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Attorneys for Plaintiff EFRAIN VIVEROS

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES – SPRING STREET

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,

Case No.: 23STCV10019

[Assigned for all purposes to Hon. Maren E.
Nelson, Dept. 17]

**CLASS AND PAGA REPRESENTATIVE
ACTION**

**DECLARATION OF PLAINTIFF EFRAIN
VIVEROS IN SUPPORT OF PLAINTIFF'S
MOTION FOR APPROVAL OF CLASS AND
PAGA REPRESENTATIVE ACTION
SETTLEMENT**

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

Action Filed: May 4, 2023
Trial: Not Set

1
2 **DECLARATION OF EFRAIN VIVEROS**

3 I, EFRAIN VIVEROS, declare as follows:

4 1. I am a named Plaintiff in this case as an employee of the named defendants D AND T
5 RESTAURANTS, INC., MCSURF, Inc., BLADE ENTERPRISES III, Inc., BLADE ENTERPRISES
6 IV, Inc., BLADE ENTERPRISES V, Inc., BLADE ENTERPRISES VI, Inc., BLADE ENTERPRISES
7 VII, Inc., BLADE ENTERPRISES VIII ("Defendants"). As such, I have personal knowledge of, or am
8 informed and believe, the following facts herein stated. If called as a witness. I could and would testify
9 competently to the following:

10 **JOB DUTIES AND EXPERIENCES**

11 2. I worked for Defendants during the Settlement Class Period as an hourly-paid non-
12 exempt employee from August 21, 2018 to October 21, 2022. I was paid on hourly basis and classified
13 as non-exempt from overtime. Throughout my employment, I typically worked 5 days per workweek,
14 and typically in excess of 8 hours in a workday.

15 3. While working for Defendant, I did not receive all meal and rest periods. I was
16 also required to work off-the-clock without compensation. While working for Defendant, I had
17 to use my personal cellular phone to download work-related applications and to communicate with co-
18 workers and supervisors. I was not reimbursed for my personal cellular phone usage.

19 **DUTIES OF A CLASS REPRESENTATIVE**

20 4. This lawsuit is not an individual lawsuit. It is a proposed class action. I understand that, if
21 approved as a class representative in this matter, I have an obligation to do my best to look out for the
22 interests of other class members, the current and former employees of Defendants who I am seeking to
23 represent. I understand that my obligations to the class exist even when the class is certified solely as
24 part of a class action settlement. It is my understanding that, as one part of this duty to the class, I
25 cannot agree to a settlement to benefit myself to the exclusion of the rest of the class members. I have
26 never asked my attorneys to simply settle this matter at any cost. Rather, I have asked them to obtain
27 the best settlement they could within reason, and I believe that they have attempted to do so.

28 5. I have been actively involved in this case since I first retained Tunyan Law, APC. I have

1 never asked to be relieved from my role as a proposed class representative. To the contrary, I have
2 made myself available whenever my attorneys wanted to discuss aspects of my employment at
3 Defendants, and I remain committed to seeing this matter through to the end.

4 6. I have conferred with my attorneys about the settlement proposed in this case. I am not an
5 accountant, but I understand the factors and risks that need to be considered when evaluating a
6 settlement. I believe that the Class Action Settlement obtained on behalf of the Class Members is fair and
7 reasonable in view of the issues and risks involved with the case.

8 7. I am asking to be stand-in for other employees of Defendants. Because of that, I cannot
9 quit on the Class, and I cannot put myself and my interests before the Class. I accept these duties and
10 request that I be approved as the class representative for purposes of this Settlement.

11 COMMUNITY OF INTEREST: TYPICALITY AND ADEQUACY

12 8. I was an hourly non-exempt employee of Defendants and was subject to the same pay
13 structure and rules as all the other hourly non-exempt employees of Defendants.

14 9. I am not aware of anything special about me that would raise unique defenses to my claims, as
15 opposed to the claims of the class. I am also not suing for anything unique to me. Rather, my claims are
16 based upon the same facts that relate to the rest of the Class.

17 10. I do not believe that I have any conflicts with Class Members included in this proposed
18 Settlement. I do not have any intention to take any action that would place me in a position that is
19 hostile to other Class Members.

20 SERVICE AS A CLASS REPRESENTATIVE

21 11. I believe if not for my stepping forward and taking on the duties of protecting the
22 interests all aggrieved former and current employees of Defendant, it is likely that the interests of the
23 Class would neither have been prosecuted, nor benefited. To my knowledge, other than the litigation
24 encompassed by this proposed Settlement, there is no other litigation concerning the claims in this
25 lawsuit. Nor has Defendants pointed to any.

26 12. I do not believe that I have any conflicts with Class Members included in this proposed
27 Settlement.

28 13. I have assumed some long-lasting risk in prosecuting this case. Because it is so easy to

1 search for information online these days, I will face an increased risk that future employers will
2 discover information about this lawsuit online and have a negative reaction to learning that I sued an
3 employer. This may make it harder for me to obtain future employment or change jobs for a better
4 opportunity.

5 14. I have devoted a substantial amount of my time, both before this lawsuit was filed and
6 also during its litigation, to ensure a fair result for the employee Class. This involved ongoing
7 communication and participation with my Counsel during the course of this case. My participation
8 began with bringing certain issues that are involved in this matter to my Counsel's attention and
9 explaining the factual background that was used to prosecute the claims in this case. For example, I
10 reviewed documents which I already had, I provided relevant documents to my Counsel, and I
11 explained those documents and related facts to my Counsel to assist them in their review during
12 multiple meetings with my attorneys.

13 15. My efforts continued after the suit was filed. For example, I have had many discussions
14 with the attorneys at Tunyan Law, APC regarding Defendant's wage and hour policies, my claims in
15 this case, litigation strategy, potential witnesses, discovery, updates on how the case was proceeding,
16 and how I could help the case. I also discussed strategy with my Counsel. I remained in regular
17 communication with my attorneys regarding discovery and settlement discussions that the parties had
18 during the course of litigation and mediation. I continued to identify employees and other witnesses to
19 counsel, along with other information as to how they could be of potential use in this matter. I also
20 provided substantial information and documents to my attorneys to assist them in preparing the case.

21 16. After the mediation, a long-form settlement agreement was negotiated, and I reviewed it
22 with my Counsel to ensure that its terms are likewise fair and adequate.

23 17. I believe that the Class Representative Service Payment of \$10,000 for me is fair and
24 reasonable. This enhancement takes into consideration the time, effort, risks, stress, and sacrifice of
25 signing a general release of all claims over just wage and hour claims, as well as the benefit provided to
26 all class members as a result of my involvement in this litigation. In sum, in addition to assuming the
27 risks that go along with being a class representative and named plaintiff in litigation, I believe I have
28 also provided well over 35 hours of my time during the course of this litigation to ensure a good

1 outcome for the best interests of the Class. I believe I have been diligent and acted above and beyond
2 that which is expected of a Class Representative throughout all stages of the litigation. I will continue to
3 diligently act as the Class Representative up to and including final approval of the Class Action
4 Settlement.

5 18. Furthermore, it is my opinion that the enhancement is fair and reasonable because in
6 addition to the many hours spent participating in this case, I accepted the potential risk of being liable
7 for the opposing parties' costs if we were unsuccessful in this lawsuit. My attorneys told me these costs
8 could be tens of thousands of dollars or more based on the extent of formal litigation. I believed in this
9 case and was willing to be a Class Representative Plaintiff knowing the risks involved.

10 19. I signed a general release, so I am not only giving up my wage and hour claims, but I
11 am also giving up all claims beyond wage and hour claims I had against my former employer. Since I
12 have signed a general release for any and all claims related to my employment with Defendant, I cannot
13 pursue any other claims against Defendant while Class Members can still pursue other claims not
14 released in this Class Action.

15 20. This litigation has also resulted in a valuable benefit to the Class Members who will
16 participate in the monetary payout of this Settlement because of my involvement. As a result of this
17 Settlement, Class Members are receiving thousands of dollars in Settlement checks.

18 21. Likewise, I risk the potential stigma of being a Class Representative in a Class Action
19 labor dispute, which may affect my future employment in this industry. A Google search with my name
20 and Defendants show that I am a Plaintiff in this Class Action case.

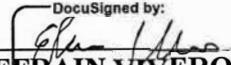
21 22. Based on the time, risk, stress, sacrifice of signing of a general release, and the great outcome
22 of this case, I believe that the requested enhancement for me is fair and reasonable.

23 I declare under penalty of perjury, under the laws of the State of California, that the foregoing is
24 true and correct.

25 Executed 2/20/2024 | 6:51 PM PST

at Torrance, California.

DocuSigned by:

26 
27 **EFRAIN VIVEROS, "Declarant"**
28 C18098037467448...

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
6 of 18 and not a party to the within action; my business address is 535 N. Brand Blvd., Suite
7 285, Glendale, California 91203.

8 On the date indicated below, I served the document described as: **DECLARATION OF
9 PLAINTIFF EFRAIN VIVEROS IN SUPPORT OF PLAINTIFF'S MOTION FOR
10 APPROVAL OF CLASS AND PAGA REPRESENTATIVE ACTION SETTLEMENT** on
11 the interested parties in this action by sending a true copy thereof to interested parties as
12 follows and as stated on the attached service list:

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

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

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

28 ☒ **BY ELECTRONIC SERVICE:** Based on a court order or an agreement of the parties
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.

23
24 Lilit Tunyan

25 Name



Signature