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Attorneys for Plaintiffs  
Doudi Zaky & Daphne Lake

DOUDI ZAKY & DAPHNE LAKE,

Plaintiffs,

vs.

JOHN FORD; PATEL GROUP;  
MESSAGE ENVY; JOHN DOE(S) (1-5)  
(FICTITIOUS NAMES); ABC  
COMPANIES (1-5) (FICTITIOUS  
NAMES),

Defendants.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: ESSEX COUNTY

DOCKET NO.:

**CIVIL ACTION**

**COMPLAINT & JURY DEMAND**

Plaintiffs, Doudi Zaky & Daphne Lake (hereinafter referred to as “Plaintiffs”) of legal age, currently residing at 237 Hudson Avenue, Hopatcong, New Jersey 07843, by way of Complaint against Defendants, say:

**PARTIES**

1. Upon information and belief, Defendant, John Ford (hereinafter referred to as “Ford”), was at all relevant times, wherein allegations are made against Ford, one of the owners of the Message Envy Franchise located at 726 Morris Turnpike, Short Hills, NJ 07078.
2. Upon information and belief, Defendant, Patel Group (hereinafter referred to as “Patel”),

was at all relevant times, wherein allegations are made against Patel, one of the owners of the Message Envy Franchise located at 726 Morris Turnpike, Short Hills, NJ 07078.

3. Upon information and belief, Defendant, Massage Envy (hereinafter referred to as “ME”), is a purported Franchisor doing business out of 14350 N 87th Street, Suite 200 Scottsdale, AZ 85260.

**STATEMENT OF FACTS COMMON TO ALL COUNTS**

4. This matter stems from a pattern of abuse and harassment, hostile working conditions, intentional and negligent infliction of emotional distress resulting in the physical manifestations of same, other personal injury to Mr. Zaky and extensive unpaid hours, wages and overtime.

5. Most disturbing, during Mr. Zaky’s tenure with the subject Massage Envy franchise, Mr. Zaky was forced to perform massages on individuals who harassed Mr. Zaky in a disturbing sexual manner during prior massages.

6. Mr. Zaky was also subject to other routine forms of maltreatment, including a male customer’s solicitation of sexual gratification, and other customers’ racial and other sexual misconduct.

7. Indeed, Mr. Zaky made numerous complaints regarding improper treatment, which were routinely ignored and disregarded by the first franchisee, John Ford, and then the second, The Patel Group, to no avail.

6. Incredibly, both franchisees displayed, at best, a willful indifference, and more precisely, an active role in the hostile and untenable working environment to which Mr. Zaky was subject.

7. Moreover, when false allegations were levied against Mr. Zaky in what can only be described as a class-action proverbial money grab by an individual who joined a lawsuit, currently pending in Middlesex County, upon receipt of a mailing seeking additional plaintiffs in a suit

against “Massage Envy,” a certain Jane Doe for the first claim made an absurd allegation of improper touching against Mr. Zaky.

8. Instead of assisting Mr. Zaky during the time leading up to his hearing and at the time of the hearing by providing full documentation from Mr. Zaky’s employment file, including, but not limited to, the numerous awards and customer compliments Mr. Zaky received, Defendants, jointly and severally, elected to throw Mr. Zaky under the proverbial bus and only provide the State with portions of his file, much of which failed to reflect his proper and impeccable conduct as a massage therapist over his tenure during which he has worked as such.

9. Indeed, Defendants, jointly and severally, inexplicably omitted from their production to the Attorney General’s Office the numerous times that Mr. Zaky was selected Therapist of the Year and Therapist of the Month.

10. Most importantly, Mr. Zaky reported frequently reported client misconduct to his supervisors.

11. Numerous times, John Ford mentioned that he used microfilm recording devices during staff meetings so previous recordings could be saved.

12. It was clear that John Ford’s policy was to keep EVERYTHING on record.

13. All recordings of that that would have been critical to Mr. Zaky’s defense against bald and baseless accusations before the State Attorney General were inexplicably withheld, notwithstanding Mr. Ford’s obsession with keeping all such goings-on at the store on record.

14. Additionally, on December 7, 2018, Mr. Zaky was called to the office where he was informed that he was being taken off the schedule as a result of a client complaint.

15. The assistant manager was the only one there, and together they called the manager and spoke with “Erica.” (This conversation is also on the microfilm which Defendants, jointly and severally, refuse to provide to Mr. Zaky).

