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10 **Attorneys for Plaintiff Stephen Russell and the Putative Class**

11 **UNITED STATES DISTRICT COURT**  
 12  
 13 **EASTERN DISTRICT OF CALIFORNIA**

14 **STEPHEN RUSSELL, an individual,**

Case No.: 2:17-CV-01182-JAM-GGH

15 **Plaintiff,**

**STIPULATION AND PROTECTIVE  
ORDER**

16 **vs.**

17  
18 **KEHE DISTRIBUTORS, INC. and**  
19 **DOES 1-100, inclusive,**

20 **Defendants.**  
21

22  
 23 **IT IS HEREBY STIPULATED** by and between Plaintiff Stephen Russell and  
 24 Defendant KeHE Distributors, Inc., by and through their respective counsel of record,  
 25 that in order to facilitate the exchange of information and documents which may be  
 26 subject to confidentiality limitations on disclosure due to federal laws, state laws, and  
 27 privacy rights, the Parties stipulate as follows:  
 28

1           1.     In this Stipulation and Protective Order, the words set forth below shall  
2 have the following meanings:

3           a.     “Proceeding” means the above-entitled proceeding, *Russell v.*  
4 *KeHE Distributors, Inc.*, Case No. 2:17-CV-01182-JAM-GGH.

5           b.     “Court” means any judge to which this Proceeding may be  
6 assigned, including Court staff participating in such proceedings.

7           c.     “Confidential” means any information which is in the possession  
8 of a Designating Party who believes in good faith that such information is entitled to  
9 confidential treatment under applicable law.

10          d.     “Confidential Materials” means any Documents, Testimony or  
11 Information as defined below designated as “Confidential” pursuant to the provisions  
12 of this Stipulation and Protective Order.

13          e.     “Designating Party” means the Party that designates Materials as  
14 “Confidential.”

15          f.     “Disclose” or “Disclosed” or “Disclosure” means to reveal,  
16 divulge, give, or make available Materials, or any part thereof, or any information  
17 contained therein.

18          g.     “Documents” means (i) any “Writing,” “Original,” and  
19 “Duplicate” as those terms are defined by California Evidence Code Sections 250,  
20 255, and 260, which have been produced in discovery in this Proceeding by any  
21 person, and (ii) any copies, reproductions, or summaries of all or any part of the  
22 foregoing.

23          h.     “Information” means the content of Documents or Testimony.

24          i.     “Testimony” means all depositions, declarations or other testimony  
25 taken or used in this Proceeding.

26          2.     The Designating Party shall have the right to designate as “Confidential”  
27 any Documents, Testimony or Information that the Designating Party in good faith  
28

1 believes to contain non-public information that is entitled to confidential treatment  
2 under applicable law.

3         3.       The entry of this Stipulation and Protective Order does not alter, waive,  
4 modify, or abridge any right, privilege or protection otherwise available to any Party  
5 with respect to the discovery of matters, including but not limited to any Party's right  
6 to assert the attorney-client privilege, the attorney work product doctrine, or other  
7 privileges, or any Party's right to contest any such assertion.

8         4.       Any Documents, Testimony or Information to be designated as  
9 "Confidential" must be clearly so designated before the Document, Testimony or  
10 Information is Disclosed or produced. The parties may agree that the case name and  
11 number are to be part of the "Confidential" designation. The "Confidential"  
12 designation should not obscure or interfere with the legibility of the designated  
13 Information.

14               a.       For Documents (apart from transcripts of depositions or other  
15 pretrial or trial proceedings), the Designating Party must affix the legend  
16 "Confidential" on each page of any Document containing such designated  
17 Confidential Material.

18               b.       For Testimony given in depositions the Designating Party may  
19 either:

20                   i.       identify on the record, before the close of the deposition, all  
21 "Confidential" Testimony, by specifying all portions of the Testimony  
22 that qualify as "Confidential;" or

23                   ii.       designate the entirety of the Testimony at the deposition as  
24 "Confidential" (before the deposition is concluded) with the right to  
25 identify more specific portions of the Testimony as to which protection is  
26 sought within 30 days following receipt of the deposition transcript. In  
27 circumstances where portions of the deposition Testimony are designated  
28 for protection, the transcript pages containing "Confidential" Information

1           may be separately bound by the court reporter, who must affix to the top  
2           of each page the legend “Confidential,” as instructed by the Designating  
3           Party.

