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on behalf of the general public as private attorney general

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN JOAQUIN

THOMAS LONGACRE, on behalf of the general public as private attorney general, Plaintiff, v. KEHE DISTRIBUTORS, INC., a Delaware Corporation; and DOES 1-50, inclusive Defendants.	Case No.: STK-CV-UOE-2022-0001211 Assigned For All Purposes To Judge: HON. Erin Guy Castillo **DECLARATION OF JAMES HAWKINS IN SUPPORT OF MOTION FOR FINAL APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES** Date: January 11, 2024 Time: 09:00 a.m. Dept: 10B

DECLARATION OF JAMES HAWKINS

I, James Hawkins, declare as follows:

1. I am an individual over the age of 18. I am a partner at the law firm of James Hawkins, APLC. I am one of the attorneys of record for Plaintiff THOMAS LONGACRE (hereinafter referred to as "Plaintiff" or "Class Representative"), who commenced this class and PAGA action on behalf of the Class Members and Aggrieved Employees. I submit this declaration in support of Plaintiff's Motion for Final Approval of Class Action and PAGA Settlement, which Plaintiff filed concurrently herewith, along with the supporting Memorandum of Points and Authorities. I have personal knowledge of the facts set forth below, and if called to testify regarding them, I could and would do so competently.

2. Attached hereto as **Exhibit A** is a true and correct copy of the executed Class Action and PAGA Settlement Agreement and Amendment ("Settlement" or "Settlement Agreement") which the Parties ask the Court to approve.

3. Plaintiff filed this representative action on February 16, 2022, alleging a cause of action against Defendant under the Private Attorneys General Act ("PAGA"), entitled *Thomas Longacre, et al. vs. Kehe Distributors, Inc.*, in the San Joaquin County Superior Court (No. STK-CV-UOE-2022-121) (the "PAGA Action"). Specifically, Plaintiff's Lawsuits sought civil penalties against Defendant for Defendant's alleged failure to: failure to pay wages, the failure to pay overtime compensation, the failure to provide meal periods, the failure to provide rest periods, the failure to maintain or provide accurate itemized statements, failure to pay all wages earned and owed during employment and upon employee's termination of employment, the failure to maintain records, failure to pay statutory sick pay at the correct rate of pay, failing to provide cool down recovery periods, and any other claims whatsoever that were or could have been alleged in this case based on the facts of the complaints, including all related claims for restitution and other equitable relief under Business and Professions Code section 17200, liquidated damages, waiting-time penalties, and penalties under the Labor Code Private Attorneys General Act of 2004. On December 22, 2022, Plaintiff filed a First Amended Class Action Complaint adding Class Claims

4. On October 17, 2022, the Parties engaged in a full-day of private mediation with a well-respected wage and hour class action mediator, Gig Kyriacou, Esq. Prior to mediation, Plaintiff requested and Defendant produced extensive documentation including time and pay data for a random sample of approximately 20% of the class members, Defendant's written policies, Plaintiff's time and pay records and personnel file, documents relating to arbitration agreements with Class Members, applicable collective bargaining agreements, and information relating to the average hourly rate, class size, and workweeks during the Class Periods and PAGA Period. In short, Defendant provided informal discovery sufficient to enable the Plaintiff and Class Counsel to rigorously evaluate the strengths, weaknesses, and risks of the case and perform an analysis of the potential damages arising from the claims made in this case.

5. As a result of settlement efforts mentioned above, the Parties agreed to resolve this matter for the Gross Settlement Amount of $750,000.00 for approximately 4,560 Class Members and the terms of which are fully memorialized in the Settlement Agreement. The settlement was negotiated at arms-length and is not collusive. From Class Counsel's review of the facts, strengths, and weaknesses of the case, the risks and delays posed by further litigation, and Class Counsel's prior litigation experience, Class Counsel believe that recovery for each Class Member is fair and reasonable.

6. The Class is defined as all hourly non-exempt employees employed by Defendant in California during the Class Period. The Class Period August 26, 2020 through January 15, 2023. ("Class Member" or "Settlement Class Member" refers to a member of the Class, as either a participating Class Member or Non-Participating Class Member (including a Non-Participating Class Member who qualifies as an Aggrieved Employee)). "PAGA Period" shall mean the period from August 26, 2020 to January 15, 2023. (Settlement Agreement I, ¶1.31.)

7. Plaintiff's Counsel conducted a thorough investigation into the factual and legal issues implicated by Plaintiff's claims and was able to objectively assess the settlement's reasonableness. For example, prior to filing the action, Plaintiff contacted Plaintiff's Counsel to discuss the factual bases for pursuing their actions against Defendant for Labor Code violations. Plaintiff was intimately familiar with Defendant's labor policies and practices, and over the course

of multiple interviews, knowledgeably summarized those policies and practices to Plaintiff's Counsel. During those conversations, Plaintiff's Counsel explained how the policies and practices were instituted and provided valuable insight into how they gave rise to the alleged Labor Code violations. Further, formal business records for Mr. Longacre were requested and received and reviewed. Based on these interviews with Plaintiff, and review of records, Plaintiff's Counsel determined that there were legally sufficient grounds for pursuing the Actions against Defendant and in preparation for drafting the complaints, Plaintiff's Counsel conducted their own independent preliminary investigations into the factual bases for Plaintiff's claims, which entailed, *inter alia*, a careful examination of Plaintiffs' personnel files and associated records.

8. In summary, Plaintiff's Counsel performed a thorough investigation into the claims at issue, which included: (1) determining Plaintiff's suitability as private attorneys general and subsequent class representative through interviews, background investigations, and analyses of their employment files and related records; (2) evaluating all of Plaintiff's potential representative claims; (3) researching similar wage and hour class actions as to the claims brought, the nature of the positions, and the type of employer; (4) analyzing employees' time and wage records and driver manifest; (5) reviewing Defendant's employment policies and practices; (6) researching settlements in similar cases and the prior settlement in this case; (7) evaluating Plaintiff's claims and estimating Defendant's liability for purposes of settlement; (8) drafting the mediation brief; and (9) participating in the mediation.

9. By engaging in such a thorough investigation and evaluation of Plaintiff's claims, Plaintiff's Counsel can opine that the Settlement, for the consideration and on the terms set forth in the Settlement Agreement, is fair, reasonable, an adequate, and is in the best interests of Class Members in light of all known facts and circumstances, including the risk of significant delay and uncertainty associated with litigation, and various defenses asserted by Defendant.

10. Defendant denies any wrongdoing and deny liability with respect to the matters alleged in the Complaint and believe that they have valid defenses to all of Plaintiff's claims. Defendant further contends that they complied with all wage and hour laws applicable to the employment of Plaintiff and other Class Members. To date, no class has been certified and no

court has made any findings that Defendant engaged in any wrongdoing or in any wrongful conduct, or otherwise acted improperly or in violation of any law, rule or regulation with respect to any of the issues presented in this action.

11. Since the filing of the complaint, the Parties have exchanged extensive informal discovery and engaged in numerous discussions regarding the factual and legal issues surrounding this case. Throughout the litigation, Defendant produced thousands of pages of information and thousands of lines of data in both electronic and pdf formats, including policies, handbooks, relevant policies, and payroll and time records. Defendants also provided Plaintiff's personnel file, and information regarding the number of employees holding these positions during the relevant time period. Defendant also provided substantial information concerning the total number of potential class members, the payroll data and time keeping data for 20% of the class at issue, and the applicable hourly rates, workweeks and pay periods, and other summary data related to the alleged class. The Parties have conducted themselves in informed, good faith arms-length negotiations after conducting discovery and exchanging extensive evidence and information about the claims and defenses of this lawsuit through informal discovery, and engaging in pre-mediation discussions, telephone conferences, and correspondence all aimed at settling their dispute.

12. In preparation for the mediation, Plaintiff reviewed the entire discovery and information produced. The information had to be extrapolated and processed to figure out the amount of compensation Plaintiff contends are due to the Classes. The evidence and information gathered and reviewed by counsel provided a factual framework for a comprehensible and reliable damage model pertaining to all Settlement Class Members. The mediation included discussions and examination of the proposed Classes and the Parties' respective positions on the legal and factual issues raised in the Complaint.

13. As a result of the mediation, the Parties agreed to settle this matter for a Gross Settlement Amount ("GSA") of $750,000.00. Plaintiff's counsel balanced the terms of the proposed Settlement against the risk of litigation and probable outcome at the class certification stage, and if any Class were certified, at trial. Based on their own respective independent investigations and evaluations, and after taking into account the sharply disputed factual and legal issues involved in

this matter, the risks attending further prosecution of the case, and the monetary benefits received under the Settlement despite the questionable nature of the claims, Plaintiff's counsel is of the opinion that Settlement for the consideration and on the terms set forth in the Settlement Agreement is fair, reasonable and adequate and is in the best interests of Plaintiff sand the Class. Counsel for the Parties investigated the applicable law as applied to the facts discovered regarding the claims of Plaintiff, Defendant's defenses thereto and the damages claimed by Plaintiff on behalf of the Settlement Class.

14. I believe that the consideration and terms set forth in the Settlement Agreement are fair, reasonable, and adequate and are in the best interests of the Settlement Classes in light of all known facts and circumstances, including the various defenses asserted by Defendant, and numerous potential appellate issues. In addition, the prospect of a potential adverse summary judgment ruling, as well as the uncertainty of class certification, the difficulties of complex litigation, the lengthy process of establishing specific damages and various possible delays and appeals, were also carefully considered in agreeing to the proposed Settlement.

15. The Gross Settlement Amount includes: (1) settlement payments to each participating Class Member; (2) Class Counsel Fees Payment of not more than one third of the Gross Settlement Amount, which is currently estimated to be $250,000.00, and a Class Counsel Litigation Expenses Payment which are estimated to be not more than $30,000.00; (3) Settlement Administration Expenses Payment not to exceed $35,000.00[1] except for a showing of good cause and as approved by the Court; (4) to the LWDA and Aggrieved Employees: PAGA Penalties in the amount of $36,000.00 to be paid from the Gross Settlement Amount, with 75% ($27,000.00) allocated to the LWDA PAGA Payment and 25% ($9,000.00) allocated to the Individual PAGA Payments; and (5) a Class Representative Service Payment of not more than $10,00.000 (in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representative is entitled to receive as Participating Class Member) to Thomas Longacre (Plaintiff) for his services on behalf of the Class and for agreeing to a broader release than those required of Class Members.

[1] An Amendment to the Settlement Agreement was executed to correct the erroneous admin costs from $13,000 to $35,000.

(Settlement Agreement ¶ 3). **The Entire Gross Settlement Amount will be paid to all Class Members who do not opt out of the Settlement Class, and without the need to submit claims for payment.** The Class Members are to be paid based from the NSA on a pro rata basis based upon the weeks each class member worked in comparison to the total work weeks worked by all Class Members.

16. Fairness of the Settlement is demonstrated by the uncertainty and risks to Plaintiff involved both in not prevailing on one or more of the causes of action or theories alleged in the operative Complaints and in non-certification, and if successful, Defendant disputes the ability of Plaintiff to certify a class in this case. Defendant also argued it maintained lawful written policies that were provided to the class members and enforced those policies. Yet, despite the defenses proffered by Defendant, the proposed Settlement commits Defendant to pay each Class Member a portion of the NSA. The amount to be paid to the Classes is fair, adequate and reasonable given the significant risk to Plaintiff and the Class in continuing with the litigation and not prevailing on their claims at class certification or at trial or not being paid anything even if trial was successful.

17. The predominant claims in this action arise from alleged violations of California law with respect to Defendant's failure to pay all wages due and owing, failure to provide meal periods, failing to provide rest periods, failing to pay all wages earned, failing to provide cool down recovery periods, failing to pay statutory sick pay at the correct rate, and wage statement violations. Plaintiff alleges that these practices resulted directly from the implementation and enforcement of Defendant's own policies and practices.

18. Defendant's time keeping records, payroll records, and review other relevant data points, were analyzed to come up with a damage model to determine Defendant's exposure for the class.

19. The meal and rest claims and wage statement claims arguably provided the stronger claims. The resultant Labor Code section 203 and 266 claims were uncertain given the defenses asserted for the underlying claims and the underlying apparent compliant policies, which provided for an argument against the "willfulness" prong necessary for a Labor Code §203 claim. Class Counsel recognized the risks of an adverse finding on certification as to all these claims.

20. With regards to meal breaks, Defendant argued class members took their meal and rest breaks as evidenced by high compliance rates, and that class members did not work any hours for which they were not paid. These arguments, coupled with the time and pay records, along with the written policies, potentially created issues for certification and ultimately damages for these claims and the related statutory penalties. Defendant also argued that class members received their rest periods and did not work through their rest breaks.

21. As for record keeping violations, Defendant produced time and pay records demonstrating its compliance with record keeping requirements although arguably not necessarily accurate.

22. Based on these defenses, Defendant argued the wage statement claim and PAGA claims also lacked merit. Defendant also argued that as Plaintiff did not suffer any injury as to any Labor Code violations, he lacked Article III standing to pursue PAGA claims on behalf of other employees. In *Magadia v. Wal-Mart Assocs.*, 999 F.3d 668, 674-78 (9th Cir. 2021), the Ninth Circuit held that the plaintiff lacked Article III standing to bring a PAGA claim for Walmart's meal-break violations since he himself did not suffer injury.

23. Although Plaintiff's Counsel believe the class claims are strong, Plaintiff's Counsel also recognize that if the litigation had continued, they may well have encountered significant legal and factual hurdles that could have prevented the Class from obtaining any recovery. To be sure, a number of cases have found wage and hours actions to be especially amenable to class resolution. However, some courts have gone the other way, finding that some of the very claims at issue here-especially meal period and rest period violations-were not suitable for class adjudication because they raised too many individualized issues. *See Duran v. US. Bank National Association*, 59 Cal. 4th 1 , 31 (2014) (reversing a verdict from a class trial); *Ali v. US.A. Cab Ltd.*, 1 76 Cal. App. 4th 1333, 1341 (2009) (affirming denial of certification because employees' declarations attesting to having taken meal and rest periods demonstrated that individualized inquiries were required to show harm); *Campbell v. Best Buy Stores, L.P.* , 2013 U.S. Dist. LEXIS 137792, at *30- 41 (C.D. Cal. Sept. 20, 2013) (following *Brinker* and denying certification of proposed off-the-clock and rest and meal break classes due to lack of uniform policy); .*Jimenez v. Allstate Ins. Co.*, 2012 U.S. Dist.

LEXIS 65328 (C.D. Cal. Apr. 18, 2012) (denying motion to certify meal and rest period classes based on employer's practice of understaffing and overworking employees); *Gonzalez v. Officemax NA.*, 2012 U.S. Dist. LEXIS 163853 (C.D. Cal. Nov. 5, 2012) (same); *Brown v. Fed. Express Corp.*, 249 F.R.D.580, 587-88 (C.D. Cal. 2008) (denying certification of driver meal and rest period claims based on the predominance of individual issues); *Kenny v. Supercuts, Inc.*, 252 F.R.D. 64 I, 645 (N.D. Cal. 2008) (denying certification on meal periods claim); *Blackwell v. Skywest Airlines, Inc.*, 245 F.R.D. 453, 467- 68 (S.D. Cal. 2007) (declining to certify class action because individual issues predominated when different employee stations provided different practices with respect to meal periods).

24. Some courts have denied certification even when an employer's policies are unlawful on their face. For instance, in *Ordonez v. Radio Shack, Inc.*, 20 1 3 U.S. Dist. LEXIS 7868, *35-4 1 (C.D. Cal. Jan. 17, 201 3), the court denied certification even though the plaintiff submitted evidence of a facially unlawful policy regarding rest breaks. The *Ordonez* court concluded that the predominance and superiority elements were not met based on the employer's presentation of anecdotal evidence of lawful compliance notwithstanding the unlawful policy. Id. at *38-40. And it should be underscored that that claims which are amendable to certification can be disposed of by motion for summary judgment. *See Loudv. Eden Med. Ctr.*, 2013 U.S. Dist. LEXIS 122873, **36-53 (N.D. Cal. Aug. 28, 2013) (granting summary judgment on wage statement claim because plaintiff could not show injury due to defects and that incorrect wage information is not willful).

25. As the above examples illustrate, the prospect of certifying a wage and hour action is always uncertain, and the risk of being denied class certification militates in favor of settlement. A denial of class certification effectively forecloses continued litigation, as neither the individual nor his or her attorney will have any incentive to proceed with an individual case when such small claims are at stake. *See In re Baycol Cases I & II*, 5 1 Cal. 4th 75 1 , 758 (2011) (explaining that a dismissal of class claims is effectively the "death knell" of the case, despite survival of individual claims). In other words, for cases where individual damages are relatively small, denial of class certification results in a near-complete loss for Plaintiffs as well as no recovery for the employees, who are shut out of the action. Thus, if the putative Class had not been certified, the value of

Plaintiffs' case would have been reduced to a fraction of the value of this Settlement; indeed, Defendant would likely have offered no money to settle the class-wide claims if certification had been denied.

26. Finally, early resolutions save time and money that would otherwise go to litigation. Parties' resources, as well as the Court's, will be further taxed by continued litigation. And if this action had settled following additional litigation, the settlement amount would likely have taken into account the additional costs incurred, and there may have been less available for Class Members. Cost savings is one reason why California policy strongly favors early settlement. *See Nemy v. Regents of University of California*, 3 Cal. 4th 273, 277 (1992) (explaining the high value placed on settlements and observing that "[s]ettlement is perhaps most efficient the earlier the settlement comes in the litigation continuum."). This concern also supports settlement.

27. Further, beyond the risk of an adverse ruling on the merits or certification, Class Counsel considered the fact that continued litigation would likely take years and would be extremely expensive given the breadth and complexity of the claims. In this case, post-trial and appellate proceedings are likely to occur, which will surely drag the case far into the future even with a positive trial result. When facing a distant and unsure resolution of the allegations in this action, the swift, sure and substantial Settlement is all the more reasonable. Avoiding such costly litigation in favor of more immediate benefits to the Class was a consideration favoring settlement. Given these realities, it is highly likely that the future expense of this litigation, and its likely duration if the settlement is not approved, would be significant and weigh heavily in favor of approval of this settlement.

28. The GSA is well within the acceptable range of reasonableness for the claims of the Settlement Class Members. After analysis and review of Defendant’s time and pay record production and other payroll data, Class counsel estimates the overall value of the claims at approximately **$7,362,018** should Plaintiff prevail at the class certification stage and at trial and survive any appeals and win on all claims and be awarded maximum damages for call class members and certain assumptions and extrapolations were confirmed with further discovery. This amount was reduced by a reasonable 50% to **$3,681,009** to account for the risks of continued litigation and

not prevailing on one or more claims and the Court not awarding penalties based upon Defendant's good faith arguments. Indeed, Defendant's apparent compliant policies could potentially support Defendant's good faith and lack of willfulness arguments, where for example LC 203, 226 and PAGA penalty claims could be reduced to zero, which penalties accounts for approximately 50% of the alleged penalties and damages disused herein.

29. There are an estimated 116,248 workweeks during the class period December 9, 2020 to January 15, 2023. The value of the failure to pay wages was valued at approximately **$1,131,093** calculated as follows: 0.50 hours per workweek off the clock x $19.46 average OT rate x 116,248 workweeks**.** The regular rate issue identified approximately **$87,468 in damages.** For meal periods, a review of records reveals **a**pproximately 92.5% compliance rate for shifts greater than 5 hours and approximately 60.7% of these meal breaks were longer than 30 minutes. As a result, the meal period claim was valued at **$631,185** (32,435 (6.5% of shifts) X $19.46). The rest period claim provided little to no value as the high meal period compliance and given the rest period policies in place during the class period. The wage statement claim was valued at approximately **$3,674,850.00** but discounted by approximately 50% to $1,837,425 based upon the high meal period compliance and meal period premium compliance rates and the defenses to the off the clock claims and the requirements for injury in some instances. Defendant also potentially owes to class members **$1,605,215** in waiting time penalties (for a total of 3,437 termed employees X 8 hour shift X $19.46 X 30 days X .10%). This number was substantially reduced given the high compliance rates for meals, payments of premiums and the apparent complaint policies. Therefore this reduction is believed to be reasonable. Defendant also potentially owes to class members **$1,837,425 in PAGA penalties** (73,497 pay periods x reasonable $25 penalty).

30. As a result, the GSA of $750,000.00 represents a reasonable recovery and approximately 20% of the overall potential value. This recovery could easily be much higher if at trial PAGA penalties were reduced or damages for certain pay periods or workweeks could not be proven for certain individuals. The proposed GSA is within the "ballpark of reasonableness" and should be approved. Counsel for Plaintiffs believe that this is a fair and reasonable Settlement in

light of the complexities of the case, the state of the law and uncertainties of class certification and litigation, the policies and practices Defendant has had in place or implemented during the purported liability period, and the benefit to be recovered for the Class. Given the risks inherent in litigation, this settlement is fair, adequate, and reasonable and is in the best interests of the Settlement Class, and should be finally approved.

Experience of Counsel

31. I have a great deal of experience in wage and hour class action litigation. I have obtained certification of several classes, I have been approved as class counsel in many other wage/hour class actions, and I am currently litigating numerous others. Although not an all inclusive list, over the years I have prosecuted the following class action matters as lead and/or co-lead counsel, all of which implicated similar law and facts to those associated with this action:

a. *Aguilar v. 7-Eleven, Inc*., et. al., Orange County Superior Court- Case No.: 30-2009-00268714-CU-OE-CXC. Certified Wage and Hour Class action seeking premium wages for meal period and rest periods and resultant penalties. Case settled, Final Approval granted, no objections and funds fully distributed.

b. *Carey, et. al. v. Arthur J. Gallagher*, et. al., USDC, SOUTHERN DISTRICT- Case No.: 09-cv-0168. Wage and Hour Class action seeking past wages of overtime for mis-classification of insurance claims adjusters employed by Gallagher Bassett, a third party administrator (TPA) in the State of California. Certification granted. Plaintiffs' counsel co-lead counsel. Case settled, Final Approval granted, no objections and funds fully distributed.

c. *Dao v. 3M Company*, et al. USDC, CENTRAL DISTRICT, Case No. CV-08-04554. Wage and Hour Class Action case seeking past wages for "off the clock", overtime and meal and rest break violations for production workers in the State of California. Plaintiffs' Counsel appointed as Lead Counsel. Case settled, Final Approval granted, no objections and funds fully distributed.

d. *Ortiz v. Kmart*, USDC, CENTRAL DISTRICT, Case No. SACV 06-638 ODW. Wage and Hour Class Action case seeking past wages for meal and rest period violations for retail employees in the State of California. Plaintiffs' counsel appointed co-lead counsel. Case settled, Final Approval granted, no objections and funds fully distributed.

e. *Morgan v. Aramark Campus*, LLC, USDC, CENTRAL DISTRICT, Case No. SACV08-00412. Wage and Hour Class Action case seeking past wages for meal and rest period violations for retail employees in the State of California. Plaintiffs' Counsel appointed as Lead Counsel. Case settled, Final Approval granted, no objections and funds fully distributed.

f. *West v Iron Mountain Information Management, Inc, et. al*.; Los Angeles County Superior Court, Case No. BC393709. Wage and Hour Class Action seeking past wages for overtime, meal and rest break violations for driver employees in the State of California. Settlement for "binding arbitration." Arbitration Award for Plaintiff Class. Arbitration Award confirmed. Plaintiffs' counsel, lead trial counsel and class counsel. No objections and funds fully distributed.

g. *Gonzalez v. Superior Industries Inter, Inc., et al*., Los Angeles County Superior Court, Case No. BC 357912. Wage and Hour Class Action seeking past wages for overtime, meal and rest breaks violations for production employees in the State of California. Plaintiffs' counsel appointed as lead counsel. Case settled, Final Approval granted, no objections and funds fully distributed.

h. *Acosta v. Fleetwood Travel Trailers of California, Inc*., et al., Riverside County Superior Court, Case No. RIC 440630. Wage and Hour Class Action seeking past wages for overtime, meal and rest break violations for production employees in the State of California. Plaintiffs' counsel appointed as co-lead counsel. Case settled, Final Approval granted, no objections and funds fully distributed.

i. *Walker v. Sharkeez, et al*., Orange County Superior Court, Case No. 05CC00293. Wage and Hour Class Action seeking past wages for unlawful deductions, meal and rest break violations for restaurant employees in the State of California. Plaintiffs' counsel appointed as lead counsel. Case settled, Final Approval granted and funds fully distributed.

j. *Padron v. Universal Protection Service, et al*, Orange County Superior Court, Case No. 05CC00013. Wage and Hour Class Action seeking past wages for overtime, meal and rest break violations for security officers in the State of California. Plaintiffs' counsel appointed as co-lead counsel. Case settled, Final Approval granted, no objections and funds fully distributed.

k. *Martinez v. Securitas Security Services USA*, et al., Santa Clara Superior Court, Case No. 105-CV047499, et al. J.C.C.P. No. 4460. Wage and Hour Class Action seeking past wages for meal and rest break violations for security officers employed by defendant in the State of California. Plaintiffs' counsel and co-counsel. Case settled, Final Approval granted and funds fully distributed.

l. *Velasquez-Lopez v. Hotel Cleaning Services, Inc*. et al., Riverside Superior Court, Case No. RIC 420909. Wage and Hour Class Action seeking past wages for overtime, meal and rest break violations for housekeepers employed by defendant in the State of California. Plaintiffs' counsel appointed as lead counsel. Case settled, Final Approval granted, no objections and funds fully distributed.

m. *Ruiz, et al. v. Unisourse Worldwide, Inc., et al*., USDC, CENTRAL DISTRICT, Case No. CV09-05848. Wage and Hour Class Action seeking past wages for meal and rest period violations for non-exempt employees employed by defendant in the state of California. Case settled. Final Approval granted, no objections and funds fully distributed.

n. *Herrador v. Culligan International Company, et al*., USDC, CENTRAL DISTRICT, Case No. SACV 08-680. Wage and Hour Class Action seeking past wages for field and branch employees of defendant in the State of California. Plaintiffs' counsel appointed as lead counsel. Case settled, Final Approval granted, no objections and funds fully distributed. .

o. *Defries v. Domain Restaurants, et al.*, Orange County Superior Court, Case No. 05CC00128. Wage and Hour Class Action seeking past wages for restaurant employees of defendant in the State of California. Plaintiffs' counsel appointed as lead counsel. Case settled, Final Approval granted, no objections and funds fully distributed.

p. *Denton v. BLB Enterprises, Inc., et al*., Orange County Superior Court, Case No. 07CC01292. Wage and Hour Class Action seeking unpaid overtime, meal and rest break violations for security guards employed by defendant in the State of California. Plaintiffs' counsel appointed as lead counsel. Case settled, Final Approval granted, no objections and funds fully distributed.

q. *Rios v. Sandberg Furniture Manufacturing Co*., Inc, et al., Los Angeles Superior Court, Case No. BC411477. Wage and Hour Class Action seeking unpaid meal and rest break violations for production employees employed by defendant in the State of California. Plaintiff counsel appointed as lead counsel. Case settled, Final Approval granted, no objections and funds fully distributed.

r. *McMurray v. Dave and Busters, Inc*., et al., Orange County Superior Court, Case No. 06CC00099. Wage and Hour Class Action seeking past wages for meal and rest break violations for restaurant employees employed by defendant in the State of California. Plaintiffs' counsel appointed as co-lead counsel. Case settled, Final Approval granted, no objections and funds fully distributed.

s. *Osuna v. DFG Restaurants, Inc.*, et al., Los Angeles Superior Court, Case No. BC 330145. Wage and Hour Class Action seeking past wages of overtime for mis-classification of managers employed by Defendant, DBA Carl's Jrs. in the State of California. Plaintiffs' counsel appointed as co-lead counsel. Case settled, Final Approval granted, no objections and funds fully distributed.

t. Burns v. Gymboree Operations, Inc., et al., San Francisco Superior Court, Case No. CGC-07-461612. Wage and Hour Class Action seeking past wages for meal and rest break violations for retail employees employed by defendant in the State of California. Plaintiffs' counsel appointed lead counsel. Case settled, Final Approval granted, no objections and funds fully distributed.

u. *Willems v. Diedrich Coffee, Inc.*, et al., Orange County Superior Court, Case No. 07CC00015. Wage and Hour Class Action seeking past wages of overtime for mis-classification of managers employed by Defendant in the State of California. Plaintiffs' counsel appointed lead counsel. Case settled, Final Approval granted, no objections and funds fully distributed.

v. *Davila, et al. v. Beckman Coulter, Inc*., et al., Orange County Superior Court, Case No. 07CC01347. Wage and Hour Class Action seeking past wages for overtime, meal and rest break violations for production workers employed by defendant in the State of California. Plaintiffs' counsel appointed lead counsel. Cased settled; final approval granted; no objections and funds fully distributed.

w. *Perez v. Naked Juice Company of Glendora, Inc*., Los Angeles Superior Court, Case No. BC387088. Wage and Hour Class Action seeking past wages for overtime, meal and rest period violations for production employees employed by defendant in the State of California. Plaintiff counsel appointed as lead counsel. Case settled, Final Approval granted, no objections and funds fully distributed.

