

## **CLASS AND REPRESENTATIVE ACTION SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement ("Agreement") is made between Plaintiff Lorenzo Maya ("Plaintiff"), on behalf of himself and all others similarly situated (the "Putative Class"), on the one hand, and Defendants Simco Fine Dining, LLC., and Simco Restaurants, Inc., ("Defendants") on the other. Plaintiff and Defendants will at times be referred to collectively as the "Parties" and may individually be referred to as a "Party."

### **RECITALS**

WHEREAS, Plaintiff was employed by Defendant during the alleged "Class Period," defined as between February 28, 2016 and the date the Court in this instant action grants Preliminary Approval of this settlement;

WHEREAS, on February 28, 2020, Plaintiff filed a Class Action Complaint in the Superior Court of California, San Francisco County, Case No. CGC-20-583325, entitled *Lorenzo Maya v. Simco Fine Dining, LLC, et al.* against Defendants alleging six causes of action for (1) failure to pay minimum wage and overtime wages; (2) failure to pay meal breaks; (3) failure to provide rest breaks (4) failure to provide wages due upon discharge; (5) failure to provide accurate wage statements; and (6) unfair business practices;

WHEREAS, on May 1, 2020 Plaintiff filed a First Amended Complaint to add a seventh cause of action for a Violation of the Private Attorney General Act of 2004 in this matter;

WHEREAS, for purposes of this Agreement, Settlement Class Members are defined as: all individuals who are or were employed by Defendants in California from February 28, 2016 and the date the Court in the Action grants Preliminary Approval of this settlement. This Agreement includes the Waiting Time and Misclassification subclasses alleged by Plaintiff in the operative Complaint.

WHEREAS, for purposes of this Agreement, PAGA Settlement Class Members are defined as: all individuals who are or were employed by Defendants in California from February 21, 2019 and the date the Court in the Action grants Preliminary Approval of this settlement.

WHEREAS, Defendants deny the validity of Plaintiff's claims in the Action; however, for the purposes of settlement only, the Parties agree that certification of the class is appropriate and the requisites for establishing class certification are met;

WHEREAS, the Parties want to resolve and settle the dispute that has arisen between them, as well as any other claims, asserted or not asserted, that either party may have against the other arising out of facts or events, known or unknown, occurring up to and including the date of execution of this Agreement; and

NOW, THEREFORE, in consideration of the promises in this Agreement, the Parties agree as follows:

## **AGREEMENT**

1. **No Admission of Liability.** It is understood and agreed by Plaintiff that this Agreement represents a compromise and settlement for various matters and that the promises and payments and consideration of this Agreement shall not be construed to be an admission of any liability by Released Parties (defined below). Plaintiff further agrees that this Agreement cannot be used as evidence, nor can it be referred to or relied upon, in any arbitration, administrative, court, or legal proceeding (other than to seek preliminary and final Court approval of this Agreement, enforce the terms of this Agreement or as required by a valid court order). Defendant disclaims and denies any liability, obligation, or responsibility to Plaintiff whatsoever.

2. **Gross Settlement Payment.** In consideration for the releases as described in Paragraphs 3 and 4, and subject to Court approval of this Agreement, Defendant agrees to pay the gross amount of One Hundred Thirty Five Thousand Dollars (\$135,000.00) (the "Settlement Sum") to Settlement Class Members (as defined in Paragraph 9 below) subject to the following terms and conditions:

- a. The Parties agree that of the Settlement Sum, two thousand five hundred dollars (\$2,500.00) will be designated to the named Plaintiff, without deductions, as an enhancement award to Plaintiff in addition to any amount he may be entitled to under the distribution formula as identified in Paragraph 6 for their time, effort, expense, and risks associated with being the named representatives, a broader, general waiver of their rights, and participating in the Action as class representatives. This payment will be reported as 1099 income. Defendants will not oppose any such application for an enhancement award described herein so long as it is consistent with the amount herein. This amount shall come from, and shall not be in addition to, the Settlement Sum. Plaintiff acknowledges his responsibility for any and all taxes. Should the court approve less than the amount provided for in this paragraph, said reduced approval amount shall not be cause to invalidate the Agreement;
- b. The Parties agree that up to eight thousand and five hundred (\$8,500.00) of the Settlement Sum will be for the payment of settlement administration fees of a third-party administrator. The costs of the Administrator shall be paid from, and shall not be in addition to, the Settlement Sum;
- c. The Parties agree that up to 33.33% of the Settlement Sum (*i.e.* \$44,995.50) will be allocated to the payment of attorneys' fees incurred in the Action. Defendants will not oppose any request for attorneys' fees so long as it does not exceed this threshold. Plaintiff will also be entitled to the actual litigation costs from the Settlement Sum as approved by the Court in an amount not to exceed seven thousand three-hundred twenty-four and sixty-four cents (\$7,324.64). These amounts shall come from, and shall not be in addition to, the Settlement Sum. Should the court approve less than the amounts provided for in this paragraph, said reduced approval amount shall not be cause to invalidate the Agreement;

- d. The Parties agree that a payment in the amount of \$2,500.00, or other amount if ordered by the Court, to be paid to the LWDA pursuant to Labor Code section 2699(i). Should the court require more of the Gross Settlement Amount be allocated to LDWA, said reduced approval amount shall not be cause to invalidate the Agreement;
- e. The Parties agree that all payroll taxes associated with payment to Settlement Class Members from the Settlement Sum shall come from, and shall not be in addition to, the Settlement Sum. The representative Plaintiff and Class Members shall be responsible for any and all tax obligations, other than payroll taxes, associated with any payments they receive as part of the Settlement Sum;
- f. There shall be a Net Settlement Sum that is distributed to Settlement Class Members in accordance with the allocations set forth in Paragraph 6 below. The Net Settlement Sum shall consist of the Settlement Sum less the amounts identified in Paragraph 2.a. through 2.e., above (attorneys' fees and costs, costs of administration, payroll taxes and representative enhancement award). All Settlement Class Members will receive a portion of the Net Settlement Sum on a pro rata basis based on the number of pay periods they worked. Specifically, the final settlement payments will be determined by the Administrator by taking the number of pay periods each individual Class Member worked during the Class Period and dividing that by the total number of pay periods Class Members worked during the Class Period and multiplying that fraction by the Net Settlement Amount.