4           c.       For Information produced in some form other than Documents, and  
5           for any other tangible items, including, without limitation, compact discs or DVDs,  
6           the Designating Party must affix in a prominent place on the exterior of the container  
7           or containers in which the Information or item is stored the legend “Confidential.” If  
8           only portions of the Information or item warrant protection, the Designating Party, to  
9           the extent practicable, shall identify the “Confidential” portions.

10          5.       The inadvertent production by any of the undersigned Parties or non-  
11          Parties to the Proceedings of any Document, Testimony or Information during  
12          discovery in this Proceeding without a “Confidential” designation, shall be without  
13          prejudice to any claim that such item is “Confidential” and such Party shall not be  
14          held to have waived any rights by such inadvertent production. In the event that any  
15          Document, Testimony or Information that is subject to a “Confidential” designation is  
16          inadvertently produced without such designation, the Party that inadvertently  
17          produced the document shall give written notice of such inadvertent production within  
18          twenty (20) days of discovery of the inadvertent production, together with a further  
19          copy of the subject Document, Testimony or Information designated as “Confidential”  
20          (the “Inadvertent Production Notice”). Upon receipt of such Inadvertent Production  
21          Notice, the Party that received the inadvertently produced Document, Testimony or  
22          Information shall promptly destroy the inadvertently produced Document, Testimony  
23          or Information and all copies thereof, or, at the expense of the producing Party, return  
24          such together with all copies of such Document, Testimony or Information to counsel  
25          for the producing Party and shall retain only the “Confidential” designated Materials.  
26          Should the receiving Party choose to destroy such inadvertently produced Document,  
27          Testimony or Information, the receiving Party shall notify the producing Party in  
28          writing of such destruction within ten (10) days of receipt of written notice of the

1 inadvertent production. This provision is not intended to apply to any inadvertent  
2 production of any Information protected by attorney-client or work product privileges.  
3 In the event that this provision conflicts with any applicable law regarding waiver of  
4 confidentiality through the inadvertent production of Documents, Testimony or  
5 Information, such law shall govern.

6         6. In the event that counsel for a Party receiving Documents, Testimony or  
7 Information in discovery designated as “Confidential” objects to such designation  
8 with respect to any or all of such items, said counsel shall advise counsel for the  
9 Designating Party, in writing, of such objections, the specific Documents, Testimony  
10 or Information to which each objection pertains, and the specific reasons and support  
11 for such objections (the “Designation Objections”). Counsel for the Designating Party  
12 shall have thirty (30) days from receipt of the written Designation Objections to either  
13 (a) agree in writing to de-designate Documents, Testimony or Information pursuant to  
14 any or all of the Designation Objections and/or (b) file a motion with the Court  
15 seeking to uphold any or all designations on Documents, Testimony or Information  
16 addressed by the Designation Objections (the “Designation Motion”). Pending a  
17 resolution of the Designation Motion by the Court, any and all existing designations  
18 on the Documents, Testimony or Information at issue in such Motion shall remain in  
19 place. The Designating Party shall have the burden on any Designation Motion of  
20 establishing the applicability of its “Confidential” designation. In the event that the  
21 Designation Objections are neither timely agreed to nor timely addressed in the  
22 Designation Motion, then such Documents, Testimony or Information shall be de-  
23 designated in accordance with the Designation Objection applicable to such material.

24         7. Access to and/or Disclosure of Confidential Materials designated as  
25 “Confidential” shall be permitted only to the following persons:  
26             a. the Court;  
27             b. (1) Attorneys of record in the Proceedings and their affiliated  
28 attorneys, paralegals, clerical and secretarial staff employed by such attorneys who are

1 actively involved in the Proceedings and are not employees of any Party. (2) In-house  
2 counsel to the undersigned Parties and the paralegal, clerical and secretarial staff  
3 employed by such counsel. Provided, however, that each non-lawyer given access to  
4 Confidential Materials shall be advised that such Materials are being Disclosed  
5 pursuant to, and are subject to, the terms of this Stipulation and Protective Order and  
6 that they may not be Disclosed other than pursuant to its terms;