Reasonableness of Attorneys' Fees

32. Here, the Parties' agreement to pay Class Counsel Fees of $250,000.00 (1/3 of the GSA is reasonable.) My firm along has been the only counsel to represent Plaintiff and the Class Members in this matter, and we have borne the entire risk and cost of this litigation on a pure contingency fee basis. The legal issues raised drew significantly upon my experience and the extensive review and analysis of documents and information by me and others at my firm. In a complex action such as this, the proposed attorneys' fees are within the typical range for contingency fees in class action cases.

33. A review of my firm's detailed billing system reveals that to date, my firm as Class Counsel, on behalf of Plaintiff and the Class Members, invested approximately 217.80 hours litigating this matter through the date of this declaration for a total lodestar of **$163,155** in fees, broken down as follows:

Name and Title of Professional	Bar Admission Date	Hours	Rate (2023)	Lodestar
James Hawkins	1997	72.90	$950	$69,255
Gregory Mauro	2002	99.20	$850	$84,320
Melissa Whitson Paralegal		45.70	$200	$9,140
TOTAL HOURS AND LODESTAR FOR JAMES HAWKINS APLC		**217.80**		**$162,715**

34. Class Counsels' hourly rates are between $200 and $950 and are in line with rates typically approved in wage and hour class action litigation and which rates have been approved by Courts in California in the Los Angeles, Sacramento, San Francisco, Alameda, Orange and San Diego County Superior Courts. As prominent attorneys in the field of wage and hour class action litigation, Class Counsel continually monitors the prevailing market rates charged by both defense and plaintiff law firms and set the billing rates of their attorneys and paralegals to be consistent with the prevailing market rates in the private sector for attorneys and staff of comparable skill, qualifications and experience. Our practices are limited exclusively to litigation, focusing on the representation of employees in wage and hour and consumer class action matters Other wage and hour attorneys working as class counsel before California courts charge comparable if not higher rates. Therefore, as they are in line with those of the relevant community, Class Counsels' hourly rates are reasonable. The hourly rates have been previously approved most recently in *Garcia vs, Union Bank, et. al.,* Ventura County Superior Court Case No. 56-2017-00492522-CU-OE-VTA. In a complex action such as this, the proposed attorneys' fees are, at the very least, on the low side of the market rate for contingency fees.

35. Despite the complexity of the case, Class Counsel has, through the investment of substantial effort and the resources of my law firm been able to secure an outstanding settlement

on behalf of the Settlement Class. Plaintiff would have faced substantial legal and factual obstacles in demonstrating that class certification was appropriate. Plaintiff would also have been required to establish a significant amount of witness testimony, pattern and practice evidence, statistical evidence, sampling evidence, expert testimony, and other evidence in order to present their case both at the class certification stage and trial. Defendant vigorously contested liability, the amount of claimed damages, and the propriety of class certification, and would have continued to do so through trial. Accordingly, I believe the Settlement continues to be fair, reasonable, and adequate and in the best interests of the Settlement Class. The fairness and adequacy of the Settlement is confirmed by all known facts and circumstances, including the risk of significant delay and uncertainty associated with litigation, the various defenses asserted by Defendant, the lack of Class Member objections or exclusions, and numerous potential appellate issues.

36. Here, the Parties' agreement to pay Class Counsel Fees Payment from the GSA is reasonable. My firm and I have been the only counsel to represent Plaintiff and the Settlement Class in this matter, and we have borne the entire risk and cost of this litigation on a pure contingency fee basis. The legal issues raised drew significantly upon my experience and the extensive review and analysis of documents and information by me and others at my firm and our co-counsel. In a complex action such as this, the proposed attorneys' fees are, at the very least, on the low side of the market rate for contingency fees. As the fee request is $250,000, Plaintiff would respectfully request a modest multiplier of approximately 1.6.

37. In addition to the requested attorneys' fees, our office has expended a total of **$15,760.69** in costs in prosecuting this action. These costs have been necessary costs associated with prosecution of this important matter. Counsel for Plaintiffs respectfully requests the Court grant the request to have these costs repaid from the Settlement. Attached as **Exhibit B** is a true and correct copy of Class Counsel James Hawkins, APLC costs bill.

Reasonableness of the Enhancement Award

38. The Class Representative has provided extensive supporting documents and assisted Class Counsel in developing information necessary to litigate and settle this case. Plaintiff also conducted record review and consultation with counsel in preparation for mediation, and to assist

in evaluating and proving the claims. The settlement provides for a Payment to be paid to the Class Representative in the amount of $10,000.00 subject to Court approval. The purpose is to compensate the Class Representatives an additional incentive or enhancement payment, taking into consideration the risks, time, effort and expenses incurred in coming forward to provide invaluable information and negotiate and litigate this matter on behalf of all Settlement Class Members who otherwise, would probably not file their own individual claims to recover what may be relatively low damages. Further, the Payment of $10,000.00 as an Service Payment to the Class Representative is a very fair and justified as part of the Settlement based on the risks Plaintiff has taken and benefits conferred upon the Settlement Class.

39. The parties request payment of an incentive award from the non-reversionary Gross Settlement Amount to the Class Representative in the amount of $10,000, in addition to whatever payments he is otherwise entitled to receive as a Class Member. The proposed incentive award is reasonable compensation given the time and effort that the named Plaintiff devoted to this case; the valuable assistance provided to Class Counsel; and the fact that Plaintiff entered into a general release of claims that is broader than the release of the Class.