The anticipated Net Settlement Amount is \$71,180.36. The Parties estimate the amount of the Net Settlement Amount to be calculated as follows:

|                                                 |              |
|-------------------------------------------------|--------------|
| Total Settlement Amount:                        | \$135,000.00 |
| Requested Class Rep. Enhancement Award:         | \$2,500.00   |
| Requested Class Counsel Fees:                   | \$44,995.50  |
| Requested Class Counsel Costs (not to exceed):  | \$7,324.64   |
| Payment to the to LWDA:                         | \$2,500.00   |
| Settlement Administrator Costs (not to exceed): | \$8,500.00   |
| Net Settlement Amount                           | \$69,179.86  |

The Settlement Administrator is to provide Defendant advance notice within twenty (20) calendar days after the Court grants preliminary approval of this Agreement regarding the total monies Defendant must deposit.

3. Release. In exchange for the mutual promises and consideration set forth in this Agreement, the sufficiency of which is hereby acknowledged by the Parties, a release of liability is understood and agreed to as follows:

- a. **"Released Parties"** as referenced herein and as released in the Agreement shall collectively mean Defendants and each of its past, present and future parent companies, subsidiaries, affiliates, insurers, re-insurers, principals and any other person, corporation, association or partnership responsible or potentially responsible for any claims made or that could have been made in the Action, and the past, present and future shareholders, directors, officers, agents, employees, attorneys, insurers, re-insurers, predecessors, and successors and assigns of any of the foregoing.
- b. Plaintiff, on behalf of himself and his heirs, successors, assigns, attorneys and agents, hereby releases and forever discharges the Released Parties from any and all claims, demands, debts, duties, obligations, promises, liabilities, damages, accounts, payments, liens acts, costs, expenses, sums of money, suits, dues, actions or causes of action, both in law and in equity, whether known or unknown, matured or unmatured, suspected or unsuspected, which they ever had, now have, or may have in the future with regard to any claims made, or which could have been made, in the Action including, but not limited to, violations of the California Industrial Welfare Commission's ("IWC") Wage Orders; violations of the California Private Attorneys General Act; violations of the California Labor Code, including, but not limited to, section 201, 202, 203, 204, 206, 210, 215, 216, 218.6, 223, 225, 226, 226.2, 226.3, 226.6, 226.7, 227.3, 246 et seq., 351, 354, 408, 510, 512, 553, 558, 1174, 1175, 1194, 1194.2, 1197, 1198, 1199, 1997.1, 2698 et seq., 2699 et seq., 2800, 2802; violations of California Business and Professions Code § 17200 et seq.; and all claims for costs, attorney's fees, civil penalties, statutory penalties, premium pay, and liquidated damages related thereto.
- c. As a condition of participating in this class action settlement, Settlement Class Members, and individuals who are within the scope of the class definition but fail to timely submit a request to be excluded from the proposed settlement, hereby release and forever discharge the Released Parties from any and all class action and representative claims made, or which could have been made, in the Action including, but not limited to, violations of the California Industrial Welfare Commission's ("IWC") Wage Orders; violations of the California Private Attorneys General Act; violations of the California Labor Code, including, but not limited to, section 201, 202, 203, 204, 206, 210, 215, 216, 218.6, 223, 225, 226, 226.2, 226.3, 226.6, 226.7, 227.3, 246 et seq., 351, 354, 408, 510, 512, 553, 558, 1174, 1175, 1194, 1194.2, 1197, 1198, 1199, 1997.1, 2800, 2698 et seq., 2699 et seq., 2802; violations of California Business and Professions Code § 17200 et seq.; and all claims for costs, attorney's fees, civil penalties, statutory penalties, premium pay, and liquidated damages related thereto (the "Released Claims"). The release shall not extend to any claims outside of the Class Period.
- d. As a further condition of participation in this settlement, PAGA Settlement Class Members hereby release and forever discharge the Released Parties from any claims for civil money penalties or other relief available pursuant to PAGA against Released Parties that were or could have been pled based on any and all of the underlying alleged Labor Code

violations pled in the original, amended and Consolidated Complaints and the LWDA notices in any of the Lawsuits.

4. California Civil Code Section 1542. Plaintiff hereby agrees that all rights under section 1542 of the Civil Code of the State of California are hereby waived as to the individuals or other claims they may have against Defendant. Section 1542 has been explained to Plaintiff by his counsel and provides as follows:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.**

5. Motion for Preliminary Approval of Class Action Settlement. Plaintiff and Plaintiff's counsel shall make their best efforts to file a motion seeking preliminary approval of this Agreement concurrent with seeking the Court's certification of the class for settlement purposes as soon as reasonably possible after this Agreement is executed by the Parties. The motion for seeking preliminary approval shall be filed within sixty (60) days of the Settlement Agreement being fully executed. Defendants agree to cooperate with Plaintiff in these efforts so that the motion seeking preliminary approval and concurrent certification of the class for settlement purposes is filed in a timely manner.

