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US FOODS, INC.

Additional Counsel Listed Below Caption

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

STEVEN THOMAS ATTEBERY on behalf of himself and others similarly situated,

Plaintiff,

v.

US FOODS, INC. d/b/a/ US FOODSERVICE, INC., a Delaware corporation; and DOES 1 through 50, inclusive,

Defendants.

Case No. 1:22-CV-01352-JLT-BAM

STIPULATION AND ~~[PROPOSED]~~ ORDER TO CONTINUE SCHEDULING CONFERENCE

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Attorneys for Plaintiff

STEVEN THOMAS ATTEBERY

The Stipulation is entered into by Plaintiff Steven Thomas Attebery and Defendant US Foods, Inc., through their respective attorneys of record.

1. On October 21, 2022, the Court set a Mandatory Scheduling Conference for January 25, 2023 (Dkt. No. 3).

2. On October 27, 2022, US Foods filed its Motion to Dismiss and/or Stay the Action on the grounds that Plaintiff's action is subsumed by two earlier-filed California wage-and-hour class action lawsuits against US Foods and Plaintiff's only non-duplicative claim for alleged violations under Labor Code section 204 and 210 fails to state a claim (Dkt. No. 5).

3. On November 10, 2022, Plaintiff filed his Motion to Remand the case on the grounds that this Court lacks subject matter jurisdiction under the Class Action Fairness Act of 2005 (Dkt. No. 7).

4. On December 21, 2022, the Court continued the January 25, 2023 Scheduling Conference to May 25, 2023 due to the pending Motion to Dismiss and/or Stay and Motion to Remand (Dkt. No. 11).

5. On May 4, 2023, the Court continued the May 25, 2023 Scheduling Conference to August 30, 2023 due to the pending Motion to Dismiss and/or Stay and Motion to Remand (Dkt. No. 13).

6. On July 18, 2023, the Court continued the August 30, 2023 Scheduling Conference to January 9, 2024 due to the pending Motion to Dismiss and/or Stay and Motion to Remand (Dkt. No. 14).

7. On December 28, 2023, the Court continued the January 9, 2024 Conference to May 9, 2024 due to the pending Motion to Dismiss and/or Stay and Motion to Remand (Dkt. No. 16).

8. On February 28, 2024, the Court issued its Order Denying Plaintiff's Motion to Remand (Dkt. No. 17).

9. On March 11, 2024, the Court issued its Order Granting in Part Defendant's Motion to Dismiss and Directing the Parties to File a Joint Statement Regarding the State Court Proceedings (Dkt. No. 18). In its Order, the Court: (a) dismissed Plaintiff's fifth cause of action

for violation of California Labor Code § 204; (b) held in abeyance the question of whether the *Colorado River* doctrine applies; and (c) required the parties to file a joint report addressing the res judicata effect of development in the related state cases, whether the Court should proceed to resolve the pending Motion to Dismiss and/or Stay, and/or continue to hold it in abeyance, and whether alternative motions practice will be required. *Id.*

10. On March 22, 2024, the Parties filed a joint statement agreeing that final judgment on the merits in the earlier-filed state court class actions will have a preclusive effect on this Action (Dkt. No. 19). The Parties agreed that the Court should continue to hold US Food's Motion to Dismiss and/or Stay in abeyance pending the settlement approval process in one of the earlier-filed, duplicative state court matters. *Id.* The Parties also agreed that they do not currently anticipate alternative motion practice. *Id.*

11. In light of the Parties' request that the Court hold US Foods Motion to Dismiss and/or Stay in abeyance pending the approval process in one of the earlier-filed, duplicative state court matters and because a ruling by the Court on the motion may moot the need for a Scheduling Conference, the Parties have agreed, subject to approval of the Court, to continue the Scheduling Conference until January 9, 2025, or the Court's next available date thereafter;

IT IS HEREBY STIPULATED, by and between Plaintiff and US Foods that the May 9, 2024 Scheduling Conference be continued to December 9, 2025 at 9:00 a.m. in Courtroom 8 before Magistrate Judge Barbara A. McAuliffe.

Dated: April 23, 2024 ORRICK, HERRINGTON & SUTCLIFFE LLP

By: */s/ Annie H. Chen*
JOSEPH C. LIBURT
KATIE E. BRISCOE
ANNIE H. CHEN
Attorneys for Defendant
US FOODS, INC.

Dated: April 23, 2024 JAMES HAWKINS APLC

By: */s/ Anthony L. Draper*
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ECF ATTESTATION

Pursuant to Local Rule 5-4.3.4, the filer of this document, Annie H. Chen, attests that all other signatories listed, and on whose behalf this filing is submitted, concur in the filing's content and have authorized this filing.

ORDER

Plaintiff Steven Thomas Attebery and Defendant US Foods, Inc. (collectively the "Parties"), through their respective counsel, have stipulated to continue the Scheduling Conference. Based on the Parties' stipulation and good cause appearing, the Scheduling Conference in this action currently set for May 9, 2024, is continued to **January 9, 2025, at 9:00 AM in Courtroom 8 (BAM) before Magistrate Judge Barbara A. McAuliffe**.[1]

The parties shall file a Joint Scheduling Report one week prior to the conference. The parties shall appear at the conference with each party connecting remotely either via Zoom video conference or Zoom telephone number. The parties will be provided with the Zoom ID and password by the Courtroom Deputy prior to the conference. The Zoom ID number and password are confidential and are not to be shared. Appropriate court attire is required.

IT IS SO ORDERED.

Dated: **April 24, 2024**

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE

[1] The parties have stipulated to continue the scheduling conference to both January 9, 2025, and December 9, 2025. The Court elects to continue the scheduling conference to the earlier of the stipulated dates. As necessary, the parties may request a further continuance of the scheduling conference supported by good cause.