

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

ALEXANDRIA STOCKMAN, on behalf of herself) And all others similarly situated,) Plaintiff,) v.) MESSAGE ENVY FRANCHISING, LLC.,) Defendants.))	Case No. 2023CH01041 CLASS ACTION
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CLASS ACTION COMPLAINT

Plaintiff, Alexandria Stockman, on behalf of herself and a putative class, brings this action under the Electronic Fund Transfer Act, 15 U.S.C. § 1693, et seq. (“EFTA”) and the Illinois Consumer Fraud Act, 815 ILCS § 505 (“ICFA”), and alleges as follows:

JURISDICTION AND VENUE

1. This Court has subject-matter jurisdiction over the EFTA claims pursuant to § 1693 et seq. of the Electronic Funds Transfer Act.
2. This court holds personal jurisdiction over Massage Envy, because the Defendant is authorized to transact business within Illinois. Furthermore, Defendant has advertised, marketed, distributed, offered for sale, and sold its services to the consumers within Illinois, transacting business in Cook County, in Illinois, and throughout the United States, including an extensive on-the-shelf presence in Cook County, as well as an online marketing intended to reach consumers in Cook County. Moreover, Massage Envy has routinely maintained sufficient purposeful, systematic and continuous minimum contacts with the various states of the United States, including Illinois, and has availed itself of the Illinois market rendering personal jurisdiction permissible.

3. Venue is proper in Cook County because Defendants offer franchises for personal health businesses in Cook County and the acts and transactions which form the basis of Plaintiff's claims occurred here, and Defendants transact substantial business here.

PARTIES

4. Plaintiff, Alexandria Stockman ("Plaintiff"), is a resident of the State of Illinois.

5. Defendant, Massage Envy Franchising, LLC ("Massage Envy") offers franchises to operate personal health businesses. It is organized as a Delaware limited liability company. With its principal place of business in Scottsdale, Arizona Its registered agent is Corporate Creations Network, Inc., located at 3411 Silverside Road, Tatnall Building Suite 104, Wilmington, Delaware 19810.

6. Massage Envy is the franchisor and monitors, regulates, controls, and directs Massage Envy clinics nationally, including in Illinois.

FACTUAL ALLEGATIONS

7. Massage Envy maintains a web site (<http://massageenvy.com>) applicable to all Massage Envy locations. The website serves as the contact point to all Massage Envy locations for customers.

8. Plaintiff obtained a membership with Massage Envy at their Chicago Streeterville-River North location.

9. The membership agreement authorized EFT or ACH withdrawal from the credit card account provided by the customer for the monthly membership payment.

10. It is Defendant's regular policy and practice to secure payment by means of an EFT or ACH withdrawal.

11. On information and belief, Defendant executes the transfers.

12. Plaintiff furnished the number of a debit card ending in 9779, linked to a checking account used primarily for personal, family, or household purposes and not for business purposes.

13. After being a member for some time, and regularly scheduling massages, Plaintiff became unable to schedule massages because there was never any availability near her. Plaintiff tried for several months to get an appointment, with no success.

14. Frustrated by the lack of available appointments, Plaintiff decided to cancel her membership as she had been completely unable to book one at any location near her for some time.

15. However, upon logging into her online account, she was unable to find any mechanism for cancelling, despite all other aspects of account management being available through her online profile.

16. The Federal Trade Commission (“FTC”) has identified the practice of making it difficult to cancel a recurring bill as “negative option renewal.” *See Enforcement Policy Statement Regarding Negative Option Marketing*, Federal Trade Commission, November 22, 2021 (available at

https://www.ftc.gov/system/files/documents/public_statements/1598063/negative_option_policy_statement-10-22-2021-tobureau.pdf).

17. The FTC has indicated that it is an unfair practice to place barriers to cancellation, especially when signing up for membership is so easy.

18. Eventually, Plaintiff decided to contact Massage Envy to attempt to cancel.

19. On December 28, 2021, Plaintiff used Defendant’s web site to cancel her membership and expressly withdrew consent to further electronic funds transfers from the card connected to her membership. (Exhibit B, Notification of Cancellation).

20. Defendant received Plaintiff’s cancellation upon submission. (Exhibit. B).

21. On January 4, 2022, Defendant left a voicemail for Plaintiff indicating that it wished to “discuss” her cancellation request.

