JOSEPH C. LIBURT (STATE BAR NO. 155507)
jliburt@orrick.com
ORRICK, HERRINGTON & SUTCLIFFE LLP
1000 Marsh Road
Menlo Park CA 94025
Telephone: +1 650 614 7400
Facsimile: +1 650 614 7401

KATIE E. BRISCOE (STATE BAR NO. 287629)
kbriscoe@orrick.com
Orrick, Herrington & Sutcliffe LLP
400 Capitol Mall
Suite 3000
Sacramento, CA 95814-4497
Telephone: +1 916 447 9200
Facsimile: +1 916 329 4900

ANNIE H. CHEN (STATE BAR NO. 292032)
annie.chen@orrick.com
ORRICK, HERRINGTON & SUTCLIFFE LLP
355 South Grand Avenue
Suite 2700
Los Angeles, CA 90071
Telephone: +1 213 629 2020
Facsimile: +1 213 612 2499

LAUREN R. LEIBOVITCH (STATE BAR NO. 323230)
lleibovitch@orrick.com
ORRICK, HERRINGTON & SUTCLIFFE LLP
631 Wilshire Blvd., Suite 2C
Santa Monica, California 90401
Telephone: +1 310 633 2800
Facsimile: +1 310 633 3849

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

JAMES HAWKINS APLC
James R. Hawkins (SBN 192925)
Isandra Y. Fernandez (SBN 220482)
Anthony L. Draper (SBN 344391)
Lance Dacre (SBN 190305)
9880 Research Drive, Suite 200
Irvine, CA 92618
Tel.: (949) 387-7200
Fax: (949) 387-6676
Email: isandra@jameshawkinsaplc.com
Email: anthony@jameshawkinsaplc.com
Email: lance@jameshawkinsaplc.com
Email: staff@jameshawkinsaplc.com

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. Thereafter, the Scheduling Conference was periodically continued due to the pending Motion to Dismiss and/or Stay and Motion to Remand, and most recently it was continued to October 7, 2025. (*See* Dkt. Nos. 11, 13, 14, 16, 20, 24, 26).

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

6. 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.*

7. 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.*

8. The parties in the *Hawkins* action have obtained final approval of the class and PAGA settlement agreement on June 16, 2025. The *Hawkins* defendants funded the settlement, and the *Hawkins* administrator has disbursed the funds.

9. 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.

10. 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. The Parties are currently engaged in settlement discussions.

11. Therefore, the Parties have agreed, subject to approval of the Court, to continue the Scheduling Conference approximately ninety (90) days, to January 5, 2026, or the Court's next available date thereafter to allow the Parties to further discuss potential resolution of Plaintiff's individual claims.

IT IS HEREBY STIPULATED, by and between Plaintiff and US Foods that the October 7, 2025 Scheduling Conference be continued to January 5, 2026 at 9:00 a.m. in Courtroom 8 before Magistrate Judge Barbara A. McAuliffe.

Dated: September 29, 2025 ORRICK, HERRINGTON & SUTCLIFFE LLP

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

Dated: September 29, 2025 JAMES HAWKINS APLC

By: */s/ Anthony L. Draper*
JAMES R. HAWKINS
ISANDRA Y. FERNANDEZ
KACEY E. COOK
ANTHONY L. DRAPER
LANCE DACRE
Attorneys for Plaintiff
STEVEN THOMAS ATTEBERY

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 shall be continued until **Wednesday, February 4, 2026 at 9:00 AM** in Courtroom 8.

IT IS SO ORDERED.

Dated: **September 30, 2025**

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE