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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

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.*

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

11. On January 2, 2025, upon stipulation by the Parties, the Court continued the Scheduling Conference to July 8, 2025 (Dkt. No. 24).

12. The parties in the *Hawkins* action have obtained final approval of the class and PAGA settlement agreement on June 16, 2025. The *Hawkins* defendants are currently in the process of funding the settlement. The administrator will thereafter disburse the funds.

13. US Foods has taken the position that Plaintiff has failed to timely opt out of the *Hawkins* settlement, and therefore, Plaintiff's class and individual claims must be dismissed. Plaintiff has taken the position that he timely opted out of the *Hawkins* settlement and therefore, he is permitted to pursue his individual claims. Plaintiff, however, has agreed to dismiss his class claims in this Action and PAGA representative action claims in his separately filed state court action.

14. In light of the Parties' respective positions, Plaintiff has proposed that the Parties discuss settlement of his individual claims in lieu of briefing a dispositive motion regarding whether Plaintiff has timely opted out of the *Hawkins* settlement.

15. Therefore, the Parties have agreed, subject to approval of the Court, to continue the Scheduling Conference approximately ninety (90) days, to October 6, 2025, or the Court's next available date thereafter to allow the Parties the opportunity to discuss potential resolution of Plaintiff's individual claims.

IT IS HEREBY STIPULATED, by and between Plaintiff and US Foods that the July 7, 2025 Scheduling Conference be continued to October 6, 2025 at 9:00 a.m. in Courtroom 8 before Magistrate Judge Barbara A. McAuliffe.

Dated: July 1, 2025 ORRICK, HERRINGTON & SUTCLIFFE LLP

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

Dated: July 1, 2025 JAMES HAWKINS APLC

By: */s/ Anthony L. Draper*
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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. Based on the Parties' stipulation and good cause appearing, the Scheduling Conference in this action is continued to **October 7, 2025 at 9:30 AM in Courtroom 8 (BAM) before Magistrate Judge Barbara A. McAuliffe.** The parties shall file a Joint Scheduling Report seven (7) days prior to the conference. The parties shall appear at the conference remotely with each party connecting via Zoom video conference. 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: **July 2, 2025**

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE