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9 MASSAGE ENVY FRANCHISING LLC

10 **UNITED STATES DISTRICT COURT**  
11 **CENTRAL DISTRICT OF CALIFORNIA**

12 SONYA VALENZUELA, individually  
13 and on behalf of all others similarly  
14 situated,

15 Plaintiff,

16 v.

17 MASSAGE ENVY FRANCHISING  
18 LLC, a Delaware limited liability  
19 company; and DOES 1 through 25,  
20 inclusive,

21 Defendant.

CASE NO. 2:22-cv-05817

**NOTICE OF REMOVAL**

[From the Superior Court of California,  
County of Los Angeles, Case No.  
22STCV23456]

Action Filed: July 20, 2022

Action Removed: August 17, 2022

1           **TO THE CLERK OF THE ABOVE-ENTITLED COURT:**

2           PLEASE TAKE NOTICE that pursuant to 28 U.S.C. §§ 1332(d), 1441, 1446,  
3 and 1453, defendant Massage Envy Franchising LLC (“Massage Envy”) hereby  
4 removes the above-captioned putative class action from the Superior Court of  
5 California, County of Los Angeles, to the United States District Court for the  
6 Central District of California. This Court has jurisdiction over this action pursuant  
7 to 28 U.S.C. § 1332(d) and the Class Action Fairness Act (“CAFA”). In support of  
8 removal, Massage Envy states the following:

9           1. On July 20, 2022, Plaintiff filed a putative class action complaint  
10 against Massage Envy in the Superior Court of California, County of Los Angeles,  
11 captioned *Valenzuela v. Massage Envy Franchising LLC*, No. 22STCV23456 (the  
12 “State Court Action”).

13           2. A copy of the complaint in the State Court Action is attached hereto as  
14 **Exhibit A** (the “Complaint”).

15           3. The Complaint alleges that Massage Envy’s website,  
16 <https://www.messageenvy.com> (the “Website”) “secretly monitors the keystrokes  
17 and mouseclicks” of visitors engaging with the Website’s chatbot feature, and  
18 claims that Massage Envy is thus “wiretapping” those visitors to the Website in  
19 violation of the California Invasion of Privacy Act (“CIPA”), California Penal Code  
20 § 631. (*See* Compl. ¶¶ 1-3.)

21           4. Plaintiff purports to bring the claims on behalf of a California class of  
22 persons, with the following proposed membership:

23                   All persons within California who (1) within one year of  
24 the filing of this Complaint visited Defendant’s website,  
25 and (2) whose electronic communications were caused to  
26 be intercepted, recorded, and/or monitored by Defendant  
without prior consent.

27 (*Id.* ¶ 19.)

28           5. Plaintiff believes the number of Class Members to be “in the tens of

1 thousands, if not more.” (*Id.* ¶ 19.)

2 6. Plaintiff asserts that Plaintiff and each Class Member is entitled to  
3 statutory damages of at least \$2,500 per violation, plus injunctive relief, punitive  
4 damages, and attorneys’ fees and costs.

5 7. On August 5, 2022, Plaintiff served the Complaint and summons on  
6 Massage Envy. The time for Massage Envy to answer or otherwise plead in the  
7 state court action has not expired.

8 8. This Notice of Removal is filed within the time prescribed under 28  
9 U.S.C. § 1446(b).

10 **GROUND FOR REMOVAL**

11 9. This Court has subject matter jurisdiction over Plaintiff’s claims under  
12 CAFA.

13 10. Under CAFA, codified in relevant part at 28 U.S.C. §§ 1332(d)(2) and  
14 1453(b), this Court has original jurisdiction over this action because: (1) this is a  
15 class action where the putative class includes more than 100 members; (2) there is  
16 minimal diversity of citizenship; and (3) the amount in controversy exceeds  
17 \$5,000,000.

