

**NOTICE TO CLASS MEMBERS RE: PENDENCY OF A CLASS ACTION AND NOTICE OF HEARING ON PROPOSED SETTLEMENT. THIS NOTICE MAY AFFECT YOUR RIGHTS. PLEASE READ IT CAREFULLY.**

*D'sa et al. v. Amber India Corp., et al*  
San Francisco Superior Court Case No. CGC-15-544578

**PLEASE READ THIS NOTICE CAREFULLY.  
THIS NOTICE COULD AFFECT YOUR LEGAL RIGHTS.  
YOU MAY BE ENTITLED TO MONEY FROM THIS SETTLEMENT.**

**IF YOU WISH TO PARTICIPATE IN THIS SETTLEMENT OF THE CLASS ACTION, YOU DO NOT NEED TO DO ANYTHING, AND YOUR SHARE OF THE SETTLEMENT FUNDS WILL BE MAILED TO YOU FOLLOWING FINAL COURT APPROVAL OF THE SETTLEMENT.**

**PLEASE DO NOT CONTACT THE COURT OR THE COURT CLERK REGARDING THIS MATTER.**

**THE FOLLOWING RECITATION DOES NOT CONSTITUTE THE FINDINGS OF THE COURT. IT SHOULD NOT BE UNDERSTOOD TO BE AN EXPRESSION OF THE COURT'S VIEWS ON THE MERITS OF ANY CLAIM OR DEFENSE RAISED BY THE PARTIES.**

**I. INTRODUCTION AND SUMMARY**

This is to notify you of a class action lawsuit filed on March 9, 2015 by Plaintiffs Mario Diaz, Francisco Romero, and Jorge Valdivia against their employers Amber India Corporation, Amber India Commercial Inc., Amber India Enterprise, Inc., Vijay Kumar, and Vijay Bist ("Amber India"). These Plaintiffs worked for Amber India as non-exempt employees in the Amber India family of restaurants in the Bay Area, and they primarily claim that Amber India did not always properly provide them with meal and rest periods as required by California law and as a result did not pay them wages for all hours worked, did not timely pay them all wages due at termination, and did not provide them with sufficient statements of their wages. Plaintiffs have filed this class action to pursue similar claims on behalf of other current and former non-exempt employees who performed work at any of the Amber India family of restaurants in California in operation at any time during the period February 27, 2011 through June 18, 2015 ("the Class Period"). Amber India has not admitted to any violations alleged by Plaintiffs, and have instead denied all liability, and they have agreed to resolve this matter to avoid the further expense and disruption of litigation pursuant to the procedure set forth in this notice.

The purpose of this Notice is to inform you of the pending settlement agreement and your rights under it. You have received this Notice because you are one of the non-exempt employees who worked in one of the Amber India family of restaurants during the Class Period. Unless you opt out, you will be treated as a member of the Settlement Class and sent a payment. This Notice provides instructions on how you can opt out of the settlement altogether and receive no payment, take no action and be sent a settlement payment, and/or take other actions. If you take no action, you will release the claims brought on your behalf and you will be sent your share of the settlement fund.

**Please understand that this is not a notice of a lawsuit against you. You have not been sued. You are not required to appear in Court in response to this Notice.** Please review this Notice and consider the options outlined herein carefully.

## II. CLASS COUNSEL

Plaintiffs and the Settlement Class are represented by attorneys at the law firm of Hoyer & Hicks, whose contact information is:

Richard A. Hoyer  
Ryan L. Hicks  
Hoyer & Hicks  
4 Embarcadero Center, Suite 1400  
San Francisco, California 94111  
415.766.3539  
www.hoyerlaw.com

If you choose to remain a Member of the Settlement Class, you will be represented by these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

## III. CERTIFICATION AND HEARING THEREON

Pursuant to the procedures for the approval of class actions under California law, the Court granted preliminary approval of the proposed settlement of this lawsuit and scheduled a hearing on final approval of that settlement for Friday February 16, 2018 at 2 P.M. This hearing will take place at Department [REDACTED] of the San Francisco Superior Court, located at 400 McAllister Street, San Francisco, CA 94102. You can express your views on the settlement at or before this hearing, but you are not required to do so, nor are you required to attend this hearing to exercise any of your rights, including either the right to remain a class member and receive payment or the right to opt out of this action. You can exercise any these options by following the instructions contained in this Notice; again, no appearance by you at the hearing is required.

The Court approved this Notice and ordered that you be provided with a copy of this Notice along with all members of the Class. The Court has not made any rulings on the merits of any claim or defense in this lawsuit.