40. Plaintiff provided invaluable assistance to Class Counsel and the Class in this case, including providing factual background for the Class Complaint; reviewing the relevant documents, and Complaint; participating in phone calls with their lawyers to discuss litigation and settlement strategy; and reviewing the settlement documents. Plaintiff agreed to participate in this case with no guarantee of personal benefit. See declarations of Longacre attached hereto as **Exhibits C.**

I declare under penalty of perjury that the foregoing is true and correct. Executed on December 17, 2023 at Irvine, California.

James R. Hawkins

EXHIBIT A

EXHIBIT A

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT

This Class Action and PAGA Settlement Agreement ("Agreement") is made by and between Plaintiff THOMAS LONGACRE ("Plaintiff") and Defendant KEHE DISTRIBUTORS, INC. ("Defendant"). The Agreement refers to Plaintiff and Defendant collectively as "Parties," or individually as "Party."

1. DEFINITIONS.

1.1. "Action" means Plaintiff's lawsuit alleging wage and hour violations against Defendant captioned "THOMAS LONGACRE, on behalf of the general public as private attorney general v. KEHE DISTRIBUTORS, INC., a Delaware corporation, and DOES 1-50, inclusive," initiated on February 16, 2022, and pending in the Superior Court of the State of California, County of San Joaquin, Case No. STK-CV-UOE-2022-1211.

1.2. "Administrator" means Apex Class Action Settlement Administrator, the neutral entity the Parties have agreed to appoint to administer the Settlement.

1.3. "Administration Expenses Payment" means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator's "not to exceed" bid submitted to the Court in connection with Preliminary Approval of the Settlement.

1.4. "Aggrieved Employee" means a person employed by Defendant in California and classified as an hourly non-exempt employee during the PAGA Period.

1.5. "Amended Complaint" means the First Amended Complaint filed by Plaintiff adding Class claims based on the same Labor Code violations alleged in the original Complaint filed in the Action.

1.6. "Class" means all hourly non-exempt employees employed by Defendant in California during the Class Period.

1.7. "Class Counsel" means James R. Hawkins and Gregory Mauro or other attorneys with James Hawkins APLC.

1.8. "Class Counsel Fees Payment" and "Class Counsel Litigation Expenses Payment" mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys' fees and expenses, respectively, incurred to prosecute the Action.

1.9. "Class Data" means Class Member identifying information in Defendant's possession including the Class Member's name, last-known mailing address, Social Security number, and number of Class Period Workweeks and PAGA Workweeks.

1.10 "Class Member" or "Settlement Class Member" means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non-Participating Class Member who qualifies as an Aggrieved Employee).

1.11. "Class Member Address Search" means the Administrator's investigation and search for current Class Member mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members.

1.12. "Class Notice" means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to Class Members in English with a Spanish translation in the form, without material variation, attached as Exhibit A and incorporated by reference into this Agreement.

1.13. "Class Period" means the period from August 26, 2020 up to the date of preliminary approval of the settlement or January 15, 2023, whichever is earlier.

1.14. "Class Representative" means the named Plaintiff in the operative complaint in the Action seeking Court approval to serve as a Class Representative.

1.15. "Class Representative Service Payment" means the payment to the Class Representative for initiating the Action and providing services in support of the Action.

1.16. "Court" means the Superior Court of California, County of San Joaquin.

1.17. "Defense Counsel" means John B. Golper, Matthew B. Golper or other attorneys with Ballard, Rosenberg, Golper & Savitt, LLP.

1.18. "Effective Date" means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) the day after the deadline for filing a notice of appeal from the Judgment; or (b) if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur.

1.19. "Final Approval" means the Court's order granting final approval of the Settlement.

1.20. "Final Approval Hearing" means the Court's hearing on the Motion for Final Approval of the Settlement.

1.21. "Final Judgment" means the Judgment Entered by the Court upon Granting Final Approval of the Settlement.

1.22. "Gross Settlement Amount" means $750,000.00, which is the total amount the Company agrees to pay except as provided in Paragraph 9 below. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel

Expenses, Class Representative Service Payment and the Administrator's Expenses.

1.23. "Individual Class Payment" means the Participating Class Member's pro rata share of the Net Settlement Amount calculated according to the number of Workweeks worked during the Class Period.

1.24. "Individual PAGA Payment" means the Aggrieved Employee's pro rata share of 25% of the PAGA Penalties calculated according to the number of Workweeks worked during the PAGA Period.

1.25. "Judgment" means the judgment entered by the Court based upon the Final Approval.

1.26. "LWDA" means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).

1.27. "LWDA PAGA Payment" means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).

1.28. "Net Settlement Amount" means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments.

1.29. "Non-Participating Class Member" means any Class Member who opts out of the Settlement by sending the Administrator a valid and timely Request for Exclusion.

1.30. "PAGA Workweek" means any Workweek during which an Aggrieved Employee worked for Defendant for at least one day during the PAGA Period.

1.31. "PAGA Period" means the period from August 6, 2020 up to the date of preliminary approval of the settlement or January 15, 2023, whichever is earlier.

1.32. "PAGA" means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).

1.33. "PAGA Notice" means Plaintiff's December 9, 2021 letter to Defendant and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).

1.34. "PAGA Penalties" means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount ($36,000.00), allocated 25% to the Aggrieved Employees ($9,000.00) and the 75% to LWDA ($27,000.00) in settlement of PAGA claims.

1.35. "Participating Class Member" means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.

1.36. “Plaintiff” means Thomas Longacre, the named plaintiff in the Action.

1.37. “Preliminary Approval” means the Court’s Order Granting Preliminary Approval of the Settlement.

1.38. "Preliminary Approval Order" means the proposed Order Granting Preliminary Approval and Approval of PAGA Settlement.

1.39. “Released Class Claims” means the claims being released as described in Paragraph 6.2 below.

1.40. “Released PAGA Claims” means the claims being released as described in Paragraph 6.2 below.

1.41. “Released Parties” means: Defendant and each of its former, present and future directors, officers, shareholders, owners, members, attorneys, insurers, predecessors, successors, assigns, subsidiaries, and affiliates.