16. “Erica” told Mr. Zaky that two (2) months prior, a client had issues with their charges. When management refused to issue her a refund, the client complained that, during Mr. Zaky’s massage a year and a half prior massage, he asked too many purportedly inappropriate, questions so they refunded her money.

17. Mr. Zaky asked “Erica” where the report was since there is a protocol for any complaint. Her answer was (paraphrasing): “There is no report since this was a bogus complaint to get the refund.”

18. While Mr. Zaky was taken off the rotation, after the Board of Nursing requested Mr. Zaky’s file, Defendants, jointly and severally, clearly created a fake report that would not contain Mr. Zaky’s signature.

19. As a whole, the foregoing has caused Mr. Zaky immeasurable emotional and mental suffering, with physical manifestations of same.

20. Had the franchisees engaged in proper reporting to the State, showing Mr. Zaky’s own reporting of inappropriate conduct, it remains highly unlikely, at best, that Mr. Zaky’s license would have ever even been placed in question or in jeopardy.

21. By that same token, Patel told Mr. Zaky that he would keep his health insurance benefits until the Attorney General matter is resolved.

22. However, On March 31, 2019, Patel terminated Mr. Zaky and cancelled his health insurance without telling him.

23. Mr. Zaky only discovered same by receiving a letter from COBRA.

24. Mr. Zaky's daughter who was receiving treatment for a rare illness passed away at or about said time.

25. Patel also inaccurately claimed the health insurance was only for Mr. Zaky and not his family making them ineligible for COBRA coverage.

26. This created an enormous financial hardship since the family was visiting specialists, obtaining lab work and undergoing testing, such as MRIs, at full cost for Mr. Zaky's daughter, who has since passed away.

27. Absurdly, had Defendants at least terminated Mr. Zaky around the time that he was improperly taken off the massage schedule without cause, he would have at least been able to apply for unemployment benefits and better pay for his dead daughter's treatments.

28. Moreover, Mr. Zaky was forced to work hours on end without a break and was, on many occasions, not even able to physically relieve himself by using the facilities.

29. Similarly, Mr. Zaky has been suffering from severe neuropathy as a result of the constant standing, without break, which Defendants, jointly and severally, intentionally forced.

30. Also, despite numerous complaints about the temperature of the "couples room," Mr. Zaky also suffered numerous reported asthma attacks. I

31. Indeed, that room easily reached 110 degrees, and Mr. Zaky was forced to work in it with Defendants' joint and several cavalier explanation that the air sensor was not working.

32. Working in said "couples room" began to cause Mr. Zaky considerable physical injury and anxiety that he would suffer another asthma attack, but his requests for reasonable accommodation went ignored.

34. As for his wages and hours Mr. Zaky has kept contemporaneous records, and he is owed considerable overtime.

35. Mr. Zaky was also directed to unload deliveries and perform construction and maintenance type activities, including, but not limited to, plunging toilets, for which he was never compensated, and which other therapist were never required to perform per the job description.

36. With respect to Defendant ME, even a cursory review of the Massage Envy franchise agreement available to the public shows clear indications of actual authority.

37. At a minimum, while Mr. Zaky came to learn that his employment was not affiliate with ME, the Franchisor, at all relevant times, Mr. Zaky was lead to believe by Defendants, jointly and severally, that he was under the authority of Defendant ME.

**COUNT ONE – VIOLATION OF THE NEWJERSEY LAW AGAINST  
DISCRIMINATION (N.J.S.A. 10:5-12, et seq.).**

38. Plaintiffs repeat and reallege all previous paragraphs of this Complaint as if they were set forth in full herein.

39. Defendants were, at all relevant times, fully aware of that Defendants, jointly and severally were directing Mr. Zaky to perform massages on clients who had previously displayed grossly in appropriate conduct, as set forth above in detail, including, but not limited to, forcing Mr. Zaky to perform massages on customers who requested sexual gratification of one sort or another.

40. As a result of Defendants acts and omissions, jointly and severally Mr. Zaky suffered considerable Post-Traumatic Stress Disorder, anxiety and depression, among numerous other emotional and psychological conditions.

41. Defendants' affirmative acts and omissions, jointly and severally, including their clear willful indifference and affirmative directives to Mr. Zaky to work on known sexual deviants that Mr. Zaky reported, male and female, and Defendants' joint and several willful ignorance of Mr. Zaky's requests for reasonable accommodations for his above-referenced physical needs, in addition to their willful failure to assist Mr. Zaky with his baseless matter before the State, have

caused Plaintiffs considerable damage, all in violation of the New Jersey Law Against Discrimination (N.J.S.A. 10:5-12, *et seq.*).