18 11. “No antiremoval presumption attends cases invoking CAFA, which  
19 Congress enacted to facilitate adjudication of certain class actions in federal court.”  
20 *Dart Cherokee Basin Operating Co., LLC v. Owens*, 574 U.S. 81, 89 (2014).  
21 “CAFA’s ‘provisions should be read broadly, with a strong preference that interstate  
22 class actions should be heard in a federal court if properly removed by any  
23 defendant.’” *Id.* (quoting S. Rep. No. 109-14, p. 43 (2005)).

24 **This Is a “Class Action” With More Than 100 Putative Class Members**

25 12. This action meets CAFA’s definition of a class action, which is “any  
26 civil action filed under Rule 23 of the Federal Rules of Civil Procedure or similar  
27 State statute or rule or judicial procedure authorizing an action to be brought by 1 or  
28

1 more representative persons as a class action.” 28 U.S.C. § 1332(d)(1)(B).

2 13. The putative class Plaintiff seeks to represent includes more than 100  
3 members; indeed, Plaintiff alleges that she “believes the number to be in the tens of  
4 thousands, if not more.” (Compl. ¶ 20.)

5 **There Is Minimal Diversity of Citizenship**

6 14. There is minimal diversity of citizenship among the parties. Minimal  
7 diversity exists when “any member of a class of plaintiffs is a citizen of a State  
8 different from any defendant.” 28 U.S.C. § 1332(d)(2)(A).

9 15. For diversity purposes, a person is a “citizen” of the state in which he  
10 or she is domiciled. *Kanter v. Warner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir.  
11 2001). Plaintiff alleges that Plaintiff “is an adult resident of California.” (Compl. ¶  
12 7.) Massage Envy is informed and believes that Plaintiff is a citizen of California.

13 16. Further, all Class Members would be citizens of California.

14 17. For CAFA removal purposes, an unincorporated association is “a  
15 citizen of the state where it has its principal place of business and the State under  
16 whose laws it is organized.” 28 U.S.C. § 1332(d)(10); *Abrego v. The Dow Chem.*  
17 *Co.*, 443 F.3d 676, 684 (9th Cir. 2006) (explaining that this “departs from the rule  
18 that frequently destroys diversity jurisdiction, that ‘a limited partnership’s [or  
19 unincorporated association’s] citizenship for diversity purposes can be determined  
20 only by reference to all of the entity’s members” (quoting *Kuntz v. Lamar Corp.*,  
21 385 F.3d 1177, 1182 (9th Cir. 2004))). Courts have interpreted this rule to apply to  
22 limited liability companies. *See Heritage Pac. Fin., LLC v. Cole*, No.  
23 CV100394PSG(JEMX), 2010 WL 2349607, at \*1 (C.D. Cal. June 7, 2010)  
24 (distinguishing the citizenship rules for limited liability companies in non-CAFA  
25 cases, 28 U.S.C. § 1332(c)(1), and CAFA cases, 28 U.S.C. § 1332(d)(10)); *accord*  
26 *Rolling v. E\*Trade Sec., LLC*, 756 F. Supp. 2d 1179, 1185 (N.D. Cal. 2010)  
27 (applying 28 U.S.C. § 1332(d)(10) to limited liability company defendant where  
28 CAFA at issue).

1 18. Massage Envy is, therefore, a citizen of Arizona for purposes of CAFA,  
2 and is diverse from Plaintiff and all Class Members.

3 **The Alleged Amount in Controversy Exceeds \$5,000,000**

4 19. The amount in controversy requirement under CAFA is satisfied if “the  
5 matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest  
6 and costs.” 28 U.S.C. § 1332(d)(2). For purposes of determining the amount in  
7 controversy, CAFA expressly requires that “the claims of the individual class  
8 members shall be aggregated.” 28 U.S.C. § 1332(d)(6).

9 20. The bar for establishing the amount in controversy is low—the notice  
10 of removal “need include only a plausible allegation that the amount in controversy  
11 exceeds the jurisdictional threshold.” *Owens*, 574 U.S. at 89.

