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25 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
26 ORANGE COUNTY

27 Joe Ortiz, an individual, appearing on  
28 behalf of himself and all others similarly  
situated,

Plaintiff,

v.

ARG Resources LLC, and DOES 1  
through 10, inclusive,

Defendants.

**ELECTRONICALLY FILED**  
Superior Court of California,  
County of Orange

**11/17/2015** at 10:45:00 AM

Clerk of the Superior Court  
By Georgina Ramirez, Deputy Clerk

CASE NO. 30-2014-00726341-CU-OE-CXC

**THIRD REVISED [~~PROPOSED~~] ORDER  
GRANTING PRELIMINARY APPROVAL  
OF CLASS ACTION SETTLEMENT,  
APPROVAL OF CLASS NOTICE, AND  
CONDITIONAL CERTIFICATION OF  
SETTLEMENT CLASS**

Dept.: CX104  
Judge: Hon. Kim G. Dunning

1           Currently pending before the Court is the Motion for Preliminary Approval of the  
2 Revised Joint Stipulation of Class Action Settlement and Release (the “Revised  
3 Agreement”), Approval of Class Notice, and Conditional Certification of the Settlement  
4 Class filed by Class Representative Joe Ortiz (the “Class Representative”). The Court,  
5 having considered all papers and submissions of counsel and having heard oral argument  
6 on October 21, 2015, and otherwise being fully informed and good cause appearing:  
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8           **IT IS HEREBY ORDERED THAT:**

9           1.       The Court on its own motion and with the agreement of the parties modifies  
10 the settlement as follows: Settlement checks that are returned a second time and  
11 settlement checks not cashed within one hundred eighty (180) days of issuance will not be  
12 re-issued. If a Claimant does not cash or deposit his or her check within one hundred  
13 eighty (180) days from the date of issuance, or if a settlement check is returned for a  
14 second time, the Settlement Administrator shall cause that Claimant’s payment to escheat  
15 to the State of California. This procedure shall apply in lieu of the charitable donation  
16 described in Paragraph 7.4 of the Revised Agreement.

17           2.       The Settlement appears to be fair, adequate, and reasonable to the  
18 Settlement Class Members, free of collusion or indicia of unfairness, and within the range  
19 of possible judicial approval. The Court also finds that the Settlement resulted from  
20 arm’s-length negotiations and is sufficient to warrant the dissemination of the Notice of  
21 Pendency of Class Action, Proposed Settlement and Hearing Date for Court Approval (the  
22 “Notice”) to the Settlement Class Members.

23           3.       Pursuant to California Code of Civil Procedure §382 and California Rule of  
24 Court 3.769, the Court hereby conditionally certifies for settlement purposes only the  
25 Settlement Class, which is defined as follows: Any and all persons employed as an hourly  
26 employee for Defendant ARG Resources LLC at an Arby’s restaurant in California during  
27 the period of time beginning May 30, 2010 through the Date of Preliminary Approval of  
28

1 the Revised Agreement, excluding only the three individuals who previously have entered  
2 into individual settlements that release the claims at issue in the Action.

3 4. The Settlement Class shall include one subclass, the “General Manager  
4 Subclass,” defined as follows: all Settlement Class Members who worked in the positions  
5 of General Manager, Certified Training Manager, or Fast Track General Manager.

6 5. The Court, for settlement purposes only, finds that certification of the  
7 Settlement Class satisfies the requirements of California Code of Civil Procedure §382.  
8 In support of this ruling, the Court conditionally and preliminarily finds that: (a) the  
9 Settlement Class Members are so numerous that joinder of all members is impracticable;  
10 (b) the Settlement Class is ascertainable; (c) there are questions of law and fact common  
11 to the Settlement Class Members; (d) the named Class Representative’s claims are typical  
12 of the claims of the Settlement Class Members; (e) the named Class Representative and  
13 Class Counsel have adequately represented and will continue to adequately represent and  
14 protect the interests of the Settlement Class for purposes of the Settlement; and (f) class-  
15 wide treatment of the disputes raised in this Action is superior to other available methods  
16 for adjudicating the controversy before this Court at this time.

17 6. The Court appoints and designates Plaintiff Joe Ortiz as Class  
18 Representative for the Settlement Class.

19 7. The Court appoints and designates Allen Graves, Esq., The Graves Firm as  
20 Class Counsel for the Settlement Class. Class Counsel is located at the following address:

21 Allen Graves, Esq.  
22 The Graves Firm  
23 122 N. Baldwin Ave., Main Floor  
Sierra Madre, CA 91024

24 8. Total Settlement Amount to be paid by Defendant is one million five  
25 hundred thousand dollars (\$1,500,000.00).

26 9. The award of attorney fees to Class Counsel will be paid from the Total  
27 Settlement Amount and will not exceed five hundred and twenty five thousand dollars  
28 (\$525,000.00).