42. The creation of said environment, in imposes direct and vicarious liability upon the subject Defendants, jointly and severally, at all relevant times.

WHEREFORE, Plaintiffs demands judgment against Defendants for:

1. General compensatory damages;
2. Punitive damages;
3. Special damages;
4. Interest according to law;
5. Attorney fees and costs of suit; and
6. Such other and further relief as the court deems just and proper.

**COUNT TWO – WAGE AND HOUR**

43. Plaintiffs repeat and realleges all previous paragraphs of this Complaint as if they were set forth in full herein.

44. As set forth above in detail, Mr. Zaky has worked considerably overtime hours without compensation.

45. Mr. Zaky is owed considerable overtime and lost wages.

WHEREFORE, Plaintiffs demands judgment against Defendants for:

1. General compensatory damages;
2. Punitive damages;
3. Special damages;
4. Interest according to law;
5. Attorney fees and costs of suit; and

6. Such other and further relief as the court deems just and proper.

**COUNT THREE – FRANCHISOR ACTUAL AUTHORITY**

46. Plaintiffs repeat and realleges all previous paragraphs of this Complaint as if they were set forth in full herein.

47. Throughout his tenure with Defendants, Mr. Zaky has come to learn that he was not working for actual franchisees, but, instead, in reality, a branch of a head office, which poorly attempts to shield itself from liability by posing as a franchisor.

48. While Defendant ME may be a franchisor, in reality, Defendant ME, at all relevant times, has exercised full control over Defendants so as to render it vicariously liable for the Defendants' Ford's and Patel's action and omissions.

49. Indeed, during his tenure with Defendants, Mr. Zaky has come to learn that Defendant ME is in full control of all day-to-day activities of its purported franchisees, and beyond.

WHEREFORE, Plaintiffs demands judgment against Defendants for:

1. General compensatory damages;
2. Punitive damages;
3. Special damages;
4. Interest according to law;
5. Attorney fees and costs of suit; and
6. Such other and further relief as the court deems just and proper.

**COUNT FOUR – FRANCHISOR APPARENT AUTHORITY**

50. Plaintiffs repeat and realleges all previous paragraphs of this Complaint as if they were set forth in full herein.

51. Even if Defendant ME did not exercise the actual control over Defendants Ford and Patel as Plaintiffs allege, it is clear from any employee of Defendant ME that ME runs the operation.

52. To the extent that ME wishes to argue that it does not exercise sufficient control over its franchisees to be, in reality, a head office in disguise so as to shield if from liability, the sad truth is that it nonetheless gives the appearance to the employees of its franchisees that it is a head office in control.

WHEREFORE, Plaintiffs demands judgment against Defendants for:

1. General compensatory damages;
2. Punitive damages;
3. Special damages;
4. Interest according to law;
5. Attorney fees and costs of suit; and
6. Such other and further relief as the court deems just and proper.

**COUNT FIVE – LOSS OF CONSORTIUM**

53. Plaintiffs repeat and realleges all previous paragraphs of this Complaint as if they were set forth in full herein.

54. At all relevant times, Plaintiff Daphne Lake has been married to Mr. Zaky.

55. At all relevant times, as a result of Defendants’ acts and omissions, Ms. Lake lost Mr. Zaky’s spousal services.

56. At all relevant times, as a result of Defendants’ acts and omissions Ms. Lake has suffered considerable loss of spousal services.

WHEREFORE, Plaintiffs demands judgment against Defendants for:

1. General compensatory damages;

2. Punitive damages;
3. Special damages;
4. Interest according to law;
5. Attorney fees and costs of suit; and
6. Such other and further relief as the court deems just and proper.

**LAW OFFICE OF ERIC J. WARNER, LLC**  
Attorneys for Plaintiffs

By: /s/Eric J. Warner  
Eric J. Warner

Dated: September 11, 2019

**DESIGNATION OF TRIAL COUNSEL**

**PLEASE TAKE NOTICE** that, pursuant to R. 4:25-4, Eric J. Warner is hereby designated as trial counsel.

**LAW OFFICE OF ERIC J. WARNER, LLC**  
Attorneys for Plaintiffs

By: /s/Eric J. Warner  
Eric J. Warner

Dated: September 11, 2019