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as an individual and on behalf of all
employees similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

EFRAIN VIVEROS, as an individual and on
behalf of all employees similarly situated,

Plaintiff,

v.

D AND T RESTAURANTS, INC., a California
Corporation; MCSURF, INC., a California
Corporation; BLADE ENTERPRISES III, Inc., a
California Corporation; BLADE ENTERPRISES
IV, Inc., a California Corporation; BLADE
ENTERPRISES V, Inc., a California Corporation;
BLADE ENTERPRISES VI, Inc., a California
Corporation; BLADE ENTERPRISES VII, Inc., a
California Corporation; BLADE ENTERPRISES
VIII, Inc., a California Corporation; and DOES 1
through 50, inclusive,

Defendants.

Case No.: 23STCV10019

[Assigned to Hon. Maren Nelson, Dept.17]

**CLASS AND PAGA REPRESENTATIVE
ACTION**

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS
AND PAGA REPRESENTATIVE ACTION
SETTLEMENT**

Date: May 29, 2024
Time: 9 a.m.
Courtroom: Dept. 17
Judge: Hon. Maren Nelson

Action Filed: May 4, 2023
Trial Date: Not Set

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

This matter came on for hearing on May 29, 2024, upon the Motion for Preliminary Approval of the proposed settlement of this action on the terms set forth in the CLASS ACTION AND PAGA REPRESENTATIVE ACTION SETTLEMENT AGREEMENT (the “Agreement”) *see* Declaration of Lilit Tunyan in Support of Plaintiff’s Motion for Preliminary Approval of Class and PAGA Representative Action Settlement [“Tunyan Decl.”], at Exh. 1).

After reviewing the Agreement, the Notice process, having reviewed the entire record on this action, having heard the argument of Counsel for respective Parties, if any, and good cause appearing, the Court Orders as follows:

1. To the extent defined in the Agreement, the terms in this Order shall have the meanings set forth therein.

2. The Court preliminarily finds that the terms of the proposed class action Settlement are fair, reasonable, and adequate, pursuant to California Code of Civil Procedure § 382. In granting preliminary approval of the class action settlement the Court has considered the factors identified in *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794 (1996), as approved in *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224 (2001) and *In re Microsoft IV Cases*, 135 Cal. App. 4th 706 (2006).

3. The Court finds that the Settlement has been reached as a result of intensive, serious and non-collusive arms-length negotiations. The Court further finds that the Parties have conducted thorough investigation and research, and the attorneys for the Parties are able to reasonably evaluate their respective positions. The Court also finds that settlement at this time will avoid additional substantial costs, as well as avoid the delay and risks that would be presented by the further prosecution of the action. The Court finds that the risks of further prosecution are substantial.

4. The Parties’ Settlement is granted preliminary approval as it meets the criteria for preliminary settlement approval. The Settlement falls within the range of reasonableness and appears to be presumptively valid, subject only to any objections that may be raised at the final fairness hearing. The Class meets the requirements for conditional certification for settlement purposes only under Code of Civil Procedure § 382. The Court finds that it is appropriate to notify the members of the proposed settlement Class of the terms of the proposed settlement.

1 5. The Parties’ proposed notice plan is constitutionally sound because individual notices
2 will be mailed to all Class Members whose identities are known to the Parties, and such notice is the
3 best notice practicable. The Parties’ proposed Class Notice, attached to the Settlement as Exhibit A, is
4 sufficient to inform Class Members of the terms of the Settlement, their rights under the settlement,
5 their rights to object to the Settlement, their right to receive a payment under the settlement or elect not
6 to participate in the settlement, and the processes for doing so, and the date and location of the final
7 approval hearing and are therefore approved.

8 6. The following persons are certified as Class Members solely for the purpose of entering
9 a settlement in this matter:

10 All non-exempt, hourly employees of Defendants who worked for Defendants
11 in California during the Class Period (the “Class Period” is May 4, 2019 through the
12 date of granting preliminary approval of this settlement.) “Participating Class
13 Members” are those Class Members who do not submit timely exclusion requests to the
14 Settlement Administrator. (Settlement, ¶ 1.35.)

15 7. The following persons are PAGA Group Employees for the purpose of entering a
16 settlement in this matter:

17 All non-exempt, hourly employees of Defendants who worked for Defendants in
18 California during the PAGA Period (the “PAGA Period” is May 4, 2022 through the
19 date of granting preliminary approval of this settlement.) Aggrieved Employees cannot
20 opt out of the settlement of the PAGA claim. (Settlement, ¶ 7.5.4.)

21 8. Plaintiff EFRAIN VIVEROS is appointed as the Class Representative. The Court finds
22 Plaintiff’s counsel are adequate, as they are experienced in wage and hour class action litigation and
23 have no conflicts of interest with absent Class Members, and that they adequately represented the
24 interests of absent class members in the Litigation. Tunyan Law, APC, is appointed Class Counsel.

