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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ERIK SANTANA, an individual, on behalf of himself, all others similarly situated and the general public,

Plaintiffs,

v.

KeHe FOOD DISTRIBUTORS, INC., an Illinois corporation; and DOES 1 through 100 inclusive,

Defendants.

Case No. 15cv2963-LAB (DHB)

[CLASS ACTION]

Assigned to: Hon. Larry Alan Burns
Magistrate: Hon. David H. Bartick

**ORDER GRANTING MOTION
FOR FINAL APPROVAL OF
CLASS ACTION SETTLEMENT**

Complaint filed: November 17, 2015
Case Removed: December 31, 2015

1 This matter came before the Court on Plaintiff's Motion for Final Approval
2 of Class Action Settlement (the "Final Approval Motion"). Defendant agreed, for
3 settlement purposes only, not to oppose the Final Approval Motion

4 The Court, having carefully considered the briefs, arguments of counsel and
5 all matters presented to the Court and good cause appearing therefore,

6 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:**

7 1. This Order incorporates by reference the definitions of the parties'
8 Settlement Agreement and Release ("Settlement Agreement") (Exhibit A to *ECF*
9 *No. 22-2*) as though fully set forth herein, and all terms used herein shall have the
10 same meaning as set forth in the Settlement Agreement.

11 2. This Court has jurisdiction over the claims of the members of
12 the Class asserted in this proceeding, personal jurisdiction over Plaintiffs,
13 Defendant, and the members of the Class as defined in the Settlement Agreement,
14 and subject matter jurisdiction to approve the Settlement.

15 3. In accordance with the Settlement and this Court's Order Adopting
16 Report and Recommendation regarding Preliminary Approval of Class Action
17 Settlement ("Preliminary Approval Order") (*ECF No. 40*), distribution of the Class
18 Notice and Request for Exclusion directed to the Class Members has been
19 completed, including the individual notice to all Class Members who could be
20 identified through reasonable effort. It is hereby determined that the notice to Class
21 Members, as disseminated to Class Members in accordance with the provisions of
22 the Preliminary Approval Order, was the best notice practicable under the
23 circumstances to all Class Members. Due and adequate notice of the pendency of
24 this Lawsuit and of this Settlement has been provided to Class Members, and this
25 Court hereby finds that the notice program described in the
26 Preliminary Approval Order (*ECF No. 40*) and completed by the Claims
27 Administrator complied fully with the requirements of due process, the Federal
28 Rules of Civil Procedure, and all other applicable laws.

1 4. The Court finds that Plaintiff has satisfied the standards and
2 applicable requirements for final approval of this class action settlement under Rule
3 23 of the Federal Rules of Civil Procedure. The Court finds that the Settlement has
4 been reached as a result of non-collusive arm's-length negotiations after sufficient
5 discovery, investigation and research. The Court also finds that settlement at this
6 time will avoid additional substantial costs, as well as the delay and risks that would
7 be presented by the further prosecution of the litigation. The Court has reviewed the
8 benefits that are being granted as part of the Settlement and recognizes their
9 significant value to Class Members. The Parties to the Settlement Agreement are
10 hereby directed to effectuate the Settlement according to its terms.

11 5. This Court previously conditionally certified the Class for settlement
12 purposes. The Court hereby grants final certification approval, for settlement
13 purposes, to the Class, consisting of:

14
15 All persons who are or have been employed as Field Sales Representatives
16 and/or Field Sales associates (or similar titles) by KeHe Distributors, Inc. in
 the State of California from November 16, 2011 through January 18, 2017.

17 6. All Participating Class Members, as defined in the Settlement, are
18 bound by this Final Approval Order and Judgment and by the Settlement embodied
19 therein, including the releases provided for in the Settlement Agreement and
20 this Final Approval Order and Judgment. As of the Effective Date of Settlement, by
21 operation of the entry of this Final Approval Order and Judgment, each
22 Participating Class Member, including Plaintiff, shall be deemed to have fully
23 released, waived, relinquished and discharged, to the fullest extent permitted by
24 law, all Released Claims that he or she may have against the Releasees.