6. Settlement Administrator and Distribution Method. The Parties agree that Plaintiff's and Defendants' counsel will select the Settlement Administrator to process and distribute the Settlement Sum in accordance with the Agreement. The Parties will agree upon a Settlement Administrator as soon as reasonably possible after this Agreement is executed by the Parties and prior to Plaintiff's counsel filing a motion seeking preliminary approval of this Agreement. In addition, and subject to Court approval, timeliness, and methods related to the administration of this Agreement shall be as follows:

- a. All Settlement Class Members will receive a portion of the Net Settlement Sum on a pro rata basis based on a reasonable estimate of the total number of workweeks worked by all members of the Settlement Class during the applicable period. The Settlement Administrator shall mail and distribute to all Settlement Class Members a notice of this settlement, in English and Spanish languages, informing them of the basic information regarding its terms, how to submit objections, how to exclude themselves from this proposed settlement, their estimated shares of the Net Settlement, how to dispute the allocated number of pay periods, and the date for a final fairness hearing (the "Class Notice" enclosed herein as Exhibit A). The estimated share of the Net Settlement Sum for each individual within the class definition will be determined as follows: 1) A Total Value Per Workweek will be derived by dividing the Net Settlement Sum by the total number of weeks that all Settlement Class Members worked within the class period (i.e., any week in which a class member worked at least one (1) day); and 2) each Settlement Class

Member will have their respective number of workweeks multiplied by the Total Value Per Workweek to derive their respective share of the Net Settlement Sum. Any monies allocated to individuals within the class definition who do not participate in this settlement because they opt out will be redistributed to Settlement Class Members pro-rata. The redistribution will take place by eliminating the non-participating class members' workweeks from the total workweeks used to calculate the Total Value per Workweek. The Total Value per Workweek will then be recalculated and applied to Settlement Class Members' workweeks to determine their respective share of the Net Settlement Sum.

- b. Ten percent (10%) of the Net Settlement Sum shall be deemed payment for settlement of claims for wages and expenses and will be subject to appropriate deductions and withholdings calculated and made by the Settlement Administrator. Ninety percent (90%) of the Net Settlement Sum be deemed payment for settlement of non-wage claims (*i.e.*, for penalties, penalties liquidated damages, and interest) and not subject to withholdings.
- c. Within seven (7) calendar days after the date that the Court grants preliminary approval of this Agreement, Defendant shall provide a list of all Class Members and all necessary information to the Administrator to locate Class Members, process payments, and process claims for payments, including, but not limited to, Class Member workweeks or dates of employment, last known addresses, social security numbers, and any other information required to effectuate the Agreement.
- d. The class list, and any other data provided by Defendants to the Administrator, shall be treated as confidential and not subject to disclosure by the Administrator except (a) relevant information may be provided to Class Counsel to the extent necessary to address a disputed claim or to respond to a specific inquiry from a class member, or to any third party; (b) to allow Defendant's and Plaintiff's counsel to review and confirm the calculation of Class Members' estimated share of the settlement is accurate and based on the correct information; and (c) as is otherwise necessary for the Administrator to perform its obligations described in this Agreement. Further, the Administrator and Plaintiff's counsel shall use commercially reasonable efforts to secure the data provided by Defendant at all times so as to avoid inadvertent or unauthorized disclosure or use of such data other than as permitted by this Agreement, and shall destroy the data (and all copies of it) in a complete and secure manner when such data is no longer required for purposes of this Agreement. The Administrator shall ensure that the Notice and any other communications to class members shall not include the class members' Social Security Number, except for the last four digits.
- e. Within fourteen (14) calendar days from the date the Court preliminarily approves this Agreement, the Administrator will provide the Parties the spreadsheet showing the Administrator's calculations for anticipated payments to Settlement Class Members, the allocation of workweeks to Settlement Class Members, and any payroll taxes to be paid by Defendant. The Administrator may redact any

identifying information and instead use an employee number to differentiate (except as to the named Plaintiff to the Action) in order to protect Settlement Class Members' confidential information. This will allow Plaintiff and Defendant the opportunity to review the Administrator's calculations, and the Administrator will confirm receipt and approval of the spreadsheet by the Parties prior to disbursing the class notices, as noted below.

- f. Within twenty-one (21) calendar days from the date the Court preliminarily approves this Agreement, the Administrator will perform an NCOA check for class members' most current addresses based on the information provided by Defendants and will mail the Court approved notices and disbursement forms to the class members. The class members will have thirty (30) days from the date of mailing the notices and disbursement forms in which to postmark returned information either contesting the number of workweeks allocated to them, requesting to opt out of the class action settlement, or objecting to the proposed settlement. For any notices and claim forms returned as undeliverable or notifying the Administrator that the class member is no longer at the address, the Administrator shall perform a skip-trace on that individual and re-mail the notice and claim form within three (3) business days of receiving information that the mailing was undeliverable or the class member was no longer at the address to the new address found in under the skip-trace. Individuals who have notices or claim forms re-mailed to them shall have an additional fourteen (14) calendar days to contest the number of workweeks allocated to them, request to opt out of the class action settlement, or object to the proposed settlement.
- g. The Administrator will investigate and will have the final decision on disputes as to the class members' information (e.g., workweeks). Any dispute as to the number of workweeks, request to opt-out, or objection submitted beyond the times authorized under Paragraph 6.f. will be approved only with the mutual approval of the Parties. The Administrator shall provide weekly reports to the Parties regarding the administration status, *i.e.* number of opt-outs, objections, and disputes submitted and the current status of any opt-outs, objections, or disputes received.
- h. Within seven (7) calendar days after the last day for class members to object to the proposed settlement, dispute their information, or request to be excluded from the settlement, the Administrator shall provide a declaration to be submitted to Court detailing the administration process thus far, the number of objections received, the number of opt-out requests received, the number of disputes submitted, and the final status of all such items.
- i. After the Court grants final approval and within seven (7) calendar days after the Administrator receives payment of the Settlement Sum, the Administrator shall provide the Parties the final calculations of settlement payments to Settlement Class Members, and the final amount of payroll taxes. The Administrator may redact any identifying information and instead assign an employee value, except leaving the identifying information for the named Plaintiff, such that the Parties can

review and approve the final distribution amounts to Settlement Class Members. Within seven (7) calendar days after the final calculations are distributed by the Administrator, the Administrator, only upon approval by the Parties of the final distribution amounts, will mail to Settlement Class Members their pro-rata share of the Net Settlement Sum. Class members shall have one hundred and twenty (120) days to cash their respective settlement checks under this Agreement. Any checks not negotiated within the one hundred and twenty (120) days will be voided and will not be reissued. Within seven (7) calendar days after the Administrator distributes final calculations and obtains approval by the Parties thereto, the Administrator shall also distribute to the awarded attorneys' fees and costs, the representative enhancement award, and payment for the costs of Administration.