12 21. Massage Envy denies the validity and merit of Plaintiff’s claim, the  
13 legal theories upon which it is based, and that Plaintiff and the putative classes are  
14 entitled to any alleged claim for monetary or other relief. Solely for the purposes of  
15 removal, however, and without conceding that Plaintiff or the putative class is  
16 entitled to damages, the aggregated claims alleged on behalf of the putative classes  
17 establish that the amount in controversy exceeds the jurisdictional minimum of  
18 \$5,000,000.

19 22. Plaintiff seeks to represent a putative class she estimates to be in the  
20 tens of thousands, and seeks at least \$2,500 in statutory damages for each Class  
21 Member for each alleged violation—it would take only a fraction of this  
22 membership (2,000 members) in the putative class to put \$5,000,000 of statutory  
23 damages in play.

24 23. Massage Envy agrees that at least 2,000 Californians visited the  
25 Website and interacted with a chatbot during the class period.

26 24. When a plaintiff “is seeking recovery from a pot that Defendant has  
27 shown could exceed \$5 million,” the amount in controversy is satisfied for purposes  
28 of CAFA jurisdiction. *Lewis v. Verizon Commc’ns, Inc.*, 627 F.3d 395, 401 (9th

1 Cir. 2010).

2 25. Moreover, Plaintiff seeks injunctive relief, attorneys' fees, and punitive  
3 damages in this putative class action Complaint, and each of those also adds to the  
4 amount in controversy. *See In re Ford Motor Co./Citibank (S. Dakota), N.A.*, 264  
5 F.3d 952, 958 (9th Cir. 2001) (the potential cost to the defendant of complying with  
6 the injunction creates the amount in controversy for jurisdictional purposes); *Fritsch*  
7 *v. Swift Transportation Co. of Arizona, LLC*, 899 F.3d 785, 795 (9th Cir. 2018)  
8 (amount in controversy includes all reasonable attorneys' fees not merely through  
9 the date of removal, but through resolution of the action); *Bayol v. Zipcar, Inc.*, No.  
10 14-CV-02483-TEH, 2015 WL 4931756, at \*9 (N.D. Cal. Aug. 18, 2015) (applying  
11 "conservative" 1:1 ratio for punitive damages to hold that the federal court had  
12 jurisdiction under CAFA).

13 26. Massage Envy denies that Plaintiff is entitled to any punitive or other  
14 damages whatsoever, or to injunctive relief or attorneys' fees, but even a  
15 conservative one-to-one ratio for putative damages would further elevate the amount  
16 in controversy well above the \$5,000,000 CAFA statutory minimum.

### 17 **REMOVAL IS PROCEDURALLY PROPER**

18 27. Removal is timely because Massage Envy filed this notice within thirty  
19 days of Plaintiff's August 5, 2022 service of the Complaint on Massage Envy. *See*  
20 28 U.S.C. § 1446(b)(1).

21 28. Removal to this Court is proper because the United States District  
22 Court for the Central District of California embraces the location where the State  
23 Court Action was commenced and is pending—Los Angeles, California. *See* 28  
24 U.S.C. §§ 89(b), 1441(a).

25 29. Massage Envy submits with this notice a copy of all process, pleadings,  
26 and orders served upon it in this action as **Exhibit B**. *See* 28 U.S.C. § 1446(a).

27 30. Massage Envy will provide prompt written notice to Plaintiff, through  
28 counsel, of this removal, in accordance with 28 U.S.C. § 1446(d).



# **EXHIBIT A**



22STCV23456

Assigned for all purposes to: Spring Street Courthouse, Judicial Officer: Yvette Palazuelos

Electronically FILED by Superior Court of California, County of Los Angeles on 07/20/2022 04:43 PM Sherri R. Carter, Executive Officer/Clerk of Court, by G. Carini, Deputy Clerk

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8  
 9  
 10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
 11 **FOR THE COUNTY OF LOS ANGELES**

12 SONYA VALENZUELA, individually and on  
13 behalf of all others similarly situated,

14 Plaintiff,

15 v.

16 MASSAGE ENVY FRANCHISING LLC, a  
17 Delaware limited liability company; and DOES 1  
through 25, inclusive,

18 Defendants.

Case No. **22STCV23456**

**CLASS ACTION COMPLAINT FOR  
VIOLATION OF PENAL CODE § 631**

1 **INTRODUCTION**

2 1. Plaintiff Sonya Valenzuela (“Plaintiff”) brings this class action on her own behalf and  
3 on behalf of all other Californians similarly situated against Defendant for its illegal wiretapping of  
4 their electronic communications with Defendant’s website, <https://www.messageenvy.com/> (the  
5 “Website”).

6 2. Unbeknownst to visitors to the Website, Defendant has secretly deployed “keystroke  
7 monitoring” software that Defendant uses to surreptitiously intercept, monitor, and record the  
8 communications (including keystrokes and mouse clicks) of all visitors to its Website. Defendant  
9 neither informs visitors nor seeks their express or implied consent prior to this wiretapping.

10 3. Defendant has violated and continues to violate the California Invasion of Privacy Act  
11 (“CIPA”), California Penal Code § 631, entitling Plaintiff and Class Members to relief pursuant  
12 thereto.

13 **JURISDICTION AND VENUE**

14 4. This Court has jurisdiction over all causes of action asserted herein.

15 5. Venue is proper in this Court because Defendant knowingly engages in activities  
16 directed at consumers in this County and engaged in the wrongful conduct alleged herein against  
17 residents of this County.

18 6. Any out-of-state participants can be brought before this Court pursuant to California’s  
19 “long-arm” jurisdictional statute.

20 **PARTIES**

21 7. Plaintiff Sonya Valenzuela is an adult resident of California.

22 8. Defendant is a limited liability company with its principal place of business in Arizona.  
23 Defendant does business and affects commerce within the state of California and with California  
24 residents.

25 9. The above-named Defendants, and their subsidiaries and agents, are collectively  
26 referred to as “Defendants.” The true names and capacities of the Defendants sued herein as DOE  
27 DEFENDANTS 1 through 10, inclusive, are currently unknown to Plaintiff, who therefore sues such  
28 Defendants by fictitious names. Each of the Defendants designated herein as a DOE is legally

1 responsible for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend the  
2 Complaint to reflect the true names and capacities of the DOE Defendants when such identities  
3 become known.

4 10. Plaintiff is informed and believes that at all relevant times, every Defendant was acting  
5 as an agent and/or employee of each of the other Defendants and was acting within the course and  
6 scope of said agency and/or employment with the full knowledge and consent of each of the other  
7 Defendants.

8 11. Plaintiff is informed and believe that each of the acts and/or omissions complained of  
9 herein was made known to, and ratified by, each of the other Defendants.

10 **FACTUAL ALLEGATIONS**

11 12. Without warning visitors or seeking their consent, Defendant has secretly deployed  
12 wiretapping software on its Website. This software allows Defendant to surreptitiously record every  
13 aspect of a visitor’s interaction with the Website, including keystrokes, mouse clicks, data entry and  
14 other electronic communications.

15 13. Defendant’s actions amount to the digital equivalent of both looking over a consumer’s  
16 shoulder and eavesdropping on a consumer’s conversation. Defendant’s conduct is not only illegal, it  
17 is offensive: indeed, a recent study conducted by the Electronic Privacy Information Center, a  
18 respected thought leader regarding digital privacy, found that: (1) nearly 9 in 10 adults are “very  
19 concerned” about data privacy, and 75% of adults are unaware of the extent to which companies  
20 gather, store, and exploit their personal data. See <https://archive.epic.org/privacy/survey/> (last  
21 downloaded July 2022).

