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

17 **UNITED STATES DISTRICT COURT**
 18 **EASTERN DISTRICT OF CALIFORNIA**

19 **STEPHEN RUSSELL, an individual,**

20 **Plaintiff,**

21 **vs.**

22 **KEHE DISTRIBUTORS, INC. and DOES 1-100,**
 23 **inclusive,**

24 **Defendants.**

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

26 **[PROPOSED] ORDER GRANTING**
 27 **PRELIMINARY APPROVAL OF**
 28 **CLASS AND COLLECTIVE ACTION**
SETTLEMENT

Plaintiff Stephen Russell's Motion for Preliminary Approval of Class and Collective Action Settlement ("Motion for Preliminary Approval") came on for hearing on May 8, 2018, at 1:30 p.m., before the honorable John A. Mendez. Robert J. Wasserman appeared on behalf of Plaintiff Stephen Russell ("Plaintiff") and Jeffrey Fuchsman appeared on behalf of Defendant KeHE Distributors, Inc. ("Defendant"). The Court, having fully and carefully reviewed Plaintiff's Motion for Preliminary Approval, the memorandum and declarations in support thereof, the Settlement Agreement including the proposed California Class Notice, FLSA Class Notice, and Claim Form, as well as Defendant's Notice

1 of Non-Opposition thereto, hereby makes the following determinations and orders¹:

- 2 1. Plaintiff Stephen Russell is preliminarily appointed as Class Representative.
- 3 2. Mayall Hurley P.C., by and through Lead Counsel Robert J. Wasserman, William J.
4 Gorham, III, Nicholas J. Scardigli, Vladimir J. Kozina, and John P. Briscoe, are hereby preliminarily
5 approved and appointed as Class Counsel.
- 6 3. Atticus Administration, LLC is appointed as the Settlement Administrator and shall
7 administer the Settlement in accordance with the terms set forth in the Settlement Agreement and
8 perform the functions set forth therein. The Court also preliminarily approves declared fees and costs of
9 administering the Settlement of up to \$26,500.
- 10 4. The class of employees covered by the Parties' Settlement consists of (i) all hourly, non-
11 exempt employees of Defendant that (a) received non-discretionary bonuses and commissions, (b)
12 worked over overtime during at least one pay period from June 7, 2013 through April 7, 2018, and (c)
13 the non-discretionary bonuses or commissions were not included in their regular rate of pay when
14 calculating their overtime, and (ii) all California employees of Defendant that received one or more
15 electronic wage statements between June 7, 2016 and July 10, 2017. It is estimated that there are 3,555
16 total class members.
- 17 5. Pursuant to Federal Rules of Civil Procedure, Rule 23, and for purposes of settlement
18 only, the following subclasses, collectively referred to as the California Class, are preliminarily and
19 conditionally certified.
 - 20 a. All hourly, non-exempt employees of Defendant that worked in California, and (a)
21 received non-discretionary bonuses or commissions, (b) worked over 8 hours in a day
22 or 40 hours in a week during at least one pay period from June 7, 2013 through April
23 7, 2018, and (c) the non-discretionary bonuses or commissions were not included in
24 their regular rate of pay when calculating their overtime (the California Regular Rate
25 Class").

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28 ¹ All terms used in this Order Preliminary Approval of Class and Collective Action Settlement (the "Order") shall have the same meanings given those terms in the Parties' Class Action Settlement Agreement and Release of Claims ("Settlement Agreement" or "Settlement"), a copy which is attached hereto as **Exhibit A** and made a part of this Order.

- 1 b. All hourly, non-exempt employees of Defendant that worked in California, and (a)
2 received non-discretionary bonuses or commissions, (b) worked over 8 hours in a day
3 or 40 hours in a week during at least one pay period from June 7, 2013 through April
4 7, 2018, (c) the non-discretionary bonuses and commissions were not included in
5 their regular rate of pay when calculating their overtime, and (d) no longer work for
6 Defendant (the “California Former Employee Class”).
- 7 c. All employees of Defendant that worked in California and both (a) were paid by
8 direct deposit and (b) received their wage statement(s) electronically rather than along
9 with live paychecks during at least one pay period from June 7, 2016 through July 10,
10 2017 and are not part of the California Regular Rate Class or the California Former
11 Employee Class (the “California Wage Statement Class”).

12 The California Class is estimated to include approximately 1,660 individuals.

13 6. The Court grants preliminary approval of the Settlement between Plaintiff and Defendant
14 KeHE Distributors, Inc. (“Defendant”), based upon the terms set forth in the Settlement Agreement.

- 15 a. As to the California Class, the Settlement Agreement appears to be fair, adequate and
16 reasonable, and the Court preliminarily approves the terms of the Settlement
17 Agreement.
- 18 b. The Court approves, as to form and content, the California Class Notice, in
19 substantially the form attached to the Settlement Agreement as **Exhibit 1**. The Court
20 further approves the procedure by which California Class Members may opt out of,
21 and to object to, the Settlement as set forth in the Settlement Agreement and the
22 California Class Notice.