7 c. those officers, directors, partners, members, employees and agents  
8 of all non-designating Parties that counsel for such Parties deems necessary to aid  
9 counsel in the prosecution and defense of this Proceeding; provided, however, that  
10 prior to the Disclosure of Confidential Materials to any such officer, director, partner,  
11 member, employee or agent, counsel for the Party making the Disclosure shall deliver  
12 a copy of this Stipulation and Protective Order to such person, shall explain that such  
13 person is bound to follow the terms of such Order, and shall secure the signature of  
14 such person on a statement in the form attached hereto as Exhibit A;

15 d. court reporters in this Proceeding (whether at depositions,  
16 hearings, or any other proceeding);

17 e. any deposition, trial or hearing witness in the Proceeding who  
18 previously has had access to the Confidential Materials, or who is currently or was  
19 previously an officer, director, partner, member, employee or agent of an entity that  
20 has had access to the Confidential Materials;

21 f. any deposition or non-trial hearing witness in the Proceeding who  
22 previously did not have access to the Confidential Materials; provided, however, that  
23 each such witness given access to Confidential Materials shall be advised that such  
24 Materials are being Disclosed pursuant to, and are subject to, the terms of this  
25 Stipulation and Protective Order and that they may not be Disclosed other than  
26 pursuant to its terms;

27 g. mock jury participants, provided, however, that prior to the  
28 Disclosure of Confidential Materials to any such mock jury participant, counsel for

1 the Party making the Disclosure shall deliver a copy of this Stipulation and Protective  
2 Order to such person, shall explain that such person is bound to follow the terms of  
3 such Order, and shall secure the signature of such person on a statement in the form  
4 attached hereto as Exhibit A.

5 h. outside experts or expert consultants consulted by the undersigned  
6 Parties or their counsel in connection with the Proceeding, whether or not retained to  
7 testify at any oral hearing; provided, however, that prior to the Disclosure of  
8 Confidential Materials to any such expert or expert consultant, counsel for the Party  
9 making the Disclosure shall deliver a copy of this Stipulation and Protective Order to  
10 such person, shall explain its terms to such person, and shall secure the signature of  
11 such person on a statement in the form attached hereto as Exhibit A. It shall be the  
12 obligation of counsel, upon learning of any breach or threatened breach of this  
13 Stipulation and Protective Order by any such expert or expert consultant, to promptly  
14 notify counsel for the Designating Party of such breach or threatened breach; and

15 i. any other person that the Designating Party agrees to in writing.

16 8. Confidential Materials shall be used by the persons receiving them only  
17 for the purposes of preparing for, conducting, participating in the conduct of, and/or  
18 prosecuting and/or defending the Proceeding, and not for any business or other  
19 purpose whatsoever.

20 9. Any Party to the Proceeding (or other person subject to the terms of this  
21 Stipulation and Protective Order) may ask the Court, after appropriate notice to the  
22 other Parties to the Proceeding, to modify or grant relief from any provision of this  
23 Stipulation and Protective Order.

24 10. Entering into, agreeing to, and/or complying with the terms of this  
25 Stipulation and Protective Order shall not:

26 a. operate as an admission by any person that any particular  
27 Document, Testimony or Information marked "Confidential" contains or reflects trade  
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1 secrets, proprietary, confidential or competitively sensitive business, commercial,  
2 financial or personal information; or

3 b. prejudice in any way the right of any Party (or any other person  
4 subject to the terms of this Stipulation and Protective Order):

5 i. to seek a determination by the Court of whether any  
6 particular Confidential Material should be subject to protection as  
7 “Confidential” under the terms of this Stipulation and Protective Order;  
8 or

9 ii. to seek relief from the Court on appropriate notice to all  
10 other Parties to the Proceeding from any provision(s) of this Stipulation  
11 and Protective Order, either generally or as to any particular Document,  
12 Material or Information.

13 11. Any Party to the Proceeding who has not executed this Stipulation and  
14 Protective Order as of the time it is presented to the Court for signature may thereafter  
15 become a Party to this Stipulation and Protective Order by its counsel’s signing and  
16 dating a copy thereof and filing the same with the Court, and serving copies of such  
17 signed and dated copy upon the other Parties to this Stipulation and Protective Order.