- j. Within ninety (90) calendar days after the Administrator mails Settlement Class Members their pro-rata share of the Net Settlement Sum, any unclaimed funds, including funds from uncashed settlement checks will be paid out in accordance with California Code of Civil Procedure section 384(b) to the *Restaurants Care Foundation*, located in Sacramento, California as the *cy pres* beneficiary. No amount of the Settlement Sum will revert to Defendants for any reason.
- k. Within ten (10) calendar days after the Administrator distributes the unclaimed funds in accordance with Paragraph 6.j., the Administrator shall provide the Parties a declaration outlining the settlement administration process and completion of payments to those specified in Paragraph 6.j.
- l. The Parties agree the Settlement Class Members' contact information and social security numbers will be used only by the Administrator counsel for the sole purpose of effectuating the Agreement.

7. Class Counsel. The Parties agree to the designation of Jose Garay, APLC and Mahoney Law Group, APC as class counsel for purposes of the Settlement Class.

8. Class Representative. The Parties agree to the designation of Plaintiff Lorenzo Maya as the class representative for purposes of the Settlement Class.

9. Definition & Scope of the Class. Settlement Class Members are defined as: all individuals who are or were employed by Defendants in California from February 28, 2016 and the date the Court in the Action grants Preliminary Approval of this settlement. This Agreement includes the Waiting Time and Misclassification subclasses alleged by Plaintiff in the operative Complaint. It was represented to Plaintiff at the time of the execution of this Agreement that there were approximately 81~~8~~<sup>81</sup> putative class members. To the extent the number of class members increases beyond this number by more than 15%, Plaintiff shall have the option to increase the total settlement amount by a proportionate amount beyond the initial 15%. (If the number of employees increases by 16%, the total increase to the settlement will be 1%.) Plaintiff shall have five (5) calendar days from the date the Administrator indicates an overage to inform Defendants' counsel in writing of his election of this option.

10. Attorneys' Fees and Costs. Except as otherwise set forth in this Agreement, the Parties agree that each shall bear their own respective attorneys' fees and costs incurred in this Action, with the exception of any dispute regarding the payment of the Settlement Sum. In the case of a dispute regarding the payment of the Settlement Sum, the prevailing party shall be entitled to recover their attorneys' fees and costs.

11. Enforcement. This Agreement is made and is enforceable in accordance with the provisions of California Code of Civil Procedure section 664.6 and/or applicable federal law and that Parties agree that the Court shall retain jurisdiction for that purpose to effectuate the terms of this Agreement and after entry of judgment in this Action. This Agreement shall be admissible in any proceeding for its enforcement in accordance with sections 1118 and 1123 of the California Evidence Code and related federal law.

12. Opt-Out Contingency. If more than 10% of the putative Class Members make valid requests to opt out of the class settlement, Defendants may, in their sole discretion, choose to reject or accept, and be bound by, this Agreement. Defendants shall have five (5) calendar days from the date the Administrator indicates the number of Class Members who opted out to inform Plaintiff's counsel in writing of its decision to exercise this opt-out option. However, Defendants agree to pay the cost of the Administrator incurred in administering the settlement up to the date Defendants choose to exercise this opt-out option.

13. Counterparts. This Agreement may be executed in one or more counterparts and each counterpart, when executed, shall have the efficacy of an original. Photographic or facsimile copies of any such signed counterparts may be used in lieu of the original for any said purpose. A facsimile or digital signature shall be treated as an original signature for all purposes. The Parties may use DocuSign, an electronic signature technology to expedite the execution of this Agreement pursuant to California Civil Code section 1633.7. Electronic signatures shall be deemed originals.

14. Confidentiality. Plaintiff represents and agrees that he has not and will not issue any press release, publication, or otherwise disclose this Agreement to the press, media, websites, or any service which reports verdicts and settlements. Plaintiff further agrees not to, at any time or in any manner, talk about, write about, disclose, or otherwise publicize or cause to be publicized, the confidential, proprietary, or trade secret information of the Released Parties.

15. Attorney Liens. Plaintiff represents and warrants that all legal expenses, bills, costs or contingency fee agreements resulting from or arising out of the representation of Plaintiff in relation to the Action are Plaintiff's responsibility to pay, and that any liens based on any legal expenses, bills, costs or contingency fee agreements incurred as a result of the Action will be satisfied by the incurring party. Plaintiff will indemnify, defend and hold Released Parties harmless from any such claims.

16. No Additional Recovery. It is the intent of this Agreement that Plaintiff, lienholders, and any other individual or entity with an interest in Plaintiff's claims with respect to payment of the Settlement Sum shall not recover, directly or indirectly, any sums from the Released Parties other than the funds received pursuant to this Agreement and set forth in Paragraph 2. If, despite the provisions of this Paragraph, any Released Party receives any claims, including a claim for

contribution, any indemnity arising out of a claim with respect to payment of the Settlement brought against another person in an interest in the claims of Plaintiff, such party shall indemnify, provide a full defense for and hold harmless the Released Parties for such amount. In the event a trier of fact determines (and all appeals are exhausted or the time for such appeals have expired) that any Released Party is or would be liable for indemnity under any theory of law or equity, this Agreement shall act as a general release, releasing not only the Released Party but every other individual, trustee, firm, trust, corporation, or entity of any kind, who is or would be entitled to a defense and indemnity from the Released Parties with respect to any liability that person, firm, or corporation may have to Plaintiff.