22. Thus, Massage Envy had received Plaintiff’s message of December 28, 2021, which included her withdrawal of consent to charge her debit card ending in 9779.

23. Nevertheless, on February 2, 2022, Defendant withdrew a payment of \$75.00 from Plaintiff’s account.

24. The recurring membership payments were a “preauthorized transfer” within the Electronic Funds Transfer Act, 15 U.S.C § 1693 et seq.

25. 15 U.S.C. § 1693e, “Preauthorized transfers,” provides in part”

(a) A preauthorized electronic fund transfer from a consumer's account may be authorized by the consumer only in writing, and a copy of such authorization shall be provided to the consumer when made. **A consumer may stop payment of a preauthorized electronic fund transfer by notifying the financial institution orally or in writing at any time up to three business days preceding the scheduled date of such transfer.** The financial institution may require written confirmation to be provided to it within fourteen days of an oral notification if, when the oral notification is made, the consumer is advised of such requirement and the address to which such confirmation should be sent.

(emphasis added).

26. Defendant violated 15 U.S.C. § 1693e(a) by executing a payment after Plaintiff gave notification in writing withdrawing their consent to preauthorized electronic fund transfer.

27. The providing of massage services, and billing for those services, are activities of trade and commerce as those terms are defined in the Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/1 et seq (“ICFA”).

28. Thus, Defendant was at all times relevant to this Demand, and currently is, engaged in trade and commerce in the State of Illinois by advertising, offering for sale, selling and providing of massage services to consumers.

29. The ICFA defines “consumer” as “any person who purchases or contracts for the purchase of merchandise not for resale in the ordinary course of his trade or business but for his use or that of a member of his household.” 815 ILCS 505/1(e).

30. Plaintiff is a “consumer” as that term is defined in the ICFA because Plaintiff contracted with Defendant for massage services for personal purposes.

31. Section 2 of the ICFA prohibits unfair or deceptive practices and states, in relevant part, as follows:

Unfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception, fraud, false pretense, misrepresentation or the concealment, suppression or omission of such material fact, or the use or employment of any practice described in section 2 of the “Uniform Deceptive Trade Practices Act”, approved August 5, 1965, in the conduct of any trade or commerce are hereby declared unlawful whether any person has in fact been misled, deceived or damaged thereby.

815 ILCS 505/2.

32. Defendant engaged in an unfair practice, in violation of 815 ILCS § 505/2, by executing a payment after Plaintiff gave notification in writing withdrawing their consent to preauthorized electronic fund transfer.

33. At all times relevant, Defendant Massage Envy was engaged in trade or commerce in the state: selling or collecting and managing payments for services to residents of Illinois.

34. At all relevant times, Plaintiff and the members of the class were consumers within the meaning of the ICFA.

CLASS ALLEGATIONS

35. Plaintiff brings this action individually and as a class on behalf of two classes (the “Classes”):

EFTA CLASS:

36. Plaintiff, Alexandria Stockman, brings this action individually and as a class on behalf of (1) all persons similarly situated in the State of Illinois (2) from whom Massage Envy collected a membership fee (3) after Massage Envy was notified in writing of cancellation of preauthorization electronic funds transfer (4) within one year prior to the filing of this class action complaint.

ICFA CLASS:

37. Plaintiff, Alexandria Stockman, brings this action individually and as a class on behalf of (1) all persons similarly situated in the State of Illinois (2) from whom Massage Envy collected a membership fee (3) after Massage Envy was notified in writing of cancellation of preauthorization electronic funds transfer (4) within three years prior to the filing of this class action complaint.

38. As Defendant operate or license 49 locations within the state of Illinois the Class is likely to consist of more than 40 individuals.¹

39. Plaintiff Stockman’s claims are typical of the claims of the Classes. Common questions of law or fact raised by this class action complaint affect all members of the Classes and predominate over any individual issues. Common relief is therefore sought on behalf of all members of the Classes. This class action is superior to other available methods for the fair and efficient adjudication of this controversy.

¹ <https://locations.massageenvy.com/illinois.html>

40. The prosecution of separate actions by individual members of either Class would create a risk of inconsistent or varying adjudications with respect to individual members of the Classes and would, as a practical matter, either be dispositive of the interests of other members of the Classes not party to the adjudication, or substantially impair or impede their ability to protect their interests.

