

8/22/23  
10B

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By                       
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10 Attorneys for Plaintiff THOMAS LONGACRE  
on behalf of the general public as private attorney general

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
12 **FOR THE COUNTY OF SAN JOAQUIN**

13  
14 Attorneys for Plaintiff THOMAS LONGACRE  
on behalf of the general public as private  
15 attorney general

16 Plaintiff,

17 v.

18 KEHE DISTRIBUTORS, INC., a Delaware  
19 Corporation; and DOES 1-50, inclusive

20 Defendants.  
21  
22  
23

Case No.: STK-CV-UOE-2022-0001211  
Assigned For All Purposes To  
Judge: HON. Erin Guy Castillo

*EOC*  
**[PROPOSED] ORDER GRANTING  
MOTION FOR PRELIMINARY  
APPROVAL OF CLASS ACTION AND  
PAGA SETTLEMENT**

Date: *8/22/23*  
Time: *9:00 AM*  
Dept.: 10B

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28  
**ORIGINAL**  
800 WEBSTER ST STE 200  
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1 **ORDER**

2 This matter came on for hearing on XXX at XXX a.m. in Department 10B of the above-  
3 captioned court on the Motion for Preliminary Approval of Class Action and PAGA Settlement,  
4 upon the terms and conditions set forth in the Class Action and PAGA Settlement Agreement  
5 (hereinafter "Settlement Agreement").

6 The Court, having fully reviewed the Motion for Preliminary Approval of Class Action and  
7 PAGA Settlement, the Memorandum of Points and Authorities and Declarations filed in support  
8 thereof, the Settlement Agreement, including the proposed Class Notice, and in recognition of the  
9 Court's duty to make a preliminary determination as to the reasonableness of any proposed class  
10 action settlement, and if preliminarily determined to be reasonable, to ensure proper notice is  
11 provided to Settlement Class Members in accordance with due process requirements, and to set a  
12 Final Approval Hearing to consider the proposed Settlement Agreement as to the good faith,  
13 fairness, adequacy and reasonableness of any proposed settlement, and having heard the argument  
14 of Counsel for the respective parties, the Court **HEREBY MAKES THE FOLLOWING**  
15 **DETERMINATIONS AND ORDERS:**

16 It appears to the Court on a preliminary basis that the Gross Settlement Amount ("GSA") is  
17 fair and reasonable to the Class and PAGA Members when balanced against the probable outcome  
18 of further litigation relating to class certification, the liability and damages issues involved, and the  
19 potential for appeals. It further appears that sufficient investigation, research, and litigation has been  
20 conducted such that counsel for the Parties at this time is able to reasonably evaluate their respective  
21 positions. It further appears that the Settlement at this time will avoid substantial costs, delay and  
22 risks that would be presented by the further prosecution of the litigation. It further appears that the  
23 proposed Settlement has been reached as the result of intensive, serious and non-collusive  
24 negotiations between the Parties. **ACCORDINGLY, GOOD CAUSE APPEARING, THE**  
25 **MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT**  
26 **IS HEREBY GRANTED, AND AS A PART OF SAID PRELIMINARY APPROVAL, THE**  
27 **COURT HEREBY ORDERS THAT THE SETTLEMENT CLASS BE CONDITIONALLY**  
28 **CERTIFIED FOR SETTLEMENT PURPOSES ONLY, AND THAT JAMES HAWKINS, APLC**

1 AND BE CONDITIONALLY AND PRELIMINARILY APPOINTED CLASS COUNSEL. MORE  
2 SPECIFICALLY, THE COURT FINDS AS FOLLOWS:

3 The Court finds on a preliminary basis that the Settlement between Plaintiff and Defendant  
4 appear to be within the range of reasonableness of a settlement which could ultimately be given final  
5 approval by this Court. The Court preliminarily finds that the terms of the Settlement are fair,  
6 reasonable, and adequate, pursuant to Section 382 of the California Code of Civil Procedure.

7 The Court notes that Defendants have agreed to a non-reversionary GSA of \$750,000.00.  
8 Defendant will pay out the entirety of the GSA to the Participating Class Members and PAGA  
9 Members, less deductions for attorneys' fees and costs, the service payment, reasonable expenses  
10 of the third-party Settlement Administrator, and the LWDA for PAGA penalties.

11 The Court finds that the elements of numerosity, commonality, typicality and adequacy have  
12 been established to support conditional certification of the Settlement Class for settlement purposes,  
13 with Plaintiff acting as the Class Representative.