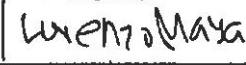
17. Entire Agreement. This Agreement sets forth the entire understanding between the Parties and supersedes any and all prior agreements, oral or written, pertaining to the Action. This Agreement may not be modified or amended except in writing, signed by all Parties. Each party acknowledges that there is no representation, inducement, promise or agreement which has been made, orally or otherwise, by the other party, concerning the terms or conditions of this Agreement, which is not expressly embodied in this Agreement. In entering into this Agreement, the Parties represent that the terms of this Agreement are fully understood and voluntarily accepted by the Parties.

18. Conditional Nature. This Agreement and all associated exhibits or attachments are made for the sole purpose of settling the Action. This Agreement and the settlement it evidences are made in compromise of disputed claims. Because the Action was pled as a class action, this Agreement must receive preliminary and final approval by the Court. Accordingly, the Parties enter into this Agreement and associated settlement on a conditional basis. If the Court does not enter an order granting final approval of the Agreement, this Agreement shall be deemed null and void; it shall be of no force or effect whatsoever; it shall not be referred to or utilized for any purpose whatsoever; and the negotiation, terms and entry of the Agreement shall remain subject to the provisions of California Evidence Code Sections 1119 and 1152, Federal Rule of Evidence 408, and any other analogous rules of evidence that may be applicable.

The Parties, with the benefit of representation and advice of counsel, have read this Agreement and fully understand each and every provision contained in it.

5/5/2022

Dated: May \_\_\_\_, 2022

DocuSigned by:  
  
 LORENZO MAYA

Dated: May \_\_\_\_, 2022

SIMCO FINE DINING, LLC  
 By:   
 Print Name: Sandra Fletcher  
 Title: President/Manager

Approved as to form and content:

JOSE GARAY, APLC  
MAHONEY LAW GROUP, APC

5/4/2022

Dated: May \_\_\_\_\_, 2022

DocuSigned by:  
  
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\_\_\_\_\_  
Jose R. Garay  
Kevin Mahoney  
Counsel for Plaintiff

FISHER & PHILLIPS, LLP



Dated: May 13, 2022

\_\_\_\_\_  
Alden J. Parker  
Gregory L. Blueford  
Counsel for Defendants

# EXHIBIT A

**SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF SAN FRANCISCO**

LORENZO MAYA, on behalf of himself and all persons  
similarly situated,

Plaintiff,

vs.

SIMCO FINE DINING, LLC., AND SIMCO RESTAURANTS,  
INC., and DOES 1 thru 50, inclusive,

Defendants.

CASE NO. CGC-20-583325

**NOTICE OF CLASS AND REPRESENTATIVE  
ACTION AND PROPOSED SETTLEMENT**

**TO:** All current and former hourly-paid or non-exempt individuals employed by Simco Fine Dining, LLC., and Simco Restaurants, Inc. within the State of California at any time between February 28, 2016 and *[date the Court in the Action grants Preliminary Approval of this settlement]*.

**IF YOU ARE A MEMBER OF THIS CLASS OF PERSONS, YOU SHOULD READ THIS NOTICE CAREFULLY  
BECAUSE IT WILL AFFECT YOUR LEGAL RIGHTS AND OBLIGATIONS**

A settlement ("Settlement") has been proposed in the lawsuit referenced above, pending in the Superior Court of California, County of San Francisco ("Court") titled *Lorenzo Maya v. Simco Fine Dining, LLC., et al.* Case No. CGC-20-583325 (the "Case"). If the Court gives final approval to the Settlement, Defendant Simco Fine Dining, LLC., and Simco Restaurants, Inc. ("Defendants") will provide each Class Member a payment calculated, in part, based on the number of weeks worked by each Class Member as set forth in this notice.

Here is a summary of your rights and options, which are described in more detail later in this document. If you have any questions, please contact the Settlement Administrator, [Phoenix XXX]

**1. GENERAL INFORMATION**

The Court preliminarily approved a settlement of the class action claims asserted by Plaintiff Lorenzo Maya ("Plaintiff") in the Case. If you were employed by Defendants within the State of California and were hourly-paid or classified as non-exempt between February 28, 2016 and *[date the Court in the Action grants Preliminary Approval of this settlement]*, you are eligible to receive payment from the Settlement.

**2. YOUR ESTIMATED PAYMENT INFORMATION**

According to Defendants' payroll records, you are a Settlement Class Member who worked approximately      Workweeks as an employee in California during the Class Period. Only weeks worked by you during the Class Period as an employee of Defendants may be considered compensable Workweeks under the Settlement. The Class Period is February 28, 2016 through *[date the Court in the Action grants Preliminary Approval of this settlement]*. Based on information currently available we estimate your total share of the Settlement will be approximately \$           . This is only an estimate. The amount you ultimately receive as part of the Settlement may increase or decrease in accordance with the terms of the Settlement and the Court's orders.