41. Plaintiff Stockman will fairly and adequately protect and represent the interests of the Classes. The factual and legal issues raised by this class action complaint will not require extended contact with the members of the Classes, because Defendants' conduct was perpetrated on all members of the Classes and will be established by common proof.

42. Moreover, Plaintiff Stockman has retained counsel has experience with class actions brought under the EFTA and ICFA.

43. The proposed classes meet all requirements under 735 ILCS 5/2-801.

44. **Numerosity:** Upon information and belief, the Class is so numerous that joinder of all individual plaintiffs would be impracticable. The exact number of members of the Class is presently unknown and can only be ascertained through discovery because that information is exclusively in the possession of Defendant. However, it is reasonable to infer that more than 40 Illinois consumers received a letter materially identical to Exhibit A hereto given that it is a form letter. Members of the Class can be easily identified through Defendants' records. Class members may be notified of the pendency of this action by recognized, Court-approved notice dissemination methods, which may include U.S. mail, electronic mail, Internet postings, and/or published notice.

45. **Commonality and Predominance:** Plaintiff's claims are typical of the claims of the Class. Common questions of law or fact raised by this class action complaint affect all members

of the Class and predominate over any individual issues. Common relief is therefore sought on behalf of all members of the Class.

46. **Adequacy of Representation:** Plaintiff is an adequate representative of the Class because her interests do not conflict with the interests of the members of the Class she seeks to represent, and she intends to prosecute this action vigorously. Plaintiff has retained counsel competent and experienced in class action litigation. The interests of the Class will be fairly and adequately protected by Plaintiff and his counsel and Plaintiff's claim is typical of the claims of the Class members.

47. **Superiority:** A class action in this case would be superior to any other available means for the fair and efficient adjudication of this controversy, and no unusual difficulties are likely to be encountered in the management of this class action. The damages or other financial detriment suffered by Plaintiff and members of the Class are relatively small compared to the burden and expense that would be required to individually litigate their claims against Defendant, so it would be impracticable for members of the Class to individually seek redress for Defendant's wrongful conduct. Individualized litigation creates a potential for inconsistent or contradictory judgments and increases the delay and expense to all parties and the judicial system. By contrast, the class action device presents far fewer management difficulties, and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

COUNT I – ELECTRONIC FUNDS TRANSFER ACT

48. Plaintiff re-alleges the above paragraphs as if set forth fully in this count.

49. Defendant violated 15 U.S.C. § 1693e(a) by executing a payment after Plaintiff gave notification in writing withdrawing their consent to preauthorized electronic fund transfer.

WHEREFORE, Plaintiff asks the court to enter an award in favor of herself and the Class against Defendant Massage Envy as follows:

- A. Actual damages pursuant to 15 U.S.C. § 1692k(a)(1);
- B. Statutory damages pursuant to 15 U.S.C. § 1692k(a)(2);
- C. Costs and reasonable attorney fees pursuant to 15 U.S.C. § 1692k(a)(3);
and
- D. Any other relief the Court deems equitable and just.

COUNT II— VIOLATIONS OF ICFA

50. Plaintiff restates the above paragraphs as if set forth fully in this count.

51. The ICFA proscribes any deceptive or unfair acts or practices in the course of trade or commerce. 815 ILCS § 505/2.

52. Massage Envy is a “person” as defined under Section 1(e) of ICFA.

53. Section 2 of ICFA prohibits unfair or deceptive acts or practices and states, in relevant part, as follows:

Unfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of such material fact, or the use or employment of any practice described in section 2 of the “Uniform Deceptive Trade Practices Act”, approved August 5, 1965, in the conduct of any trade or commerce are hereby declared unlawful whether any person has in fact been misled, deceived or damaged thereby.

54. Massage Envy violated Section 2 of ICFA by engaging in unfair or deceptive acts in the course of conduct involving trade or commerce when dealing with Plaintiff.