18 12. Any Information that may be produced by a non-Party witness in  
19 discovery in the Proceeding pursuant to subpoena or otherwise may be designated by  
20 such non-Party as “Confidential” under the terms of this Stipulation and Protective  
21 Order, and any such designation by a non-Party shall have the same force and effect,  
22 and create the same duties and obligations, as if made by one of the undersigned  
23 Parties hereto. Any such designation shall also function as a consent by such  
24 producing Party to the authority of the Court in the Proceeding to resolve and  
25 conclusively determine any motion or other application made by any person or Party  
26 with respect to such designation, or any other matter otherwise arising under this  
27 Stipulation and Protective Order.

1           13. If any person subject to this Stipulation and Protective Order who has  
2 custody of any Confidential Materials receives a subpoena or other process  
3 (“Subpoena”) from any government or other person or entity demanding production of  
4 Confidential Materials, the recipient of the Subpoena shall promptly give notice of the  
5 same by electronic mail transmission, followed by either express mail or overnight  
6 delivery to counsel of record for the Designating Party, and shall furnish such counsel  
7 with a copy of the Subpoena. Upon receipt of this notice, the Designating Party may,  
8 in its sole discretion and at its own cost, move to quash or limit the Subpoena,  
9 otherwise oppose production of the Confidential Materials, and/or seek to obtain  
10 confidential treatment of such Confidential Materials from the subpoenaing person or  
11 entity to the fullest extent available under law. The recipient of the Subpoena may not  
12 produce any Documents, Testimony or Information pursuant to the Subpoena prior to  
13 the date specified for production on the Subpoena.

14           14. Nothing in this Stipulation and Protective Order shall be construed to  
15 preclude either Party from asserting in good faith that certain Confidential Materials  
16 require additional protection. The Parties shall meet and confer to agree upon the  
17 terms of such additional protection.

18           15. If, after execution of this Stipulation and Protective Order, any  
19 Confidential Materials submitted by a Designating Party under the terms of this  
20 Stipulation and Protective Order is Disclosed by a non-Designating Party to any  
21 person other than in the manner authorized by this Stipulation and Protective Order,  
22 the non-Designating Party responsible for the Disclosure shall bring all pertinent facts  
23 relating to the Disclosure of such Confidential Materials to the immediate attention of  
24 the Designating Party.

25           16. This Stipulation and Protective Order is entered into without prejudice to  
26 the right of any Party to knowingly waive the applicability of this Stipulation and  
27 Protective Order to any Confidential Materials designated by that Party. If the  
28

1 Designating Party uses Confidential Materials in a non-Confidential manner, then the  
2 Designating Party shall advise that the designation no longer applies.

3 17. Where any Confidential Materials, or Information derived from  
4 Confidential Materials, is included in any motion or other proceeding governed by  
5 California Rules of Court, Rules 2.550 and 2.551, the party shall follow those rules.  
6 With respect to discovery motions or other proceedings not governed by California  
7 Rules of Court, Rules 2.550 and 2.551, the following shall apply: If Confidential  
8 Materials or Information derived from Confidential Materials are submitted to or  
9 otherwise disclosed to the Court in connection with discovery motions and  
10 proceedings, the same shall be separately filed under seal with the clerk of the Court  
11 in an envelope marked: "CONFIDENTIAL - FILED UNDER SEAL PURSUANT  
12 TO PROTECTIVE ORDER AND WITHOUT ANY FURTHER SEALING ORDER  
13 REQUIRED."

14 18. The Parties shall meet and confer regarding the procedures for use of  
15 Confidential Materials at trial and shall move the Court for entry of an appropriate  
16 order.

17 19. Nothing in this Stipulation and Protective Order shall affect the  
18 admissibility into evidence of Confidential Materials, or abridge the rights of any  
19 person to seek judicial review or to pursue other appropriate judicial action with  
20 respect to any ruling made by the Court concerning the issue of the status of Protected  
21 Material.

22 20. This Stipulation and Protective Order shall continue to be binding after  
23 the conclusion of this Proceeding and all subsequent proceedings arising from this  
24 Proceeding, except that a Party may seek the written permission of the Designating  
25 Party or may move the Court for relief from the provisions of this Stipulation and  
26 Protective Order. To the extent permitted by law, the Court shall retain jurisdiction to  
27 enforce, modify, or reconsider this Stipulation and Protective Order, even after the  
28 Proceeding is terminated.