\*\*\*Defendants respect your right to participate in this Settlement and will take no adverse action against you should you accept payment under the Settlement\*\*\*

**SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT**

|                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                       |
|------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------|
| <b>GET A PAYMENT</b>               | <b>If you do nothing, you will automatically receive a payment if the Settlement is finally approved by Court.</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | <b>N/A</b>                                            |
| <b>EXCLUDE YOURSELF</b>            | <b>If you wish to exclude yourself from the Settlement, you must submit to the Settlement Administrator a valid Request for Exclusion. If you exclude yourself from the Settlement, you will not receive a payment under the Settlement. Excluding yourself is the only option that allows you to bring or maintain your own lawsuit against Defendant regarding the allegations in the Case. Detailed instructions for this option are set forth in Section 17 below.</b>                                                                                                           | <b>Deadline:<br/>[30 days from mailing of notice]</b> |
| <b>OBJECT</b>                      | <b>If you wish to object to the Settlement, you must submit your objections (i.e., why you do not believe the Settlement is fair or adequate) to the Superior Court of California, San Francisco County and copies must be served on the Settlement Administrator, Plaintiffs' counsel, and Defendant's counsel. Submitting an objection does not exclude you from the Settlement. Detailed instructions for this option are set forth in Section 18 below.</b>                                                                                                                      | <b>Deadline:<br/>[30 days from mailing of notice]</b> |
| <b>GOTO THE "FAIRNESS HEARING"</b> | <p><b>The Court will hold a "Fairness Hearing" to consider the Settlement, the request for attorneys' fees and costs by the attorneys representing the Class in the Case, and the Representative Plaintiff's request for an enhancement award for bringing and maintaining this action.</b></p> <p><b>You may, but are not required to, speak at the Fairness Hearing about any objection to the Settlement that you submitted. If you intend to speak at the Fairness Hearing, you must also provide a "Notice of Intention to Appear," indicating your intention to do so.</b></p> | <b>Hearing Date: [TBD]</b>                            |

The Court in charge of this Case has preliminarily approved the Settlement and must decide whether to give final approval to the Settlement. The relief provided to Class Members will only be provided if the Court gives final approval to the Settlement, and if there are any appeals, after the appeals are resolved in favor of the Settlement. ***Please be patient.***

## WHAT THIS NOTICE CONTAINS

### BACKGROUND

INFORMATION.....X

1. Why did I get this notice?
2. What is this lawsuit about?
3. Why is this a class action?
4. Why is there a settlement?
5. How do I know if I am part of the Settlement?
6. I'm still not sure if I am included.

### THE PROPOSED

SETTLEMENT.....X

7. What relief does the Settlement provide to the Class Members?

PAYMENT TO THE CLASS.....X

8. How can I get a payment?
9. When will I get a payment?
10. What if I disagree with the calculation regarding my estimated settlement payment?
11. If I receive a settlement payment will I have to pay taxes on it?
12. No retaliation or discrimination

### THE LAWYERS IN THIS CASE AND THE REPRESENTATIVE

PLAINTIFF.....X

13. Do I have a lawyer in this case?
14. How will the lawyers be paid?
15. Will the Representative Plaintiff receive any compensation for their efforts in bringing and maintaining this Case?

### RELEASE OF ALL

CLAIMS.....X

16. What am I giving up to obtain relief under the Settlement?

### HOW TO EXCLUDE YOURSELF FROM THE

SETTLEMENT.....

X

17. How do I exclude myself from the Settlement?

### HOW TO OBJECT TO THE

SETTLEMENT.....

X

18. How do I tell the Court that I do not like the Settlement?

19. What is the difference between excluding myself and objecting to the Settlement?

### FAIRNESS

HEARING.....

X

20. What is the Fairness Hearing?
21. When and where is the Fairness Hearing?
22. May I speak at the Fairness Hearing?

### ADDITIONAL

INFORMATION.....

X

23. How do I get more information?
24. What if my address or other information has changed?

**BACKGROUND INFORMATION****1. Why did I receive this notice?**

You received this Notice because a Settlement has been reached in this Case. According to Defendants' available records you are a member of the Settlement Class and may be eligible for the relief detailed below.

This Notice explains the nature of the Case, the general terms of the proposed Settlement, and your legal rights and obligations. To obtain more information about the Settlement, including information about how you can see a copy of the Settlement Agreement, see Section 23 below.

**2. What is this lawsuit about?**

The Case alleges that Defendants failed to pay minimum wage, failed to pay overtime compensation, failed to maintain accurate time records, failed to provide meal periods, failed to provide rest periods, failed to provide accurate wage statements, failed to pay all wages due at separation, and engaged in unfair competition and business practices, and is thus subject to damages and civil penalties under the California Labor Code.

Defendants deny Plaintiff's allegations in their entirety. Defendants contend that it complied with California law, including paying all wages, providing all meal periods, providing all rest periods, providing accurate wage statements, paying all wages due at termination or resignation, and it did not engage in any acts of unfair competition. Defendants contend that its affirmative defenses to this action may otherwise prevent or limit Plaintiff's class claims.

**The issuance of this Notice is not an expression of the Court's opinion on the merits or the lack of merits of the Representative Plaintiff's claims in the Case.**

For information about how to learn about what has happened in this Case to date, please see Section 23 below.

**3. Why is this a class and representative action?**

In a class and representative action lawsuit, a "Representative Plaintiff" (in this Case, Lorenzo Maya) sued on behalf of other people who allegedly have similar claims. For purposes of this proposed Settlement, one court will resolve the issues for all Class Members. The companies sued in this case, Simco Fine Dining, LLC and Simco Restaurants, Inc., are called the Defendants.

**4. Why is there a settlement?**

The Representative Plaintiff made claims against Defendants. Defendants deny that they have done anything wrong or illegal and admits no liability. **The Court has not decided whether the Representative Plaintiff or the Defendants should win in this Case. Instead, both sides agreed to a Settlement.** That way, both sides avoid the cost of a trial, and the Class Members will receive payment now rather than years from now, if at all.

**5. How do I know if I am part of the Settlement?**

The Court has decided that everyone who fits the following description is a Class Member for purposes of the proposed Settlement: All current and former individuals employed by Defendants within the State of California and paid hourly at any time during the period starting on February 28, 2016 and [date the Court in the Action grants Preliminary Approval of this settlement].

