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HAWKINS individually, and on behalf of
others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE

CARRELL HAWKINS, individually, and on
behalf of others similarly situated,

Plaintiffs,

vs.

CATALYST FORWARD GROUP, a
corporation; US FOODS, INC., a corporation;
SHIFTABLEHR, an unknown business form;
DOES 1 through 50, inclusive,

Defendants.

Case No.: 30-2021-01197275-CU-OE-CXC

*Assigned for all purposes to the Honorable
William Claster, Dept. CX101*

CLASS ACTION

**SUPPLEMENTAL BRIEF IN SUPPORT
OF PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
AND REPRESENTATIVE ACTION
SETTLEMENT**

Date: October 25, 2024
Time: 9:00 a.m.
Dept.: CX101

Complaint Filed: April 26, 2021
Trial Date: Not Set

*[Filed Concurrently with: Declaration of
Julia Z. Wells in Support of Motion for
Preliminary Approval]*

SUPPLEMENTAL MEMORANDUM OF POINTS AND AUTHORITIES

On September 3, 2024, this Court issued a Minute Order on Plaintiff Carrell Hawkins's ("Plaintiff") Motion for Preliminary Approval of Class and Representative Action Settlement ("Motion for Preliminary Approval"). Counsel for Plaintiff and Defendants Catalyst Forward Group and US Foods, Inc. ("Defendants") (collectively, "the Parties") have met and conferred on the issues identified in the September 3, 2024 Minute Order ("Minute Order"), and Plaintiff now submits this supplemental briefing in order to address the issues raised therein.

Based upon the September 3, 2024 Minute Order, counsel for the parties met and conferred, and ultimately, entered into the Amended Class Action and PAGA Settlement Agreement and Class Notice ("Amended Agreement"). (Declaration of Julia Z. Wells ["Wells Decl."] ¶ 7.) A true and correct copy of the Amended Agreement is attached to the Wells Declaration attached as **Exhibit 1**. (*Id.*) A redline version reflecting the changes made in the Amended Agreement is attached to the Wells Declaration as **Exhibit 2**. (*Id.*)

1. Issues as to the Settlement:

a. Other Actions

The Minute Order asked for clarification as to whether "any other actions, whether individual, class, or PAGA (including in the pre-filing LWDA stage)," may be affected by the Parties' proposed settlement. The Parties have identified the following cases which may be affected by this settlement: (1) *Steven Thomas Attebery v. US Foods, Inc.*, Eastern District of California, Case No. 1:22-cv-01352-JLT-BAM, filed on September 16, 2022 (class action); (2) *Steven Thomas Attebery v. US Foods, Inc.*, Superior Court of California, County of Fresno, Case No. 22CECG03727, filed on November 21, 2022 (PAGA action); (3) *Florencio Cruz v. US Foods, Inc.*, Central District of California, Case No. 2:23-cv-05851-WLH-RAO, filed on June 6, 2023; and (4) *Elier Zermeno v. U.S. Foodservice, Inc.*, Eastern District of California, Case No. 2:24-cv-01732-DAD-CSK, filed on June 19, 2024.

b. PAGA Period

The Minute Order noted:

The PAGA period begins on February 21, 2020. Plaintiff's pre-filing letter to the LWDA was sent January 15, 2021. Why is does the PAGA period begin less than a year before the letter?

1 As to this question, the PAGA period was determined based on the date that Plaintiff filed the initial
2 complaint. Specifically, the PAGA period begins on the date that is one year and sixty-five days before
3 the complaint was filed.

4 2. Class Period

5 In its Minute Order, the Court noted:

6 The case settled in principle in November 2022, but the settlement agreement
7 wasn't signed until July 2024. According to the Declaration of Matthew Matern,
8 "it took several months of additional negotiation to finalize the long form
9 settlement agreement which was ultimately signed on July 15, 2024." This
10 statement does not explain a 20-month delay in signing the agreement, nor does
11 it explain why payments to the putative class have taken so long. What is the
12 reason for the delay? Why is it fair that the amount of settlement agreed to nearly
13 two years ago should be unchanged today? Based on the present information
14 before the Court, why shouldn't one of two things occur: either increase the
15 settlement amount to reflect the delay or substantially roll back the April 2024
16 class period cut-off date?

17 After the parties reached a settlement in principle in 2022, several procedural developments took
18 place. (Well Decl., ¶ 4.) On January 29, 2024, the Parties filed a Stipulation to grant plaintiff leave to
19 file a First Amended Complaint. (*Id.*) After the Court signed the order granting the stipulation, Plaintiff
20 filed the amended complaint on February 16, 2024, as contemplated by the terms laid out in the Parties
21 settlement. (*Id.*) In addition the Parties dealt with procedural issues regarding remanding this case from
22 the United States Central District to the instant Court. (*Id.*) Finally, the settlement negotiations were
23 hard-fought, in particular, with respect to the provision in the settlement agreement setting the end date
24 of the proposed class period. (*Id.*) The end date of the Class Period was a material term of the
25 Settlement, which the Parties ultimately agreed to as a compromise after lengthy, hard-fought
26 negotiations. (*Id.*)

27 In the interest of addressing the concerns raised in the Court's Order, the Parties have met
28 and conferred and have agreed to change the Class Period end date from April 14, 2024, to
December 15, 2023. (*See Wells Decl.* ¶ 7, Exh. 1.)

3. Issues with Class Notice:

Based on information provided by Defendants' counsel, the notice does not need to be
provided in any language other English and Spanish. (Wells Decl., ¶ 8.)

1 The Parties will include opt-out and workweek dispute forms with the notice. (Wells Decl. ¶
2 9.) Counsel for the parties have conferred about, and submit for the Court's consideration, a draft
3 of the opt-out and work dispute form attached to the Wells Declaration as **Exhibit 5**. (*Id.*)

4 The Parties have amended page 5 of the Class Notice to specify that the final approval hearing
5 will be in Department CX101, not CX104. (*Id.*, ¶ 7, at Exhs. 3-4.)

6 Finally, to the extent that the Parties have made changes to the settlement agreement as set forth
7 in the Amended Agreement, the Parties have also made all corresponding changes to the proposed
8 Class Notice as applicable. (*Id.* ¶ 7, at Exhs. 1-4.)

9 Respectfully Submitted,

10 DATED: October 15, 2024

MATERN LAW GROUP, PC

11
12
13 By: 

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Sean P. Hardy

Attorneys for Plaintiff

CARRELL HAWKINS, individually, and on
behalf of others similarly situated