#### **IV. THE PEOPLE RECEIVING THIS NOTICE AND ADDRESS CHANGES**

In order to ensure that all Class Members are given an adequate opportunity to protect their rights, this Notice is being mailed to the last known addresses of all people identified as Class Members, and address verification measures have been taken. If you wish to change the name or address listed on the envelope in which this Notice was sent, please provide that information on the Change of Address Form attached to this Notice as Form A.

#### **V. DESCRIPTION OF THE LAWSUIT**

Plaintiffs filed a claim on behalf of themselves and other Amber India restaurant employees claiming that Amber India did not properly provide meal and rest periods to its hourly non-exempt employees in California as required by state law during the period relevant to this suit. Plaintiffs allege that as a result of the missed meal and rest periods, Amber India failed to provide hourly non-exempt employees with accurate statements of wages earned, and committed other related violations of the California Labor Code.

Amber India has chosen to work with Plaintiffs and their counsel to resolve this matter and address any doubt with regard to these issues. Accordingly, and subject to court approval, the parties have entered a settlement agreement that provides for the certification of a class consisting of current and former hourly non-exempt employees who worked for Amber India during the period from February 27, 2011 through June 18, 2015, in any of the Amber India family of restaurants, including restaurants owned/operated by Amber India Enterprise, Inc.; Amber Culinary Service, Inc.; Amber India Commercial, Inc.; Amber Foods International, Inc.; Amber Foods Enterprise, Inc.; and Amber India Corporation, including the Amber India restaurants in San Francisco, Mountain View, Los Gatos, and San Jose; the Amber Dhara restaurants in Palo Alto and San Francisco; the Amber Café, and the Amber Club.

#### **VI. KEY TERMS OF THE PROPOSED SETTLEMENT**

Plaintiffs and the company have voluntarily entered into this settlement agreement. Through this settlement, neither Amber India nor any of their affiliates or employees have admitted any liability or wrongdoing. The total maximum amount of the Settlement is \$570,000,(five-hundred seventy thousand dollars), and this amount, less the amounts the Court approves for Class Counsel's fees and costs, Class Representative Awards to Plaintiffs, the Settlement Administrator's costs of up to \$20,000, and payment amount to the California Labor and Workforce Development Agency, will be paid to the class members who do not opt out of the settlement.

Subject to the Court's approval, the attorneys for Plaintiffs and the Class ("Class Counsel") will be paid a sum sufficient to compensate them for their services in this matter. The company will pay at most \$190,000 for Plaintiffs' attorneys' fees and up to \$10,000 in litigation costs out of the Settlement Fund. Class Members will not be required to separately compensate Class Counsel.

In addition to the payments to Class Counsel, each of the three named Class Representatives who brought this case on your behalf may receive a court-approved payment beyond what each would receive as a claimant in this action. This payment will be in the amount of up to \$5,000 for each plaintiff for each plaintiff's role in prosecuting this class action lawsuit on the behalf of all Class Members. Class Members will not be responsible for this payment – it will come from the settlement fund.

A full copy of the settlement agreement and other public documents filed with the Court with regard to this matter can be inspected and copied in the Office of the Court Clerk. The Office of the Clerk is located at the California Superior Court for the City and County of San Francisco, located at 400 McAllister Street, San Francisco, CA 94102. Please see Section IX of this Notice for further details. You can also view copies of the key filings in this case on Class Counsel's website: <http://www.hoyerlaw.com/Amber-India-settlement-information.php>

Each Class Member who does not opt out of the settlement will receive a payment from the settlement fund. 90% of those settlement proceeds will be distributed among all Class Members, and each Class Member's payment from these proceeds will be determined by the number of weeks in which he or she worked as a non-exempt employee for Amber India in California during the pertinent period. Specifically, a class member who does not opt out of the settlement will receive approximately <<EstimatedAmount>> for each week during which he or she worked as an hourly non-exempt employee for Amber India in California during the class period (February 27, 2011 through June 18, 2015). Company records demonstrate that during the pertinent period, you worked in a position as a non-exempt employee for <<WorkWeeks>> weeks. Therefore, if the Court approves all of the requested attorneys' fees and costs, the enhancement to Plaintiffs, the Settlement Administrator's costs, and payment amount to the California Labor and Workforce Development Agency, your estimated payment (before tax deductions) should be at least <<EstimatedAward>>. The remaining 10% of the settlement proceeds to be distributed to Class Members will be treated as waiting time penalties for unpaid wages owed at termination and divided equally among all Class Members' whose employment with Defendants ended between February 27, 2012 and the date of Preliminary Approval October 25, 2017. Company records indicate that you <<Are/AreNot>> eligible for a payment from this portion of the proceeds. **(IF ELIGIBLE INSERT SENTENCE: your estimated payment for the waiting time penalties portion of the settlement is estimated to be at least [MERGE WTP PAYMENT AMOUNT])**The parties have proposed that the funds from any checks not cashed within ninety (90) days will be distributed to The Impact Fund, a non-profit organization that represents low wage workers against their employers ([www.impactfund.org](http://www.impactfund.org)) If more than \$10,000 worth of settlement checks are uncashed, then those funds will be redistributed to those class members who cashed their checks.