**6. I'm still not sure if I am included.**

If you are still not sure whether you are included, you can write to the Settlement Administrator for help. The address for the Settlement Administrator is [TPA ADDRESS]

## THE PROPOSED SETTLEMENT

### 7. What relief does the Settlement provide to the Class Members?

Defendants have agreed to fund a settlement with a maximum value of \$135,000. This settlement amount will be used to pay the claims of the Class Members, and the following amounts requested by Plaintiff and subject to Court approval: the cost of providing notice to the Class and administering the Settlement (up to 8,500.00); to pay any awards by the Court for attorneys' fees (up to \$44,995.00), and costs (up to \$7,324.64) to Plaintiff's counsel; and any enhancement award the Court awards to the Representative Plaintiff (up to \$2,500.00). The estimated Net Settlement Amount to be used to pay the claims of Class Members is approximately \$71,180.36.

**Your estimated Settlement Payment is stated on the Workweek Dispute Form included with this Notice.** Your estimated payment was calculated using Defendants' payroll and employee records. Individual Settlement Payments will be calculated and apportioned as follows:

- (a) The "Net Settlement Amount" shall be calculated by subtracting the payments to Class Counsel, the Representative Plaintiff, and the Settlement Administrator, from the Maximum Settlement Amount.
- (b) The Net Settlement Amount will be divided up and paid to Participating Class Members on a pro-rata basis based on each Participating Class Member's total number of "Individual Workweeks" divided by the aggregate Individual Workweeks of all Participating Class Members according to the following formula:
  1. For each Participating Class Member, Defendant will calculate the total number of weeks that the Individual worked for Defendant during the Class Period.
  2. The "Individual Settlement Payment" for each Participating Class Member will equal the individual's Individual Workweeks divided by the aggregate Individual Workweeks for all Participating Class Members multiplied by the Net Settlement Amount.
- (c) For tax purposes, ten percent (10%) of each Participating Class Member's Individual Settlement Payment shall be treated as wages, and will be subject to withholdings. Class Members' Individual Settlement Payments shall be reported on an IRS Form W-2.

## PAYMENT TO THE CLASS

### 8. How can I get a payment?

If you wish to remain a Settlement Class Member and obtain any share of the Settlement to which you may be entitled, **then you do not have to do anything and you will automatically receive a settlement payment in the mail if the Court approves the proposed Settlement.** You are not required to go to court or pay anything to the lawyers in this case. The Settlement Payment you will receive will be a full and final settlement of your Released Claims described below.

### 9. When will I get a payment?

As described in Sections 20 and 21, the Court will hold a hearing on [DATE FOR FAIRNESS HEARING] to decide whether to approve the Settlement. If the Court approves the Settlement, after that, there may be appeals. It is always uncertain whether these appeals can be resolved, and resolving them can take time, perhaps more than a year. *Please be patient.*

### 10. What if I disagree with Defendant's calculation regarding my estimated settlement payment?

If you believe that the number of Workweeks with which you have been credited is incorrect, you may produce evidence to the Settlement Administrator by [TBD] showing that such information is inaccurate. The Settlement Administrator shall then decide the dispute between your calculation and that of Defendant. Defendant's records will be presumed to be correct, but the Settlement Administrator will evaluate the evidence submitted by you and will make the final decision as to the merits of the dispute. You can submit the Workweek Dispute Form by mail to the Settlement Administrator at: [ADDRESS]. Alternatively, you may submit your dispute form via facsimile to \_\_\_\_\_, or you can submit your dispute to the Settlement Administrator via e-mail to the following e-mail address: \_\_\_\_\_.

**11. If I receive a settlement payment will I have to pay taxes on it?**

Ten Percent (10%) of your Individual Settlement Payment will be reported on IRS Form W-2. You should consult with a tax professional for more information about your own specific situation.

**12. No retaliation or discrimination.**

Defendants respect your right to participate in this lawsuit and will take no adverse action against you should you accept payment under the Settlement.

**THE LAWYERS IN THIS CASE AND THE REPRESENTATIVE PLAINTIFF**

**13. Do I have a lawyer in this case?**

The Court has preliminarily approved Jose Garay, APLC and Mahoney Law Group, APC ("Class Counsel") to represent the interests of all Class Members. You will not be separately charged for these lawyers. If you have a question about the settlement, you may contact Class Counsel by writing to them at 249 E. Ocean Boulevard, Suite 814, Long Beach, California 90802. If you want you be represented by your own lawyer, you may hire one at your own expense.

**14. How will the lawyers be paid?**

Defendants have agreed to pay Class Counsel's attorney's fees up to \$44,995.00 and costs of up to \$7,324.64 for their services in litigating the Case, subject to approval by the Court. You will not be required to pay any attorneys' fees or costs.

**15. Will the Representative Plaintiff receive any compensation for her efforts in bringing and maintaining this Case?**

The Representative Plaintiff will request an enhancement award of up to \$2,500.00 for his services as class representative and his efforts in bringing and maintaining this action. The Court will make the final decision as to the amount to be paid to the Representative Plaintiff.

**RELEASE OF ALL CLAIMS**

**16. What am I giving up to obtain relief under the Settlement?**

If the Court approves the proposed Settlement, unless you exclude yourself from the Settlement, you will be releasing your claims against Defendants and certain affiliated parties. Specifically, you will release the Released Parties from any and all class action and representative claims asserted in Plaintiff's Complaint in this Case, including but not limited to: (1) the failure to pay minimum wages and overtime compensation; (2) the failure to provide meal periods; (3) failure to pay rest periods; (4) the failure to timely pay all final wages; (5) the failure to provide accurate written wage statements; (6) the failure to provide accurate wage statements; (7) unfair competition in violation of Bus. & Prof. Code §§ 17200 et seq. and; (8) violations of the Private Attorneys General Act of 2004 pursuant to Labor Code §§ 2698 et seq. (hereinafter the "Released Claims"). The release shall not extend to any claims outside of the Class Period of February 28, 2016 and [date the Court in the Action grants Preliminary Approval of this settlement].

