

SETTLEMENT AGREEMENT BETWEEN

THE UNITED STATES OF AMERICA

AND

EQUINVEST CORPORATION, d.b.a.

THE MASSAGE COMPANY, LOS ANGELES, CALIFORNIA

DEPARTMENT OF JUSTICE COMPLAINT NUMBER 202-12C-297

A. BACKGROUND AND PARTIES

1. The parties to this Settlement Agreement ("Agreement") are the United States of America and Equinvest Corporation doing business (and referred to hereafter) as "The Massage Company." The Massage Company, headquartered at 99 South Raymond Avenue, Pasadena, California 91105, provides therapeutic massage services on a reservation and walk-in basis, and currently operates six facilities in and around the Los Angeles area.
2. This matter was initiated by a complaint filed with the United States by an individual with the Human Immunodeficiency Virus ("HIV"). The complaint alleges that The Massage Company discriminated against the complainant on the basis of disability, in violation of Title III of the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12181-12189, by refusing to provide massage services to him after he disclosed his HIV status.
3. The Attorney General of the United States is authorized to investigate alleged violations of Title III of the ADA, and to bring a civil action in federal court if the Attorney General is unable to secure voluntary compliance where a case involves a pattern or practice of discrimination or raises issues of general public importance. 42 U.S.C. § 12188(b).
4. The Massage Company is a place of public accommodation covered by Title III of the ADA. 42 U.S.C. § 12181(7)(F). The ADA prohibits a place of public accommodation from discriminating against an individual on the basis of disability in the full and equal enjoyment of the entity's goods and services. 42 U.S.C. § 12182(a); 28 C.F.R. § 36.201. Such entities may not subject an individual on the basis of disability, directly or through contractual, licensing, or other arrangements, to a denial of the opportunity to participate in or benefit from the goods, services, facilities, privileges, advantages, or accommodations of the entity. 42 U.S.C. § 12182(b)(1)(A)(i); 28 C.F.R. § 36.202(a). The ADA further

prohibits a place of public accommodation from unnecessarily imposing or applying eligibility criteria that screen out or tend to screen out an individual with a disability from fully and equally enjoying any goods, services, facilities, privileges, advantages, or accommodations being offered. 42 U.S.C. § 12182(b)(2)(A)(i); 28 C.F.R. § 36.301(a). Discrimination under Title III of the ADA also includes a failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford an individual with a disability the goods, services, facilities, privileges, advantages, or accommodations of the public accommodation, unless the entity can demonstrate that making such modifications would fundamentally alter the nature of its goods or services. 42 U.S.C. § 12182(b)(2)(A)(ii); 28 C.F.R. § 36.302.

5. The parties agree to resolve this matter as set forth below. This Agreement shall not be construed as an admission of liability by The Massage Company.

B. TERMS OF AGREEMENT

6. The Massage Company agrees that it will not discriminate against any individual on the basis of disability with respect to the goods, services, facilities, privileges, advantages, or accommodations offered by The Massage Company.
7. Within thirty (30) days of the effective date of this Agreement, The Massage Company shall designate an ADA Compliance Official who shall have responsibility to ensure that the policies and procedures set forth in Paragraphs 8 and 9 of this Agreement are fully implemented and complied with, and to review all decisions to deny services to any individual on the basis of disability.
8. Within sixty (60) days of the effective date of this Agreement, The Massage Company shall submit to the United States, for review and approval, written policies and procedures regarding The Massage Company's obligations under Title III of the ADA, to be adopted and implemented at each of The Massage Company's facilities. The policies and procedures shall, at a minimum, include:
 - (A) Adoption of a nondiscrimination policy consistent with that attached as Appendix A, which shall include contact information for the ADA Compliance Official, and which shall be posted in each facility owned or operated by The Massage Company; and
 - (B) A policy and procedure providing for written documentation of each decision to deny services to an individual on the basis of disability, which documentation shall be submitted to the ADA Compliance Official for review.
9. Within ninety (90) days of the effective date of this Agreement, and annually thereafter, The Massage Company shall distribute to each person working for or on

behalf of The Massage Company:

- (A) the nondiscrimination policy described in paragraph 8(A), supra;
- (B) written notification and instruction for complying with the documentation obligation described in Paragraph 8(B), supra; and
- (C) a directive instructing all persons working for or on behalf of The Massage Company that it is against the policy of The Massage Company to discriminate against clients (or potential clients) with HIV.

New hires shall be provided with the materials referenced herein within thirty (30) days of hire.