A portion of this payment will be treated as unpaid wages subject to required wage withholdings and deductions, and so the net payable amount will be less than the gross amount of the settlement sum. Specifically, the company will report 50% of this payment

to relevant government entities as a wage payment, and the remaining 50% as a non-wage payment. The company reserves the right to make any required withholdings or deductions as required by applicable law, and the company will report any payments made pursuant to this agreement to the Internal Revenue Service and other relevant government entities (if any) as required by law.

If you believe that the information regarding your weeks worked is incorrect, you must explain your disagreement in writing, and provide some documentation that shows the weeks you worked in an hourly position during the period of February 27, 2011 through June 18, 2015 (your paystubs and wage statements, for example) and mail it along to the Settlement Administrator at the address provided below. For your explanation and documentation to be considered, they must be postmarked by January 7, 2018. The parties will review such disputes and attempt to resolve them by comparing the documentation provided with company records. Please keep in mind that only weeks worked during February 27, 2011 through June 18, 2015 in an hourly position count. Weeks worked outside that time period or in salaried exempt positions do not count, so this is not a situation in which *any* week worked for Amber India is qualifying.

You will be responsible for any taxes on any payments made pursuant to this settlement. Neither the Class Representatives, Class Counsel, nor Amber India make any representations concerning the tax consequences of this settlement or your participation in it, and you may seek tax advice from a tax professional at your own expense in association with your response to this notice.

Only those individuals who remain Members of the Class will be eligible to participate in this settlement and receive payment under this agreement. All individuals who do not opt out will be subject to the judgment. On the other hand, those Class Members who opt out of the settlement will not be eligible to obtain payment pursuant to this settlement, nor will they be bound by the judgment and associated waiver or release of related claims.

## **VII. THE RIGHTS AND OPTIONS OF CLASS MEMBERS**

You have received this Notice because company records suggest that you are a member of the conditionally certified Class. Current Members of the Class have two options:

### **If you want to take part in the Settlement and receive a payment:**

You may choose to be a member of the Settlement Class and receive a share of the settlement. You do not have to do anything to remain a member of the Settlement Class and be mailed your share of the settlement if and when the Court approves it. **IF YOU DO NOTHING, YOU WILL RECEIVE A SETTLEMENT PAYMENT AND BE BOUND BY THE TERMS OF THE SETTLEMENT**

You may also (a) participate in this lawsuit at your own expense by obtaining your own attorneys (If you choose this option you will be responsible for any attorney fees or costs incurred by your attorney); and/or (b) submit written objections to the settlement by

mailing them to the Settlement Administrator at the above-listed addresses no later than January 7, 2018. Class Counsel will present these objections to the Court. Late objections will not be valid.

If you do not take any action (*i.e.*, fail to opt out), you will remain in the Settlement Class and receive your settlement payment, you will forever release the Released Claims (see below) related to meal and rest periods during the Class Period against Amber India, and you will be subject to the judgment issued in connection with this settlement.

If you do not opt-out and the Settlement is ultimately approved by the Court, you will be deemed to have forever released Amber India of any known or unknown claims for failure to provide meal and/or rest period or any associated benefits or remedies.

Specifically, if do not opt-out and the Settlement is ultimately approved by the Court, you will be deemed to have forever released and discharged Amber India and all of their past and present affiliates, directors, officers and employees from any and all claims of any nature or kind whatsoever, whether known or unknown, based on any actual or alleged failure to provide sufficient meal and/or rest periods or pay additional sums of money in lieu thereof and all derivative claims, including claims for (A) failure to pay regular, overtime, and/or premium wages per the allegations of the complaint; (B) failure to comply with payroll, wage record-keeping, and/or wage statement itemization requirements; (C) failure to timely pay wages due at termination or otherwise; (D) and to the extent not covered above, any claims based on facts pled in the Litigation regarding alleged missed and/or non-complaint meal and rest periods during the Class Period (February 27, 2011 through June 18, 2015). Specifically, this release shall result in the waiver of all claims, including without limitations unknown claims, demands, rights, liabilities and causes of action of every nature and description whatsoever including without limitation statutory, constitutional, contractual or common law claims, whether known or unknown, whether or not concealed or hidden, against Amber India and any of their affiliated persons or entities for any type of relief as a result of the Class Member's employment in California for (a)(i) failure to provide sufficient meal and/or rest periods; (ii) associated failure to pay premium or other wages; (iii) failure to comply with payroll or wage record-keeping or wage statement itemization requirements; and (iv) failure to timely pay Wages due at termination or otherwise; (b) penalties or any other remedies for any of the claims covered by subsection (a) above under any statute or regulation or other provision of law, including without limitation claims under California Labor Code sections 201, 201.3, 202, 203, 226, 226.7, 512 & 1194, California Labor Code section 2698 *et seq.*, California Business and Professions Code section 17200 *et seq.*, any applicable California Industrial Welfare Commission Wage Order (including without limitation Wage Order 4), and the federal Fair Labor Standards Act; (c) injunctive relief, restitution, disgorgement, accounting, declaratory relief or other equitable relief for any of the claims covered by subsection (a); (d) any and all claims for interest, costs, or attorney fees for any of the claims covered by subsection (a), including without limitation California Labor Code sections 218.5, 1194 & 2698 *et seq.* and California Code of Civil Procedure section 1021.5; and (e) to the extent not covered above, all claims arising from the factual allegations pled in the Litigation.

With respect to those claims released by the above specified release based on alleged missed and/or non-compliant meal and rest periods, and only such claims (as opposed, for example, to claims for wrongful termination, harassment, or Workers Compensation), all Settlement Class Members, *i.e.*, people who do not opt out of the settlement, shall be deemed to have, and by operation of the judgment shall have, expressly waived, the rights and benefits of California Civil Code section 1542, which provides as follows:

**A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.**

Basically, if you receive a payment from this Settlement, you will release any claims based on any missed meal and rest periods while you worked as an hourly employee at an Amber India restaurant during February 27, 2011 through June 18, 2015.

**If you DO NOT want to take part in the Settlement and DO NOT want a payment:**

If you do not want to be part of this settlement, you must “opt out” of the Settlement Class by informing the Administrator that you want to opt out. If you opt out of this action you can bring a separate lawsuit of your own against Amber India for missed meal and rest periods and related claims, subject to the statute of limitations and applicable statutory, common law or other restrictions. Similarly, if you decide to opt out, you are not be allowed to object to this settlement.

To opt out of the lawsuit and this settlement, you must send a letter to the Settlement Administrator stating in straightforward language that you do not want to be a part of the settlement and do not wish to receive a payment. You will also need to include your name, address, phone number and the last four digits of your Social Security Number, and your signature on the letter. The Settlement Administrator’s address is:

D’sa v Amber India Settlement Administrator  
c/o Rust Consulting, Inc. - 5776  
P.O. Box 2396  
Faribault, MN 55021-9096

The deadline to opt out is January 7, 2018. This deadline is final, and forms not postmarked before January 7, 2018 will be ignored. **IF YOU OPT OUT OF THE SETTLEMENT, YOU WILL NOT RECEIVE A PAYMENT.**

## **VIII. HEARING ON SETTLEMENT**

The Court will hold a hearing to decide whether to approve this settlement on Friday February 16, 2018 at 2 P.M. This hearing will take place at Department \_\_\_\_ of the San Francisco County Superior Court, located at 400 McAllister Street, San Francisco,

California 94102, Judge Curtis Karnow presiding. Attendance at this hearing is completely optional; attendance at the hearing is not required at all, and you do not have to come to the hearing in order to be a part of the settlement or opt out of the lawsuit.

**IX. EXAMINATION OF PAPERS FILED IN THIS ACTION**

This Notice does not fully describe the action. Members of the public, including but not limited to those whose rights may be affected by this action, may inspect the files (including the full settlement agreement) at the Office of the Court Clerk at the following address:

Clerk of Court  
San Francisco Superior Court  
400 McAllister St.  
San Francisco, CA 94102

Until the final hearing, you can also view copies of the key filings in this case on Class Counsel's website at the web address: <http://www.hoyerlaw.com/Amber-India-settlement-information.php>

**PLEASE DO NOT CALL OR WRITE THE COURT OR THE CLERK OF THE COURT WITH QUESTIONS REGARDING THIS ACTION.**