The Released Parties include Defendants and each of their past, present and future parent companies, subsidiaries, affiliates, insurers, re-insurers, principals and any other person, corporation, association or partnership responsible or potentially responsible for any claims made or that could have been made in the Action, and the past, present and future shareholders, directors, officers, agents, employees, attorneys, insurers, re-insurers, predecessors, and successors and assigns of any of the foregoing.

#### HOW TO EXCLUDE YOURSELF FROM THE SETTLEMENT

##### 17. How do I exclude myself from the Settlement?

You may exclude yourself from the Class and the Settlement (i.e., "opt out"). If you want to be excluded, you must send a written request via U.S. Mail or other delivery service to the Settlement Administrator that states: (a) the case name and number of the Case "*Lorenzo Maya v. Simco Fine Dining, LLC., et al.*", Case No. CGC-20-583325"; (b) your full name, address, and telephone number; and (c) a statement that you have received notice of the Settlement and have decided that you do not wish to participate in the Settlement. You must sign the written request for it to be valid. The written request must be sent (i.e., postmarked or delivery date stamped) no later than \_\_\_\_\_, and sent to the Settlement Administrator at: \_\_\_\_\_, [\_\_\_\_\_] . You may also fax the letter or postcard to the Settlement Administrator at \_\_\_\_\_, or submit it to the Settlement Administrator via e-mail to \_\_\_\_\_.

If you timely request exclusion from the Class, you will be excluded from the Class, you will not be bound by the judgment entered in the Case, and you will not be precluded from prosecuting any timely individual claim against Defendant based on the conduct complained of in the Case.

#### HOW TO OBJECT TO THE SETTLEMENT

##### 18. How do I tell the Court that I do not like the Settlement?

If you do not exclude yourself from the Settlement, you can object to the terms of the Settlement before the Court grants final approval. You can ask the Court to deny approval by filing an objection. You **cannot** ask the Court to order a larger settlement; the Court can only approve or deny the settlement.

You may object to the Settlement in writing. You may also appear at the Fairness Hearing at the date, time and location stated in Section 21 below.

To be valid, any objection must: (a) state the case name and number of the Case "*Sandoval v. Simco Fine Dining, LLC., et al.*", Case No. CGC-20-583325"; (b) state your full name, address, telephone number, and dates of employment with Defendants; (c) state your objection to the settlement and the legal and/or factual arguments supporting the objection; (d) be filed with the Superior Court of California, County of San Francisco on or before \_\_\_\_\_; and (e) copies of the objection must be served on the Settlement Administrator, Plaintiff's counsel, and Defendants' counsel via U.S. Mail or other delivery service with proof of submission date (such as a U.S. Postal Service postmark or other delivery service date state stamp no later than \_\_\_\_\_. You may, but need not, submit your objection through counsel of your choice. If you make your objection through counsel, you will be responsible for your attorneys' fees and costs.

If you make an objection and the Court disagrees with your objection and grants final approval of the Settlement, you will have released all Released Claims against Released Parties as described in Section 16 above and will receive your Individual Settlement Payment.

**IF YOU DO NOT TIMELY MAKE YOUR OBJECTION, YOU WILL BE DEEMED TO HAVE WAIVED ALL OBJECTIONS.**

##### 19. What is the difference between excluding myself and objecting to the Settlement?

Objecting is telling the Court that you don't like something about the Settlement. You can object only if you stay in the Settlement Class. Excluding yourself is telling the Court that you don't want to be part of the Settlement Class. If you exclude yourself, you have no basis to object because the Settlement no longer affects you.

## FAIRNESS HEARING

### 20. What Is the Fairness Hearing?

The Court has preliminarily approved the Settlement, meaning only that it concluded that there is sufficient evidence to suggest that the Agreement falls within the range of possible approval as fair, reasonable, and adequate, and that the final determination of these issues will be made at the Fairness Hearing. The purpose of the Fairness Hearing will be for the Court to determine whether the Settlement should be approved as fair, reasonable, and adequate, and in the best interests of the Settlement Class; to consider the award of attorneys' fees and expenses to Class Counsel and to consider the request for an enhancement award for the Representative Plaintiff.

### 21. When and where is the Fairness Hearing?

On \_\_\_\_\_, at \_\_\_\_\_, a hearing will be held on the fairness of the proposed Settlement. At the hearing, the Court will be available to hear any objections and arguments concerning the proposed Settlement's fairness. The hearing will take place before the Honorable Garrett L. Wong in Department 610 of the Superior Court of California, County of San Francisco, located at 400 McAllister Street, San Francisco CA 94102. The hearing may be postponed to a different date, time or location without notice. It is not necessary for you to appear at this hearing unless you want to object to the settlement.

### 22. May I speak at the hearing?

At the hearing, the Court will be available to hear any objections and arguments concerning the fairness of the Settlement. You may attend, but you do not have to.

## ADDITIONAL INFORMATION

### 23. How do I get more information?

To see a copy of the Settlement Agreement, the Court's Preliminary Approval Order, and/or the Complaint filed in the Case, please visit the Superior Court of California, County of San Francisco's Office during regular business hours at 400 McAllister Street, San Francisco CA 94102.

### 24. What if my address or other information has changed?

It is your responsibility to inform the Settlement Administrator of your updated information. You may make corrections to your address by sending in the Workweek Dispute Form. Alternatively, you may contact the Settlement Administrator at: \_\_\_\_\_.

**DO NOT ADDRESS ANY QUESTIONS ABOUT THE SETTLEMENT OR THE CLASS LITIGATION TO THE CLERK OF THE COURT OR THE JUDGE.**