23 7. Pursuant to 29 U.S.C. § 216(b), and for purposes of settlement only, the FLSA Class, as
24 defined below, is preliminarily and conditionally certified.

- 25 a. All hourly, non-exempt employees of Defendant that worked outside of California,
26 and (a) received non-discretionary bonuses or commissions, (b) worked over 40 hours
27 in a week during at least one pay period from June 7, 2013 through April 7, 2018 ,
28

1 and (c) the non-discretionary bonuses or commissions were not included in their
2 regular rate pay when calculating their overtime. (the "FLSA Class"),
3 The FLSA Class is estimated to include approximately 1,990 individuals.

4 8. As to the FLSA Class, the Settlement Agreement appears to be fair, adequate and
5 reasonable, and the Court preliminarily approves the terms of the Settlement Agreement.

6 a. As to the FLSA Class, the Settlement Agreement appears to be fair, adequate and
7 reasonable, and the Court preliminarily approves the terms of the Settlement
8 Agreement.

9 b. The Court approves, as to form and content, the FLSA Class Notice and Consent and
10 Claim Form, in substantially the form attached to the Settlement Agreement as
11 **Exhibits 2 and 3**, respectively. The Court further approves the procedure by which
12 FLSA Class Members may consent to join the lawsuit and claim a share of the Net
13 Settlement Amount.

14 9. The Court directs the mailing of the California Class Notice, FLSA Class Notice, and
15 Consent and Claim Form in accordance with the terms of the Settlement Agreement and on the schedule
16 set forth below. The Court finds the dates selected for the mailing and distribution of the California
17 Class Notice, FLSA Class Notice, and Consent and Claim Form, as set forth below, meet the
18 requirements of due process and provide the best notice practicable under the circumstances and shall
19 constitute due and sufficient notice to all persons entitled thereto.

20 10. Subject to further consideration by the Court at the time of the Final Approval Hearing,
21 the proposed PAGA allocation and payment to the LWDA is preliminarily approved.

22 11. Subject to further consideration by the Court at the time of the Final Approval Hearing,
23 the proposed Service Payment of \$7,500, or .55% of the Maximum Settlement Amount, to Plaintiff or
24 his service as Class Representative is preliminarily approved.

25 12. Subject to further consideration by the Court at the time of the Final Approval Hearing,
26 Class Counsel's request of attorneys' fees in the amount of 25% of the Maximum Settlement Amount,
27 or \$337,500, and declared costs of up to \$20,000, are preliminarily approved.

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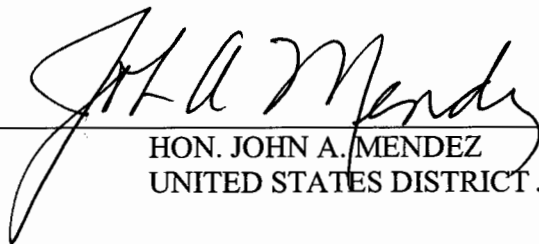
13. The Court adopts the following dates and deadlines:

Defendant to provide Class List to the Settlement Administrator.	Within 10 calendar days of the Court's execution of the Order Granting Preliminary Approval.
Settlement Administrator to mail California Class Notice, FLSA Class Notice, and Consent and Claim Form and establish the website.	Within 10 calendar days of its receipt of the Class List from Defendant.
Settlement Administrator to mail the reminder postcard to the FLSA Class Members.	Within 30 calendar days of its mailing of the FLSA Class Notice.
Deadline for California Class Members to object to, or opt out of, the Settlement.	Within 45 calendar days after the mailing of the California Class Notice.
Deadline for FLSA Class Members to Consent to join and claim a share of the Net Settlement Amount.	Within 45 calendar days after the mailing of the FLSA Class Notice and Consent and Claim Form.
Plaintiff to file Motion for Attorneys' Fees, Costs and Service Payment.	Not less than 35 calendar days after the mailing of the California Class Notice and FLSA Class Notice.
Deadline for Plaintiff to file Motion for Final Approval.	Not less than 28 calendar days before the Final Approval hearing.
Final Approval Hearing.	Not less than 105 days after the Court's execution of the Order Granting Preliminary Approval.

14. A Final Approval hearing on the question of whether the proposed Settlement, attorneys' fees to Class Counsel, and the Class Representative's Service Payment should be finally approved as fair, reasonable and adequate is scheduled in for October 2, 2018 at 1:30 a.m. / (p.m.)

15. The parties to the Agreement are directed to carry out their obligations under the Settlement Agreement.

Dated: June 5, 2018


HON. JOHN A. MENDEZ
UNITED STATES DISTRICT JUDGE