14 The Court hereby appoints, for settlement purposes, Plaintiff THOMAS LONGACRE as the  
15 Class Representative and finds Plaintiff is an adequate representative for the Settlement Class for  
16 settlement purposes. The Court further finds that James Hawkins APLC has preliminarily  
17 established adequacy to be appointed as Class Counsel and appoints them as Class Counsel.

18 The Class as identified in the Settlement is provisionally certified by this Order.

19 The Court finds that the proposed manner of class notice is adequate.

20 The Court approves Apex Class Action Settlement Administrator to serve as the Settlement  
21 Administrator.

22 The Court further hereby approves the proposed Notice of Class Action Settlement and  
23 Orders to the notice to be mailed to the Settlement Class.

24 The Court finds that the Notice of Class Action Settlement constitutes the best notice  
25 practicable under the circumstances, is in full compliance with the laws of the State of California  
26 and, to the extent applicable, the United States Constitution and the requirements of due process.  
27 The Court further finds that the Class Notice fully and accurately informs Settlement Class Members  
28 of all material elements of the proposed Settlement, of each Settlement Class Member's right to be

1 excluded from the Settlement Class, and each Settlement Class Member's right and opportunity to  
2 object to the proposed Settlement. The Notice of Class Action Settlement adequately advises the  
3 Class about: the Class Action; the terms of the proposed Settlement and the benefits available to  
4 each Settlement Class Member; each Settlement Class Member's right to participate, submit an  
5 exclusion/Opt-Out, or Objection to the proposed Settlement, and the timing and procedures for  
6 doing so; the temporary and conditional certification of the Settlement Class for settlement purposes  
7 only; preliminary Court approval of the proposed Settlement; timing and procedures for distributing  
8 the Gross Settlement and the Individual Settlement Payments to the Participating Class Members;  
9 and the date of the Final Approval Hearing as well as the rights of the Settlement Class to file  
10 documentation in support of or in opposition to and appear in connection with said hearing.

11 ACCORDINGLY, GOOD CAUSE APPEARING, THE COURT HEREBY APPROVES  
12 THE PROPOSED CLASS NOTICE PACKET TO THE CLASS AND FINDS that mailing to the  
13 last known address of the Settlement Class, as specifically described within the Settlement  
14 Agreement, constitutes an effective method of notifying Settlement Class Members of their rights  
15 with respect to the proposed Settlement. ACCORDINGLY, IT IS HEREBY ORDERED that:

16 Within fifteen (15) calendar days of the Court granting preliminary approval of this  
17 Agreement, Defendant shall provide the Settlement Administrator with the Class Information for  
18 purposes of mailing the Class Notice. The Settlement Administrator shall maintain the Class  
19 Information as private and confidential and shall not disclose such data to any persons or entities  
20 other than Counsel for Defendant, except that, subject to Defendant's approval, relevant  
21 information can be provided to Class Counsel if necessary for Class Counsel to respond to  
22 inquiries or requests from Class Members. The Class Information is being supplied solely for  
23 purposes of the administration of the Settlement set forth in this Agreement and cannot be used by  
24 the Settlement Administrator or Class Counsel for any other purpose. The Parties agree that the  
25 Class Information will not be used to solicit Class Members to file any claim, charge, or complaint  
26 of any kind whatsoever against the Defendant and/or the Released Parties and will only be used to  
27 administer the Settlement under the terms provided herein.

28 IT IS FURTHER ORDERED that within twenty (20) days of receipt of the Class

1 Information, the Settlement Administrator will mail copies of the Class Notice via regular First-  
2 Class U.S. Mail.

3 IT IS FURTHER ORDERED that any Class Notice returned to the Settlement  
4 Administrator as undeliverable with no forwarding address, the Settlement Administrator shall  
5 conduct an advanced skip trace to locate the most current address of the person to whom the  
6 Notice was addressed, and shall resend the Notice to any updated address within ten (10) calendar  
7 days. Further, the Settlement Administrator shall promptly re-mailed returned notices to the  
8 forwarding address affixed thereto. Class Members who receive a re-mailed Class Notice shall  
9 have their Response Deadline extended twenty (20) days from the original Response Deadline.

10 IT IS FURTHER ORDERED that Class Members who disagree with the number of Eligible  
11 Workweeks stated on their Class Notice may provide documentation and/or a written explanation  
12 to the Settlement Administrator to show contrary information by the Response Deadline. If there is  
13 a dispute, the Settlement Administrator will consult with the Parties to determine whether an  
14 adjustment is warranted. The Settlement Administrator shall determine a Class Member's eligibility  
15 for, and the amounts of, any Individual Settlement Payment under the terms of this Agreement. The  
16 Settlement Administrator's determination of the eligibility for and amount of any Individual  
17 Settlement Payment will be binding upon the Class Members and the Parties. Defendant's records  
18 will be given a rebuttable presumption of accuracy.