1           21.    Upon written request made within thirty (30) days after the settlement or  
2 other termination of the Proceeding, the undersigned Parties shall have thirty (30)  
3 days to either (a) promptly return to counsel for each Designating Party all  
4 Confidential Materials and all copies thereof (except that counsel for each Party may  
5 maintain in its files, in continuing compliance with the terms of this Stipulation and  
6 Protective Order, all work product, and one copy of each pleading filed with the Court  
7 and one copy of each deposition together with the exhibits marked at the deposition),  
8 (b) agree with counsel for the Designating Party upon appropriate methods and  
9 certification of destruction or other disposition of such Confidential Materials, or (c)  
10 as to any Documents, Testimony or other Information not addressed by sub-  
11 paragraphs (a) and (b), file a motion seeking a Court order regarding proper  
12 preservation of such Materials. To the extent permitted by law the Court shall retain  
13 continuing jurisdiction to review and rule upon the motion referred to in sub-  
14 paragraph (c) herein.

15           22.    After this Stipulation and Protective Order has been signed by counsel  
16 for all Parties, it shall be presented to the Court for entry. Counsel agree to be bound  
17 by the terms set forth herein with regard to any Confidential Materials that have been  
18 produced before the Court signs this Stipulation and Protective Order.

19           23.    The Parties and all signatories to the Certification attached hereto as  
20 Exhibit A agree to be bound by this Stipulation and Protective Order pending its  
21 approval and entry by the Court. In the event that the Court modifies this Stipulation  
22 and Protective Order, or in the event that the Court enters a different Protective Order,  
23 the Parties agree to be bound by this Stipulation and Protective Order until such time  
24 as the Court may enter such a different Order. It is the Parties' intent to be bound by  
25 the terms of this Stipulation and Protective Order pending its entry so as to allow for  
26 immediate production of Confidential Materials under the terms herein.

27           This Stipulation and Protective Order may be executed in counterparts.

28    ///

1 **IT IS SO STIPULATED.**

2 Dated: September 25, 2017

**MAYALL HURLEY P.C.**

3 By: /s/ Robert J. Wasserman

4 ROBERT J. WASSERMAN  
5 WILLIAM J. GORHAM, III  
6 NICHOLAS J. SCARDIGLI  
7 JOHN P. BRISCOE  
8 Attorneys for Plaintiff  
9 Stephen Russell and  
10 the Putative Class

11 Dated: September 25, 2017

**ROSENBERG GOLPER & SAVITT**

12 By: /s/ Jeffrey P. Fuchsman

13 JEFFREY P. FUCHSMAN  
14 JOHN B. GOLPER  
15 Attorneys for Defendant  
16 KeHE Distributors, Inc.

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**ORDER**

**GOOD CAUSE APPEARING**, the Court hereby approves this Stipulation and Protective Order.

**IT IS SO ORDERED.**

Dated: 9/25/2017

/s/ John A. Mendez  
JUDGE OF THE UNITED STATES  
DISTRICT COURT

**EXHIBIT A**

**CERTIFICATION RE CONFIDENTIAL DISCOVERY MATERIALS**

I hereby acknowledge that I, \_\_\_\_\_ [NAME],  
\_\_\_\_\_  
\_\_\_\_\_ [POSITION AND EMPLOYER], am about  
to receive Confidential Materials supplied in connection with the Proceeding *Russell v. KeHE Distributors, Inc.*, Case No. 2:17-CV-01182-JAM-GGH. I certify that I understand that the Confidential Materials are provided to me subject to the terms and restrictions of the Stipulation and Protective Order filed in this Proceeding. I have been given a copy of the Stipulation and Protective Order; I have read it, and I agree to be bound by its terms.

I understand that Confidential Materials, as defined in the Stipulation and Protective Order, including any notes or other records that may be made regarding any such materials, shall not be Disclosed to anyone except as expressly permitted by the Stipulation and Protective Order. I will not copy or use, except solely for the purposes of this Proceeding, any Confidential Materials obtained pursuant to this Protective Order, except as provided therein or otherwise ordered by the Court in the Proceeding.

I further understand that I am to retain all copies of all Confidential Materials provided to me in the Proceeding in a secure manner, and that all copies of such Materials are to remain in my personal custody until termination of my participation in this Proceeding, whereupon the copies of such Materials will be returned to counsel who provided me with such Materials.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed this \_\_\_ day of \_\_\_\_\_, 20\_\_\_ at \_\_\_\_\_.

BY: \_\_\_\_\_

Signature

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State, Zip

\_\_\_\_\_  
Telephone Number