22 14. Within the past year, Plaintiff visited Defendant’s Website. Plaintiff communicated  
23 with a “person” that Plaintiff believed to be an actual human customer service representative. In  
24 reality, Defendant’s Website utilizes a sophisticated “chatbot” that convincingly impersonates an  
25 actual human that encourages consumers to share their personal information. At the same time, the  
26 Defendant simultaneously records and stores the entire conversation using secretly embedded  
27 wiretapping technology.

1 15. Both the “chatbot” and “replay” technology were created by third party providers who  
2 license the technology to Defendant and with whom Defendant routinely shares the contents of the  
3 wiretapped communications.

4 16. Defendant did not inform Plaintiff, or any of the Class Members, that Defendant was  
5 secretly monitoring, recording, and sharing Plaintiff’s and the Class’s communications.

6 17. Defendant did not seek Plaintiff’s or the Class Members’ consent to monitoring,  
7 recording, and sharing the electronic communications with the Website.

8 18. Plaintiff and Class Members did not know at the time of the communications that  
9 Defendant was secretly intercepting, monitoring, recording, and sharing the electronic  
10 communications.

11 **CLASS ALLEGATIONS**

12 19. Plaintiff brings this action individually and on behalf of all others similarly situated (the  
13 “Class”) defined as follows:

14 **All persons within California, who (1) within one year of the filing of this**  
15 **Complaint visited Defendant’s website, and (2) whose electronic communications**  
16 **were caused to be intercepted, recorded, and/or monitored by Defendant without**  
17 **prior consent.**

18 20. NUMEROSITY: Plaintiff does not know the number of Class Members but believes the  
19 number to be in the tens of thousands, if not more. The exact identities of Class Members may be  
20 ascertained by the records maintained by Defendant.

21 21. COMMONALITY: Common questions of fact and law exist as to all Class Members,  
22 and predominate over any questions affecting only individual members of the Class. Such common  
23 legal and factual questions, which do not vary between Class members, and which may be determined  
24 without reference to the individual circumstances of any Class Member, include but are not limited to  
25 the following:

- 26 a. Whether Defendant caused Plaintiff’s and the Class’s electronic communications with  
27 the Website to be recorded, intercepted and/or monitored;  
28 b. Whether Defendant violated CIPA based thereon;

- c. Whether Plaintiff and Class Members are entitled to statutory damages pursuant to Cal. Penal Code § 631(a);
- d. Whether Plaintiff and Class Members are entitled to punitive damages pursuant to Cal. Civil Code § 3294; and
- e. Whether Plaintiff and Class Members are entitled to injunctive relief.

22. TYPICALITY: As a person who visited Defendant’s Website and had her electronic communications recorded, intercepted and monitored, Plaintiff is asserting claims that are typical to the Class.

23. ADEQUACY: Plaintiff will fairly and adequately protect the interests of the members of The Class. Plaintiff has retained attorneys experienced in the class action litigation. All individuals with interests that are actually or potentially adverse to or in conflict with the class or whose inclusion would otherwise be improper are excluded.

24. SUPERIORITY: A class action is superior to other available methods of adjudication because individual litigation of the claims of all Class Members is impracticable and inefficient. Even if every Class Member could afford individual litigation, the court system could not. It would be unduly burdensome to the courts in which individual litigation of numerous cases would proceed.