1           10.    The award of costs to Class Counsel will be paid from the Total Settlement  
2 Amount and will not exceed thirty five thousand dollars (\$35,000.00).

3           11.    The Service Payment to the Class Representative will be paid from the Total  
4 Settlement Amount and will not exceed twenty thousand dollars (\$20,000).

5           12.    The Settlement Administrator fees will be paid from the Total Settlement  
6 Amount and will not exceed fifty five thousand dollars (\$55,000).

7           13.    Thirty thousand dollars (\$30,000) of the Total Settlement Amount shall be  
8 allocated as settlement of claims under the California PAG Act. Seventy-five percent  
9 (75%) of that total, or \$22,500, shall be paid to the LWDA pursuant to the provisions of  
10 the PAG Act. The remaining twenty-five percent (25%), or \$7,500, shall be distributed to  
11 the Claimants.

12           14.    The funds remaining after distribution of the payments described in  
13 paragraphs 9-13 are referred to in this Order as the Net Distribution Amount.

14           15.    A Class Member who is entitled to payment under this Order is referred to  
15 in this Order as a "Claimant."

16           16.    The Net Distribution Amount will be paid to Claimants as follows: Each  
17 Claimant shall receive one credit per pay period or major fraction of a pay period that he  
18 or she worked in a Covered Position during the Covered Timeframe. Each Claimant shall  
19 receive nine (9) additional credits per pay period or major fraction of a pay period that he  
20 or she worked as a General Manager, Certified Training Manager, and/or Fast Track  
21 General Manager, in a Covered Position during the Covered Timeframe. Each Claimant  
22 shall receive one (1) additional credit per pay period or major fraction of a pay period that  
23 he or she worked as a Shift Lead, Shift Manager, Assistant Manager, Assistant General  
24 Manager, Fast Track Manager, Manager, or Manager Trainee in a Covered Position  
25 during the Covered Timeframe. A Claimant who was employed during the Covered  
26 Timeframe but who did not work during the Covered Timeframe will be treated as having  
27 worked one pay period. Settlement Class Members who do not submit a valid and timely  
28 Claim Form will not receive any credits. The value of a credit shall be determined by

1 dividing the Net Distribution Amount by the total number of credits awarded to  
2 Claimants. Each Claimant shall receive a gross payment equal to his or her credits  
3 multiplied by the value of a credit.

4 17. The Court approves, as to form and content, the proposed Notice, attached  
5 as Exhibit 1 to this Order and the Claim Form attached as Exhibit 2 to this Order.

6 18. The Court finds that the Notice, and the distribution of the Notice described  
7 herein, is the best means practicable of providing notice under the circumstances and  
8 when completed shall constitute due and sufficient notice of the Action, the Settlement,  
9 and the Final Approval Hearing to all persons affected by and/or authorized to participate  
10 in the Settlement. The Notice, and the distribution of the Notice described in this Order  
11 complies with California Code of Civil Procedure §382 and the requirements of due  
12 process.

13 19. The Court appoints and designates Rust Consulting to act as the Settlement  
14 Administrator.

15 20. The Settlement Administrator shall be responsible for administration of the  
16 settlement, including:

- 17 a. Printing and mailing the Notice and Claim Form approved by the  
18 Court;
- 19 b. Performing address updates prior to the mailing of the Notice and  
20 Claim Form;
- 21 c. Processing and recording Claim Forms;
- 22 d. Performing Skip Trace address follow up on any returned mailed  
23 Notices;
- 24 e. Creating and maintaining a toll-free number that Settlement Class  
25 Members can call to request a copy of the Agreement, a Claim Form,  
26 and/or to obtain any other information concerning the Settlement or  
27 the Agreement;
- 28

- 1 f. Consulting with ARG’s Counsel and Class Counsel concerning any  
2 relevant issue, including (without limitation) distribution of the  
3 Notice and processing of Claim Forms;  
4 g. Processing and recording timely and proper requests for exclusion;  
5 h. Calculating and processing the Individual Settlement Amounts;  
6 i. Reporting of all taxable amounts on Forms W-2 and 1099 as required  
7 and withholding of payroll taxes and any other withholdings and  
8 payment of such amounts withheld to the appropriate taxing  
9 authorities in a proper and timely manner including electronic  
10 payment or reporting requirements imposed by such authorities, if  
11 any;  
12 j. Transmit to the parties and attach to its report filed with this Court all  
13 objections along with a certification as to the date of mailing for each  
14 Objection; and  
15 k. Such other tasks as ARG and the Class Representative mutually  
16 agree or the Court orders the Settlement Administrator to perform.

