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Attorneys for Defendant
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

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

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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, and then to May 9, 2024 due to the pending Motion to Dismiss and/or Stay and Motion to Remand (Dkt. Nos. 14 and 16).

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

8. 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.*

9. 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 *Hawkins v. US Foods, Inc.*, Orange County Superior Court Case No. 30-2021-01197275 (the "*Hawkins*" action). *Id.* The Parties also agreed that they do not currently anticipate alternative motion practice. *Id.*

10. On April 24, 2024, upon stipulation by the Parties, the Court continued the Scheduling Conference to January 9, 2025 (Dkt. No. 20).

11. The parties in the *Hawkins* action are in the process of obtaining preliminary approval of the class and PAGA settlement agreement. A hearing on plaintiff's motion for preliminary approval is scheduled for January 10, 2025.

12. Therefore, the Parties have agreed, subject to approval of the Court, to continue the Scheduling Conference approximately one hundred and eighty (180) days, to July 8, 2025, or the Court's next available date thereafter; and

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

IT IS SO ORDERED.

Dated: **January 2, 2025**

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE

Dated: December 31, 2024

ORRICK, HERRINGTON & SUTCLIFFE LLP

By: */s/ Lauren Leibovitch*
JOSEPH C. LIBURT
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LAUREN LEIBOVITCH
Attorneys for Defendant
US FOODS, INC.

Dated: December 31, 2024

JAMES HAWKINS APLC

By: */s/ Anthony L. Draper* (as authorized on 12/30/24)
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ORDER

Plaintiff Steven Thomas Attebery and Defendant US Foods, Inc. (collectively the "Parties"), through their respective counsel, have stipulated to continue the Scheduling Conference. (Doc. 23.) Based on the Parties' stipulation and good cause appearing, the Scheduling Conference in this action set for January 9, 2025 is **CONTINUED to July 8, 2025, at 9:00 AM in Courtroom 8 (BAM) before Magistrate Judge Barbara A. McAuliffe**. The parties shall file a joint scheduling report one week prior to the scheduling conference. The parties shall appear at the conference 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 required.