19 IT IS FURTHER ORDERED that any disputes not resolved by the Settlement Administrator  
20 concerning the administration of the Settlement will be resolved by the Court under the laws of the  
21 State of California. Prior to any such involvement of the Court, counsel for the Parties will confer  
22 in good faith to attempt to resolve the dispute without involving the Court.

23 IT IS FURTHER ORDERED that individuals who fall within the definition of the Class  
24 may choose to exclude themselves as Participating Class Members. The Class Notice shall state  
25 that Class Members who wish to exclude themselves from the Settlement must submit a request to  
26 exclude themselves that need not be in any particular form and will be considered a valid request  
27 for exclusion so long as it communicates a clear desire by the Settlement Class Member not to be  
28 included in the Settlement and/or Settlement Class, and identifies his/her/their full name and date

1 of birth, and current address along with his/her/their signature. No requests for exclusion shall be  
2 accepted if postmarked after the forty-five (45) calendar day period for the filing of exclusions.  
3 Class Members are responsible to maintain a photocopy of their request for exclusion, reflecting  
4 that it was submitted in a timely manner. Any disputes regarding the timeliness of a request for  
5 exclusion or whether a written communication constitutes a valid request that cannot be resolved  
6 between the

7 Parties shall be determined by the Court, whose determination shall be final

8 IT IS FURTHER ORDERED that every Class Member who does not validly and timely  
9 exclude themselves shall be deemed a Participating Class Member.

10 IT IS FURTHER ORDERED that the Class Notice shall state that Class Members who  
11 wish to object to the Settlement may do so in person at the Final Approval Hearing and/or in  
12 writing. Any written objection (“Notice of Objection”) must be mailed to the Settlement  
13 Administrator by the Response Deadline. The date of mailing on the envelope shall be deemed  
14 the exclusive means for determining that a Notice of Objection was timely received. Any Class  
15 Member who makes a timely request for exclusion has waived their right to object. The Objecting  
16 Class Member shall inform the Court and the Parties in the objection of (1) full name and current  
17 address of the Objecting Class Member; and (2) the specific reason(s) for the objection; and (3)  
18 shall also provide any and all evidence and supporting papers (including, without limitation, all  
19 briefs, written evidence, and declarations) to be considered by the Court. Any Objecting Class  
20 Member who wishes to appear at the Final Approval Hearing and be heard orally in support of, or  
21 in opposition to the class action settlement, must state so in the objection. Class Members shall  
22 have no right to object to the PAGA release or PAGA Payment.

23 IT IS FURTHER ORDERED that the Final Approval Hearing shall be held on 4/11/24 in <sup>@ 9 am</sup>  
24 Department 10B of the above captioned Courthouse to consider the fairness, adequacy and  
25 reasonableness of the proposed Settlement preliminarily approved by this Order Granting  
26 Preliminary Approval, and to consider the application of Class Counsel for an award of attorneys’  
27 fees, costs, and class representative enhancement. The Court may continue the Final Approval  
28 Hearing to another date at its discretion.

1 IT IS FURTHER ORDERED that all briefs and materials in support of an Order Granting  
2 Final Approval and application for attorneys' fees and costs and class representative enhancement  
3 shall be filed with this Court no later than sixteen (16) court days before the date set for the Final  
4 Approval Hearing.

5 IT IS FURTHER ORDERED that, if for any reason the Court does not execute and file an  
6 Order Granting Final Approval and Judgment, or if the Effective Date does not occur for any reason  
7 whatsoever, the Settlement Agreement and the proposed Settlement which is the subject of this  
8 Order and all evidence and proceedings had in connection therewith shall be without prejudice to  
9 the status quo ante rights of the Parties to the litigation as more specifically set forth in the Settlement  
10 Agreement.

11 IT IS FURTHER ORDERED that, pending further order of this Court, all proceedings in  
12 this matter except those contemplated herein and in the Settlement Agreement are stayed.

13 The Court expressly reserves the right to adjourn or continue the Final Fairness Approval  
14 Hearing from time to time without further notice to the Class.

15 **IT IS SO ORDERED.**

16  
17 Dated: August 22, 2023



\_\_\_\_\_  
Honorable Erin Guy Castillo  
JUDGE OF THE SUPERIOR COURT