25 9. The Court appoints Phoenix Class Action Administration Solutions to act as the
26 Settlement Administrator, pursuant to the terms set forth in the Agreement.

27 10. Defendants are directed to provide the Settlement Administrator the names and most
28 recent known mailing addresses of Class Members and any other information required in accordance
with the Agreement (the “Class Database”).

1 11. The Settlement Administrator is directed to mail the approved Class Notice by first-
2 class mail to the Class Members in accordance with the Agreement. Before mailing, the Settlement
3 Administrator or Class Counsel shall include the appropriate dates in the Class Notice and insert the
4 correct time and place for the Final Approval Hearing.

5 12. Class Members will be bound by the Agreement unless they submit a timely and valid
6 written request to be excluded from the Settlement, postmarked by the response deadline. Any request
7 for exclusion shall be submitted to the Settlement Administrator rather than filed with the Court. Class
8 members are not required to send copies of their Exclusion request to counsel. The Settlement
9 Administrator shall file, or provide to Counsel for filing, a declaration authenticating a copy of every
10 Exclusion request received by the Administrator.

11 13. To be considered, Class Members must timely file and serve their written objections in
12 accordance with the Agreement.

13 14. Upon completion of the Notice process, the Settlement Administrator shall provide a
14 report of the results of that process to Counsel for all Parties.

15 15. A final approval hearing will be held on _____, 2024, at
16 _____, in Department 17, to determine whether the settlement should be granted final approval
17 as fair, reasonable, and adequate as to the Class Members. At that time, the Court will hear all evidence
18 and arguments necessary to evaluate the Settlement. Class Members and their counsel may support or
19 oppose the Settlement, if they so desire, in accordance with the procedures set forth in the Class Notice
20 and this Order.

21 16. As set forth in the Notice, any Class Member may appear at the final approval hearing
22 in person or by his or her own attorney or virtually via LACourtConnect <https://www.lacourt.org/lacc/>
23 and show cause why the Court should not approve the settlement.

24 17. The Court reserves the right to continue the date of the final approval hearing without
25 further notice to Class Members.

26 18. Class Counsel shall give notice to any objecting party of any continuance of the hearing
27 of the motion for final approval.
28

1 19. The Court retains jurisdiction to consider all further applications arising out of or in
2 connection with the settlement.

3 20. In the event that the Settlement does not become effective in accordance with the terms
4 of the Agreement, then this Preliminary Approval Order shall be rendered null and void to the extent
5 provided by and in accordance with the Agreement and shall be vacated, and, in such event, all orders
6 entered and releases delivered in connection herewith shall be null and void to the extent provided by and
7 in accordance with the Agreement, and each party shall retain his or its rights to proceed with litigation
8 of the Actions.

9
10 **IT IS SO ORDERED.**

11
12 Dated: _____

Hon. Hon. Maren Nelson
LOS ANGELES SUPERIOR COURT JUDGE

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA)
3) ss
4 COUNTY OF LOS ANGELES)

5 I am employed in the county of Los Angeles, State of California. I am over the age of
6 18 and not a party to the within action; my business address is 1336 Rossmoyne Avenue
7 Glendale, California 91207.

8 On the date indicated below, I served the document described as: **[PROPOSED] ORDER**
9 **GRANTING PRELIMINARY APPROVAL OF CLASS AND PAGA REPRESENTATIVE**
10 **ACTION SETTLEMENT** on the interested parties in this action by sending a true copy thereof to
11 interested parties as follows and as stated on the attached service list:

12 Lisa Reimbold
13 lreimbold@clarkhill.com
14 Saige Shaw
15 sshaw@clarkhill.com
16 Hiba Hammad
17 hhammad@clarkhill.com
18 **CLARK HILL LLP**

19 555 South Flower Street, 24th Floor
20 Los Angeles, CA 90071
21 Phone: 213-891-9100
22 Facsimile: 213-488-1178

23 Attorneys for Defendants D AND T RESTAURANTS, INC., MCSURF, INC., BLADE
24 ENTERPRISES III, Inc., BLADE ENTERPRISES IV, Inc., BLADE ENTERPRISES V, Inc.,
25 BLADE ENTERPRISES VI, Inc., BLADE ENTERPRISES VII, Inc., BLADE ENTERPRISES
26 VIII, Inc.

27 ☒ **BY ELECTRONIC SERVICE:** Based on a court order or an agreement of the parties
28 to accept electronic service, I caused the documents to be sent to the persons at the
electronic service addresses listed above via third-party cloud service
CASEANYWHERE. I did not receive an error message.

I declare under penalty of perjury under the laws of the State of California that the above is
true and correct.

Executed on March 13, 2024 at Glendale, California.

Lilit Tunyan
Name


Signature