- 10. Within thirty (30) days of the effective date of this Agreement, The Massage Company will send to the complainant, at the address provided by the United States, a copy of the Agreement and the release form attached as Appendix B. Within thirty (30) days of receiving the signed release form, The Massage Company shall send the complainant a check payable to the complainant for damages in the amount of \$10,000 (ten thousand dollars) pursuant to 42 U.S.C. § 12188(b)(2)(B) and 28 C.F.R. § 36.504(a)(2). The check should be sent to the complainant by certified or overnight mail, with a copy sent to counsel for the United States.
- 11. In consideration of the terms of this Agreement, the United States agrees to close the investigation of the underlying complaint, D.J. No. 202-12C-297, and to refrain from bringing a civil action against The Massage Company regarding any alleged violation in that complaint, except as provided in Paragraph 14 of this Agreement.

C. RECORD RETENTION, IMPLEMENTATION, AND ENFORCEMENT

- 12. The Massage Company shall retain the following records during the term of this Agreement:
 - (A) Copies of all policies, procedures, and other material developed, implemented, and/or disseminated pursuant to Paragraphs 8 and 9, above; and
 - (B) All documents created by The Massage Company or that come into its possession relating to a decision to deny services to an individual with a disability.
- 13. Within three (3) business days of a decision to deny services to an individual with a disability, the ADA Compliance Official must provide to the United States all

documents related to the decision; the identities of all individuals who participated in the decision; and all reasons underlying the decision. This information should be sent by fax or overnight mail to counsel for the United States at the following number or address: Kathleen Wolfe, U.S. Department of Justice, Disability Rights Section, 1425 New York Avenue, N.W., Washington D.C. 2005, tel: 202-353-0368; fax: 202-305-9775.

14. The United States may review compliance with this Agreement at any time. If the United States believes that this Agreement or any of its requirements has been violated, the United States will raise its concerns with The Massage Company, and the parties will attempt to resolve the concerns in good faith. Prior to instituting any court action, the United States will give The Massage Company thirty (30) days from the date of notification of an alleged breach to cure the breach. If the parties are unable to agree on a satisfactory resolution within that time frame, the United States may bring a civil action in federal district court to enforce this Agreement or Title III, and may in such action seek any relief available under law.
15. Failure by the United States to enforce this entire Agreement or any of its provisions or deadlines shall not be construed as a waiver of the United States' right to enforce other deadlines and provisions of this Agreement.
16. This Agreement constitutes the entire agreement between the parties, and no other statement, promise, or agreement, either written or oral, made by either party or agents of either party, that is not contained in this written agreement, shall be enforceable regarding the matters raised herein.
17. This Agreement does not purport to remedy any other potential violations of the ADA or any other federal law. This Agreement does not affect The Massage Company's continuing responsibility to comply with all aspects of the ADA.
18. This Agreement shall be binding on The Massage Company, and its successors in interest. The Massage Company has a duty to notify all such successors in interest of the existence and terms of this Agreement.
19. A copy of this document will be made available to any person by The Massage Company or the United States upon request.
20. This Agreement shall be in full force and effect for a period of three (3) years after the effective date of the Agreement. The effective date of this Agreement is the date of the last signature below.
21. The individual signing this Agreement for The Massage Company represents that he or she is authorized to bind The Massage Company to this Agreement.

Agreed and consented to:

FOR THE UNITED STATES OF AMERICA:

GRACE CHUNG BECKER
Acting Assistant Attorney General
Civil Rights Division

JOHN L. WODATCH, Chief
ALLISON J. NICHOL, Deputy Chief
PHILIP L. BREEN, Special Legal Counsel
Disability Rights Section
Civil Rights Division

BY: Kathleen P. Wolfe
KATHLEEN P. WOLFE, Trial Attorney
Disability Rights Section
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530
(202) 353-0368

Date: 10/10/08

FOR THE MESSAGE COMPANY:

BY: Angela L. Anderson
ANGELA L. ANDERSON
The Massage Company

Date: 9-11-08

APPENDIX A

NONDISCRIMINATION POLICY UNDER THE AMERICANS WITH DISABILITIES ACT

In accordance with the requirements of Title III of the Americans with Disabilities Act of 1990, The Massage Company will not discriminate against any individual on the basis of disability. The Massage Company will make reasonable modifications in policies, practices, or procedures when such modifications are necessary to afford its services and facilities to individuals with disabilities, unless the modifications would fundamentally alter the nature of its services. The Massage Company will not exclude any individual with a disability from the full and equal enjoyment of its services and facilities, unless the individual poses a direct threat to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures, or by the provision of auxiliary aids or services. The Massage Company will not exclude any individual from the full and equal enjoyment of its services and facilities because of the individual's association with a person with a disability.