**CAUSE OF ACTION**

**Violations of the California Invasion of Privacy Act**

**Cal. Penal Code § 631**

25. Section 631(a) of California’s Penal Code prohibits and imposes liability upon any entity that “by means of any machine, instrument, contrivance, or in any other manner,” (1) “intentionally taps, or makes any unauthorized connection, whether physically, electrically, acoustically, inductively, or otherwise, with any telegraph or telephone wire, line, cable, or instrument, including the wire, line, cable, or instrument of any internal telephonic communication system,” or (2) “willfully and without the consent of all parties to the communication, or in any unauthorized manner, reads, or attempts to read, or to learn the contents or meaning of any message, report, or communication while the same is in transit or passing over any wire, line, or cable, or is being sent from, or received at any place within this state” or (3) “uses, or attempts to use, in any manner, or for

1 any purpose, or to communicate in any way, any information so obtained, or who aids, agrees with,  
2 employs, or conspires with any person or persons to unlawfully do, or permit, or cause to be done any  
3 of the acts or things mentioned above in this section”.

4 26. Section 631 of the California Penal Code applies to internet communications and thus  
5 applies to Plaintiff’s and the Class’s electronic communications with Defendant’s Website. (“Though  
6 written in terms of wiretapping, Section 631(a) applies to Internet communications. It  
7 makes liable anyone who ‘reads, or attempts to read, or to learn the contents’ of a communication  
8 ‘without the consent of all parties to the communication.’ Cal. Penal Code § 631(a).” *Javier v.*  
9 *Assurance IQ, LLC*, 21-16351, 2022 WL 1744107, at \*1 (9th Cir. May 31, 2022).

10 27. The software employed by Defendant on its Website to record Plaintiff’s and the  
11 Class’s electronic communications qualifies as a “machine, instrument, contrivance, or ... other  
12 manner” used to engage in the prohibited conduct alleged herein.

13 28. At all relevant times, Defendant intentionally caused the internet communication  
14 between Plaintiff and Class Members with Defendant’s website to be tapped and recorded.

15 29. At all relevant times, Defendant willfully, and without the consent of all parties to the  
16 communication, caused to be intercepted, read or attempted to be read, logged, and stored, the contents  
17 of electronic communications of Plaintiff and Class Members with its Website, while the electronic  
18 communications were in transit over any wire, line or cable, or were being sent from or received at any  
19 place within California.

20 30. Plaintiff and Class Members did not consent to any of Defendant’s actions in  
21 implementing wiretaps on its Website, nor did Plaintiff or Class Members consent to Defendant’s  
22 intentional access, interception, recording, monitoring, reading, learning and collection of Plaintiff and  
23 Class Members’ electronic communications with the Website.

24 31. Defendant’s conduct constitutes numerous independent and discreet violations of Cal.  
25 Penal Code § 631(a), entitling Plaintiff and Class Members to injunctive relief and statutory damages  
26 of at least \$2,500.00 per violation.


27 **PRAYER FOR RELIEF**

28 WHEREFORE, Plaintiff prays for the following relief against Defendant:

- 1           1.     An order certifying the Class, naming Plaintiff as the representative of the Class and  
2 Plaintiff's attorneys as Class counsel;
- 3           2.     An order declaring Defendant's conduct violates CIPA;
- 4           3.     An order of judgment in favor of Plaintiff and the Class and against Defendant on the  
5 cause of action asserted herein;
- 6           4.     An order enjoining Defendant's conduct as alleged herein and any other injunctive  
7 relief that the Court finds proper;
- 8           5.     Statutory damages to Plaintiff and the Class pursuant to Cal. Penal Code § 631(a);
- 9           6.     Punitive damages to Plaintiff and the Class pursuant to Cal. Civil Code § 3294;
- 10          7.     Prejudgment interest;
- 11          8.     Reasonable attorneys' fees and costs incurred in this action pursuant to Cal. Code Civ.  
12 Proc. § 1021.5; and
- 13          9.     All other relief that would be just and proper as a matter of law or equity, as determined  
14 by the Court.

15 Dated: July 20, 2022

PACIFIC TRIAL ATTORNEYS, APC

16  
17 By:   
18 Scott J. Ferrell  
Attorneys for Plaintiff

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [‘Illegal Wiretapping’: Lawsuit Claims Massage Envy Tracks Website Visitors’ Activity](#)

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