UNITED STATES DISTRICT COURT

FOR THE 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-FJS ORDER GRANTING PARTIES' STIPULATION TO CONTINUE SCHEDULING CONFERENCE (ECF No. 35)

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

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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 May 14, 2026. (*See* Dkt. Nos. 11, 13, 14, 16, 20, 24, 26, 32).

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.

10. In light of the Parties' respective positions, Plaintiff has proposed that the Parties discuss settlement 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 August 24, 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 May 26, 2026 Scheduling Conference be continued to August 24, 2026 at 9:30 a.m. in Courtroom 8, 6th Floor before Magistrate Judge Frank J. Singer.

Dated: May 5, 2026 ORRICK, HERRINGTON & SUTCLIFFE LLP

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

Dated: May 5, 2026 JAMES HAWKINS APLC

By: */s/ Anthony Draper* (as authorized on May 5, 2026)
JAMES R. HAWKINS
ISANDRA Y. FERNANDEZ
KACEY E. COOK
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LANCE DACRE
Attorneys for Plaintiff
STEVEN THOMAS ATTEBERY

ORDER

Plaintiff Steven Thomas Attebery and Defendant US Foods, Inc., 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 August 24, 2026, in Courtroom 8, 6th Floor. The parties shall file a joint scheduling report seven (7) days prior to the conference. The parties shall appear at the conference remotely by telephone. The parties will be provided with the telephonic conference information by the Courtroom Deputy prior to the conference. The conference number and password are confidential and are not to be shared.

IT IS SO ORDERED.

Dated: **May 6, 2026**

UNITED STATES MAGISTRATE JUDGE