

STATE OF NORTH CAROLINA
MECKLENBURG COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
25CV016260-590

KYLE O'BRIEN; JAMES WATERS;
RHODA WATERS; JEFF VINER;
LINDA VINER; RALPH THOMAS
TRUMAN, JR. REVOCABLE
LIVING TRUST DATED AUGUST
19, 2011; EG-VK-800BARCLAY,
LLC; ANTHONY MCKENNA; ERIC
MEREDITH; NADIA MEREDITH;
CDS VENTURES 2, LLC; BARRY
COCEANO; CARL A. FOULKS, JR.;
SEAN M. WHITE; DAVE THOMAS;
and M. TODD HUFF, for themselves,
individually, and derivatively, as
members of 800 DEGREES
PHILLIPS PLACE LLC,

Plaintiffs,

v.

STEVEN JENSEN,

Defendant,

and

800 DEGREES PHILLIPS PLACE
LLC,

Nominal
Defendant,

**ORDER ON JOINT MOTION TO
APPROVE DISMISSAL OF
DERIVATIVE CLAIMS WITH
PREJUDICE**

1. This matter is before the Court on the parties' Joint Motion for Dismissal of Derivative Claims with Prejudice. (ECF No. 24).

2. Plaintiffs commenced this putative derivative suit on 27 March 2025. (ECF No. 4). In their complaint and their arguments in support of a requested temporary restraining order, Plaintiffs alleged that defendant Steven Jensen repeatedly breached his fiduciary duties and contractual obligations as manager of 800 Degrees Phillips Place ("Phillips Place") by financial mismanagement, personal use of

business funds, and using his position to recruit employees for other restaurants he owned. (ECF Nos. 4, 7).

3. Defendant moved to dismiss Plaintiffs' claims on 28 March 2025, seeking alternatively to compel arbitration, (ECF No. 14), and the Court ultimately denied Plaintiffs' request for a temporary restraining order, (ECF No. 19).

4. On 13 May 2025, following settlement negotiations between the parties, Plaintiffs filed a Notice of Voluntary Dismissal with Prejudice, dismissing all non-derivative claims in the case. (ECF No. 23). Plaintiffs and Defendant also filed a Joint Motion to Approve Dismissal of Derivative Claims with Prejudice, attaching a copy of a settlement agreement reached between Plaintiffs, Defendant, and certain other interested individuals and entities. (ECF Nos. 24, 24.1).

5. Plaintiffs and Defendant seek dismissal of all claims asserted in this action in the name or right of 800 Degrees Phillips Place LLC. With their proposed order, the parties also seek an order providing that the derivative claims "together with all claims, suits, causes of actions and demands against Defendant Jensen, whether asserted by or on behalf of Phillips Place, that are known to any Plaintiff are forever barred and released," that "Phillips Place and its members shall be bound by this Order," and that the parties will bear their own fees and costs in this matter. (ECF No. 25).

6. On 15 May 2025, in its discretion and to ensure notice to all parties potentially affected in any meaningful way by the parties' joint motion and the Court's potential order on it, the Court ordered counsel for Plaintiffs and Defendant

“to provide to all members of 800 Degrees Phillips Place LLC who are not named parties to this action a copy of the parties’ Joint Motion to Approve Dismissal of Derivative Claims with Prejudice (ECF No. 24), Settlement Agreement and Release (ECF No. 24.1), and proposed Order of Dismissal with Prejudice, (ECF No. 25), as well as a copy of this Order[,]” within five days of the entry of the Order. (ECF No. 26).

7. Thereafter, Plaintiffs and Defendant filed a Joint Affidavit of Benjamin C. DeCelle and Tomi M. Suzuki, confirming notice to, and service of the documents on, all members of 800 Degrees Phillips Place LLC who are not otherwise named parties to this action. (ECF No. 27).

8. All interested persons and entities were given until 5:00 pm ET, 30 May 2025, to file and serve any objection or otherwise submit a response to the joint motion to dismiss the remaining claims in this action. (ECF Nos. 26, 27).

9. No person or entity submitted an objection to the motion or otherwise indicated a desire to be heard on the motion by the deadline, and the Court has not received any objections or other responses as of the date of entry of this Order.

10. The discontinuation or settlement of a putative derivative action brought on behalf of a limited liability company in North Carolina is generally subject to the Court’s approval. *See* N.C. Gen. Stat. § 57D-8-04.

11. When deciding whether to approve the settlement and dismissal of a derivative action, the Court weighs “(1) any legitimate corporate [or LLC] claims as brought forward in the derivative shareholder suit against (2) the corporation's [or

LLC's] best interests[.]” *Alford v. Shaw*, 327 N.C. 526, 540, 398 S.E. 2d 445, 453 (1990); *White v. Hyde*, 2017 NCBC LEXIS 202, at *2 (N.C. Super. Ct. May 23, 2017) (applying *Shaw*’s derivative balancing framework to LLCs). The Court considers factors including the litigation costs, any benefits that the LLC would derive continuing the suit, and any “ethical, commercial, promotional, public relations, and fiscal factors” that may be involved. *Shaw*, 327 N.C. at 540, 398 S.E. 2d at 453.

12. The record, as briefed and represented by counsel, indicates that the parties reached a settlement, that the settlement benefits each party by avoiding the costs of drawn-out litigation, that potentially interested persons and entities were notified of the relevant implications of the settlement, that each party will pay its own attorneys’ fees, and that all remaining claims arising out of this dispute will be dismissed with prejudice. (ECF Nos. 24, 27).

13. Having considered the motion, the record proper (including the settlement agreement at issue), the written arguments of counsel, and applicable law, the Court determines that the settlement was reached as part of a disputed and arm’s-length transaction, was entered into by experienced counsel, shows no sign of collusion, was entered into for valid business reasons, is in the best interest of 800 Degrees Phillips Place LLC and its members, and outweighs any benefits likely to be achieved by further pursuing the claims at issue in this action.

14. Further, the Court is satisfied that reasonable and sufficient notice has been provided to all members of 800 Degrees Phillips Place LLC who are not named parties

to this action and all other persons and entities who might reasonably have a material interest in this matter and that no objection has been filed prior to entry of this Order.

15. Therefore, in the exercise of its discretion, the Court **ORDERS** as follows:

- a. Plaintiffs' and Defendant's joint motion to approve dismissal is **GRANTED**;
- b. All claims asserted in this action in the name or right of 800 Degrees Phillips Place LLC (the "Derivative Claims") are **DISMISSED WITH PREJUDICE**;
- c. The Derivative Claims, together with all claims, suits, causes of action, and demands against Defendant Jensen, whether asserted by or on behalf of 800 Degrees Phillips Place LLC, that are known to any Plaintiff are forever barred and released;
- d. 800 Degrees Phillips Place LLC and its members (as well as all parties to the action) are bound by this Order;
- e. The parties to this action shall bear their own costs and fees in this matter; and
- f. With all outstanding claims in this matter having been dismissed, this case may be designated as a closed or otherwise inactive case upon entry of this Order.

SO ORDERED, this the 2nd day of June, 2025.

/s/ Matthew T. Houston
Matthew T. Houston
Special Superior Court Judge
for Complex Business Cases