapy rooms.

60. Defendant breached its duty of care by failing to act as a reasonable and prudent business operator would have under the same or similar circumstances. Specifically, Defendant committed negligence by:

- a. Alerting massage therapists that most dissatisfied clients will never complain about their massage;
- b. Failing to enforce adequate policies to punish massage therapists who commit sexual misconduct, which served to embolden perpetrators who would not fear harsh punishment;
- c. Failing to create, implement, and establish policies and procedures to properly train employees to ensure the proper and safe conduct of massage therapists;

- d. Failing to create, implement, and establish protocols to train employees on policies and procedures to ensure proper supervision of employees who were entrusted with the care and treatment of clients;
- e. Failing to create, implement, and properly train employees on policies and procedures preventing sexual misconduct, abuse, or harm to the clients; identifying individuals who posed a risk of harm to the clients; how to respond to situations that posed a risk of harm to the clients; how to handle reports involving inappropriate situations or relationships involving the clients; and how to report inappropriate situations involving clients to law enforcement and to the Massage Envy hierarchy;
- f. Failing to warn female clients of the high rate of sexual misconduct by male massage therapists within the industry; and
- g. Failing to create, implement, and properly train employees on their duties as a professional in whom a client places his or her trust.

56. As a direct and proximate cause of the foregoing, Plaintiff has suffered injury and expense, including but not limited to, psychological and emotional injuries, mental anguish, and the loss of the enjoyment of life.

WHEREFORE, Plaintiff, JANE DOE, demands judgment against Defendant, FIRST WORLD FINANCIAL CORP. d/b/a MASSAGE ENVY OF CORAL GABLES, for compensatory damages, costs, and such other and further relief as this Court deems just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a jury trial in this action.

**CERTIFICATE RE: E-FILING AND E-SERVICE**

I HEREBY CERTIFY that this Amended Complaint was filed electronically in compliance with Florida Rules of Judicial Administration 2.515 and 2.516(e).

I FURTHER CERTIFY that the Amended Complaint was served electronically in compliance with Florida Rule of Judicial Administration 2.516(b)(1)(E) to all persons on the Service List on this **24th day of April, 2018.**

I FURTHER CERTIFY for purposes of service of any documents after initial process that [adam@adamhorowitzlaw.com](mailto:adam@adamhorowitzlaw.com) and [amy@adamhorowitzlaw.com](mailto:amy@adamhorowitzlaw.com) are primary.

Respectfully submitted,

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