17 21. In accordance with the schedule set forth below, the Settlement  
18 Administrator is directed to establish a website at <http://www.argcawageclassaction.com>  
19 (the “Settlement Website”) to provide the following: 1) copies of all pleadings filed with  
20 regard to Preliminary Approval, Plaintiff’s Request for Service Payment, Costs and  
21 Attorney Fees, and Final Approval; 2) the ability to submit and track the status of Claim  
22 Forms; 3) information concerning requesting exclusion from or objecting to the  
23 Settlement; 4) The Settlement Administrator’s Contact Information; and 5) information  
24 regarding hearing dates and deadlines in the case.

25 22. The Court orders the following schedule:

- 26 a. No later than Ten (10) business days after the date of this Order,  
27 ARG shall provide the Settlement Administrator with the following  
28 information with respect to each Settlement Class Member: (i) first

1 and last name; (ii) last known mailing address; (iii) social security  
2 number; (iv) dates of employment; (v) all known phone numbers; and  
3 (vi) number of pay periods worked in each Covered Position,  
4 including the job title of each Covered Position, during the Covered  
5 Timeframe.

6 b. No later than Twenty (20) calendar days after the date of this Order,  
7 the Settlement Administrator shall launch the Settlement Website.

8 c. No later than Thirty (30) calendar days after entry of this Order, the  
9 Settlement Administrator shall mail the Notice and Claim Form to all  
10 Settlement Class Members.

11 d. All Claim Forms must be submitted online or mailed to the  
12 Settlement Administrator by First Class U.S. Mail on or before the  
13 Sixtieth (60th) day after the Notices and Claim Forms are initially  
14 mailed.

15 e. All requests for exclusion must be mailed by First Class U.S. Mail to  
16 the Settlement Administrator postmarked on or before the Sixtieth  
17 (60th) day after the Notices and Claim Forms are initially mailed.

18 f. No later than Twenty-Eight (28) days before the Final Approval  
19 Hearing, the Settlement Administrator shall provide Class Counsel  
20 and ARG's Counsel with a declaration of due diligence and proof of  
21 mailing with regard to the mailing of the Notice and Claim Form.  
22 The declaration will include a list of Settlement Class Members who  
23 submitted valid exclusion requests to the Settlement Administrator as  
24 well as the number of credits associated with each of those  
25 Settlement Class Members seeking exclusion and the aggregate  
26 number of credits therefore excluded from the contemplated  
27 Settlement. The declaration will include a count of the individuals  
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1                   who have filed a timely Claim Form and the number of work weeks  
2                   and credits associated with timely filed Claim Forms.

3                   g.    No later than Twenty-One (21) days before the Final Approval  
4                   Hearing, Class Counsel shall file the Class Representative's Motion  
5                   for Final Approval and any Request for a Fee and Cost Award and/or  
6                   Service Payment.

7                   h.    Any oppositions to the Class Representative's Motion for Final  
8                   Approval and any Request for a Fee and Cost Award and/or Service  
9                   Payment shall be filed Fourteen (14) days before the Final Approval  
10                  Hearing. Either party may file a reply Seven (7) days before the  
11                  Final Approval Hearing.

12                23.   Any Settlement Class Member who objects to this Settlement may mail the  
13                objection via certified mail to the Settlement Administrator within sixty (60) calendar  
14                days from the date the Notices and Claim Forms are initially mailed. Objections timely  
15                mailed will be deemed filed for purposes of the individuals standing as an Objector.

16                24.   Settlement Class Members who fail to object in accordance with the  
17                procedures described herein shall be deemed to have waived any objections and shall  
18                forever be foreclosed from making any objection (whether by appeal or otherwise) to the  
19                Settlement.

20                25.   Any Settlement Class Member may choose to be excluded from the  
21                Settlement by providing a written request to the Settlement Administrator within Sixty  
22                (60) calendar days from the date the Notices and Claim Forms are initially mailed.

23                26.   Any Settlement Class Member who timely and properly requests to be  
24                excluded from the Settlement will not be bound by the Revised Agreement nor have any  
25                right to object, appeal, or comment to the Court thereon.

26                27.   Settlement Class Members who have not requested exclusion by submitting  
27                a valid and timely written request shall be bound by all determinations of the Court, the  
28                Revised Agreement, and any Final Approval Order entered.



1           28.     The Final Approval Hearing shall be held before this Court on  
2 April 13, 2016, at 1:30 p.m. in Department CX104 of the above-entitled Court, located at  
3 751 W. Santa Ana Boulevard, Santa Ana, California 92701.

4           29.     The page limit for Plaintiff’s Memorandum of Points and Authorities in  
5 Support of Final Approval and Plaintiff’s Memorandum of Points and Authorities in  
6 Support of Request for Service Payment, Costs and Attorney Fees is extended to 25 pages.

7           30.     Nothing in this Order is, or may be construed as, an admission or concession  
8 on any point of fact or law by or against the Class Representative or ARG.

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**IT IS SO ORDERED.**

**November 17, 2015**



Hon. Kim G. Dunning  
Judge of the Superior Court