25 7. Release of Claims: Participating Class Members release and
26 discharge Defendants, its past or present officers, directors, shareholders,
27 employees, agents, principals, heirs, representatives, accountants, auditors,
28 consultants, insurers and reinsurers, and its and their respective successors and

1 predecessors in interest, subsidiaries, affiliates, parents and attorneys from all
2 claims, demands, rights, liabilities and causes of action that were or could have been
3 asserted (whether in tort, contract or otherwise) for violation of the California Labor
4 Code, the California Business and Professions Code, the Private Attorneys General
5 Act (“PAGA”), the applicable Industrial Welfare Commission Orders or any similar
6 state or federal law, whether for economic damages, non-economic damages,
7 liquidated damages, punitive damages, restitution, penalties, other monies, or other
8 relief based on any facts, transactions, events, policies, occurrences, acts,
9 disclosures, statements, omissions or failures to act pled or arising out of or
10 reasonably related to the transactions and occurrences pled in either the Complaint,
11 or the First Amended Complaint, or both and which are or could have been the basis
12 of claims that Defendants failed to pay wages for all hours worked, failed to provide
13 timely final paychecks, provided inaccurate itemized wage statements, or engaged
14 in unfair business practices at any times on or before the Effective Date (“Released
15 Claims”). The release of claims includes Released Claims which could have been
16 pled based on the facts and claims alleged in either the Complaint, or First
17 Amended Complaint or both or arising out of or reasonably related to the
18 transactions and occurrences pled in the Complaint or First Amended Complaint of
19 which a Class Member does not know or suspect to exist in his or her favor against
20 KeHE Distributors as of the Effective Date. Each Class Member who does not
21 timely submit an Exclusion Letter will waive all rights and benefits afforded by
22 section 1542 of the California Civil Code as to their Released Claims. Section 1542
23 provides: A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH
24 THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
25 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN
26 BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER
27 SETTLEMENT WITH THE DEBTOR.

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1 8. Neither this Settlement nor this Final Approval Order and Judgment
2 is an admission of liability, fault, or wrongdoing by Defendant, or any of the
3 Releasees, nor a finding of the validity of any claims in the Action or any violation
4 of law. Neither this Final Approval Order and Judgment, the Settlement Agreement,
5 nor any document referred to herein, nor any action taken to carry out the
6 Settlement is, may be construed as, or may be used as, an admission or concession
7 by or against Defendant, or any of the Releasees, of any fault, wrongdoing, or
8 liability whatsoever. Neither this Final Approval Order and Judgment, any term or
9 provision of the Settlement, nor any of the negotiations or proceedings connected
10 with it, shall be offered or received in evidence in any pending or future civil,
11 criminal or administrative action or proceeding, other than such proceedings that
12 may be necessary to consummate or enforce the Settlement; however, Defendant or
13 any Releasee may use the Settlement and/or any related document, in
14 any action that may be brought against them in order to support a defense or
15 counterclaim based on principles of *res judicata*, collateral estoppel, release, good
16 faith settlement, judgment bar or reduction, accord and satisfaction, or any other
17 theory of claim preclusion or issue preclusion or similar defense or counterclaim.

18 9. The Court hereby finds the Settlement Payments provided for under
19 the Settlement to be fair and reasonable in light of all the circumstances. The Court,
20 therefore, orders the calculations and the payments to be made and administered in
21 accordance with the terms of the Settlement.

22 10. The Court hereby confirms the Law Offices of Thomas D. Rutledge
23 and Thomas D. Rutledge, and the Law Offices of J.D. Henderson and J.D.
24 Henderson as Class Counsel in this action.

25 11. The parties have allocated \$5,000 towards the release of PAGA
26 claims. The sum of \$5,000 shall be paid to the California Labor and Workforce
27 Development Agency for the release of PAGA claims, in accordance with the terms
28 of the Settlement Agreement.

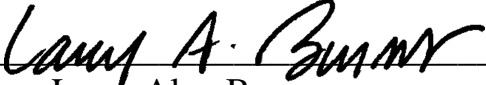
1 12. Without affecting the finality of this Final Approval Order and
2 Judgment, the Court reserves continuing and exclusive jurisdiction over the parties
3 to the Settlement, including Defendant and Class members, to administer, supervise,
4 construe and enforce the Settlement in accordance with its terms for the mutual
5 benefit of the parties. The parties have separately consented to reference of this
6 case to a magistrate judge. By a separate order, all remaining issues in this case —
7 including interpretation and enforcement of the settlement agreement — are
8 referred to the magistrate judge assigned to this case.

9 13. Judgment will be entered in accordance with the findings and orders
10 made herein. For all of the reasons set forth above, the Class Representative's
11 Motion for Final Approval of Class Action Settlement is hereby GRANTED.
12 This action is dismissed in its entirety, on the merits, with prejudice, and without
13 leave to amend, and Plaintiff and Settlement Class members are forever barred and
14 enjoined from asserting any of the Released Claims in any court or forum
15 whatsoever.

16 14. Under Rules 23, 54, and 58 of the Federal Rules of Civil Procedure,
17 the Court, in the interests of justice, there being no reason for delay, expressly
18 directs the Clerk of the Court to enter this Order, and hereby decrees that, upon its
19 entry, it be deemed a final judgment.

20 **IT IS SO ORDERED.**

21
22 Date: October 26, 2017



Hon. Larry Alan Burns
United States District Judge