55. ICFA prohibits any unfair acts or practices in the course of trade or commerce. 815 ILCS § 505/2.

56. ICFA defines “merchandise” to include services, and not just tangible goods or real estate.

57. Plaintiff opened an account with Massage Envy and Plaintiff is in privity with Massage Envy.

58. Plaintiff was a resident of Illinois at all times relevant to this complaint.

59. At all times relevant hereto, Massage Envy was providing massage and separately account and membership servicing services to Plaintiff.

60. Massage Envy’s misconduct threatens the rights of residents throughout Illinois.

61. At all times relevant, Massage Envy was engaged in trade or commerce in the state, providing massage services and servicing consumer accounts and membership to residents of Illinois.

62. While engaged in trade or commerce, Massage Envy committed deceptive and unfair acts as set forth below. These acts were carried out without legal or factual basis, in direct contravention of Illinois law, and in violation of federal law.

63. It was deceptive for Massage Envy to:

- Obfuscate the procedures for cancelling a membership;
- Receive a written cancellation of a membership and still process Plaintiff’s payment;
- Ignore Plaintiff’s cancellation request and call her to “discuss” her cancellation request instead of honoring the request in order to extract additional payments;
- Adopting procedures and implementing a negative option renewal;
- Informing customers that it is easy to cancel when in fact there are barriers to cancellation and sales pitches after the process of cancellation is initiated by the consumer.

64. It was unfair for Massage Envy to:

- Executing a payment after Plaintiff gave notification in writing withdrawing her consent to preauthorized electronic fund transfers;
- Adopt policies and procedures complicating the process by which Plaintiff could withdraw or cancel her membership;
- Manage payments in a manner that violated federal law;
- Process payments in a manner that violated federal law;
- Placing barriers to cancellation of its membership packages;
- Refuse to acknowledge or honor Plaintiff's cancellation request; and
- Attempt a bait-and-switch by pitching to consumers after they have elected to while extracting additional payment instead of honoring the request to cancel.

65. Message Envy's conduct was purposefully confusing, misleading and oppressive.

66. Message Envy intended that Plaintiff rely on false statements and unfair actions because such statements and actions were made as the administrator of Plaintiff's membership and a provider of membership services.

67. Message Envy's conduct was willful, malicious, unfair and arbitrary.

68. Message Envy's actions cause substantial injury to consumers generally because:

- (1) Consumers reasonably expect their servicer's promises to be honored and their accounts to be properly managed;
- (2) Consumers reasonably expect that service providers will communicate with them truthfully and accurately regarding their account;
- (3) Consumers reasonable expect that large corporations will honor and respect federal regulations.

69. All of Message Envy's conduct described herein occurred in the course of conduct involving trade or commerce.

70. The foregoing conduct is part of a pattern and practice of behavior in which Message Envy routinely engages as part of its business model. Their normal business practices are designed to disregard the law through an agreement to subvert state and federal consumer

protection laws, ignore the legal rights of Illinois residents, and profit from confusing membership policies and aggressive sales tactics that allow them to extract additional payments from consumers after their cancel their accounts and revoke authorization to process payments electronically.

71. Defendant's practices offend public policy, have a direct consumer nexus, affect consumers as a whole, and violate the basic rights of Illinois consumers. These practices directly implicate consumer protection concerns because the conduct impacts and threatens consumers' rights and causes substantial emotional and financial harm to consumers by subverting legal protections afforded to Illinois residents.

72. These practices are immoral, unethical, oppressive, and unscrupulous, and demonstrate an industry-wide practice of maximizing profits by intimidating consumers and ignoring consumers' legal rights.

73. Massage Envy is vicariously liable for the actions, conduct and misconduct of Credit Solutions as described herein.

74. Plaintiff suffered damages as a result of Defendant's misconduct, including but not limited to withdrawn payments that were not authorized and not refunded, and emotional distress.

WHEREFORE, Plaintiff asks that the Court enter judgment in favor of herself and the class and against Defendants as follows:

- A. Actual damages;
- B. Punitive damages;
- C. Granting equitable and injunctive relief to Plaintiff and the Class for Count II, including disgorgement and an accounting of all revenue gained by Defendant through its' unlawful conduct alleged herein;
- D. Costs, expenses, and reasonable attorneys' fees; and
- E. Any other relief the Court deems equitable and just.

JURY DEMAND

Plaintiff demands trial by jury.

Respectfully submitted,

By: /s/Seth McCormick
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