1.42. “Request for Exclusion” means a Class Member’s submission of a written request to be excluded from the Class Settlement signed by the Class Member.

1.43. "Response Deadline" means 45 days after the Administrator mails Notice to Class Members and Aggrieved Employees, and shall be the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail his or her Objection to the Settlement. Class Members to whom Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond the Response Deadline has expired.

1.44. “Settlement” means the disposition of the Action effected by this Agreement and the Judgment.

1.45. “Workweek” means any week during which a Class Member worked for Defendant for at least one day, during the Class Period.

2. **RECITALS**.

2.1. On February 16, 2022, Plaintiff commenced this Action by filing a Complaint alleging a cause of action against Defendant under PAGA for failure to provide meal periods or pay an additional hour of pay at the employee's regular rate of pay; failure to provide rest periods or pay an additional hour of pay at the employee's regular rate of pay; failure to provide recovery periods or pay an additional hour of pay at the employee's regular rate of pay; failure to pay all wages earned and owed during employment and upon the employee's termination of employment; failure to provide accurate itemized wage statements; and failure to pay statutory sick pay at the correct rate of pay. A First Amended Complaint ("FAC") was or will be filed adding class claims based on the same alleged violations of the Labor Code. The

FAC is the operative complaint in the Action (the "Operative Complaint."). Defendant denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in in the Operative Complaint, and denies any and all liability for the causes of action alleged.

2.2. Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave timely written notice to Defendant and the LWDA by sending the PAGA Notice.

2.3. On October 17, 2022, the Parties participated in an all-day mediation presided over by Gig Kyriacou, Esq. which led to this Agreement to settle the Action.

2.4. Prior to mediation, Plaintiff obtained, through informal discovery, a 20 % random sample of time and pay data for Class Members, Defendant's written policies, Plaintiff's time and pay records and personnel file, documents relating to arbitration agreements with Class Members, applicable collective bargaining agreements, and information relating to the average hourly rate, class size and workweeks during the Class Period and PAGA Period. Plaintiff's investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 ("*Dunk/Kullar*").

2.5. The Court has not granted class certification.

2.6. The Parties, Class Counsel and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

3. MONETARY TERMS.

3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 9 below, the Company promises to pay $750,000.00, and no more as the Gross Settlement Amount, and to separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. Defendant has no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 6.1 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendant.

3.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval:

3.2.1. To Plaintiff: Class Representative Service Payment to the Class Representative of not more than $10,000.00 (in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class Member). Defendant will not oppose Plaintiff's request for a Class Representative Service Payment that does not exceed this amount. As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiff will seek Court approval for any Class Representative Service Payments no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Representative Service Payment less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative Service Payment using IRS Form 1099. Plaintiff assumes full responsibility and liability for employee taxes owed on the Class Representative Service Payment.

3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than one third of the Gross Settlement Amount, which is currently estimated to be $250,000.00, and a Class Counsel Litigation Expenses Payment which are estimated to be not more than $30,000. Defendant will not oppose requests for these payments provided they do not exceed these amounts. Plaintiff and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class Litigation Expenses Payment no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds Defendant harmless, and indemnifies Defendant, from any dispute or controversy regarding any division or sharing of any of these Payments.

3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed $13,000 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than $13,000, the Administrator will retain the remainder in the Net Settlement Amount.

3.2.4. To Each Participating Class Member: An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks.

3.2.4.1. Tax Allocation of Individual Class Payments. 20 % of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. The 80 % of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for [e.g., interest and penalties] (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class

Payment. The tax allocation also applies to the individual settlement payments, and supersedes the tax treatment set forth in the individual settlement agreements. Class Members will indemnify the Company for the employee's portion of taxes on the non-wage portion of the Individual Class Payment paid to that Class Member.

3.2.4.2. Effect of Non-Participating Class Members on Calculation of Individual Class Payments. Non-Participating Class Members will not receive any Individual Class Payments. The Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis.

3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of $36,000.00 to be paid from the Gross Settlement Amount, with 75% ($27,000.00) allocated to the LWDA PAGA Payment and 25% ($9,000.00) allocated to the Individual PAGA Payments.

3.2.5.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties $9,000.00 by the total number of PAGA Workweeks worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Workweeks. No tax withholding will be made from the Individual PAGA Payments, and Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

3.2.5.2. If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

4. SETTLEMENT FUNDING AND PAYMENTS.

4.1. Class Workweeks. Based on a review of its records to date, Defendant estimates Class Members collectively worked a total of 92,146 Workweeks as of July 31, 2022.

4.2. Class Data. Not later than 15 days after the Court grants Preliminary Approval of the Settlement, Defendant will simultaneously deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. Defendant has a continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted class member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which Defendant must send the Class Data to the Administrator, the

Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.

4.3. Funding of Gross Settlement Amount. Defendant shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendant's share of payroll taxes by transmitting the funds to the Administrator no later than 14 days after the Effective Date.

4.4. Payments from the Gross Settlement Amount. Within 14 days after Defendant funds the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service Payment shall not precede disbursement of Individual Class Payments and Individual PAGA Payments.

4.4.1. The Administrator will issue checks for the Individual Class Payments and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. The Administrator will send checks for Individual Settlement Payments to all Participating Class Members (including those for whom Class Notice was returned undelivered). The Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved Employees (including those for whom Class Notice was returned undelivered). The Administrator may send Participating Class Members a single check combining the Individual Class Payment and the Individual PAGA Payment. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.

4.4.2. The Administrator must conduct a Class Member Address Search for all other Class Members whose checks are retuned undelivered without USPS forwarding address. Within 7 days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Class Member Address Search. The Administrator need not take further steps to deliver checks to Class Members whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Class Member whose original check was lost or misplaced, requested by the Class Member prior to the void date.

4.4.3. For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b).

4.4.4. The payment of Individual Class Payments and Individual PAGA Payments shall not obligate Defendant to confer any additional benefits or make any additional payments to Class Members (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

6. RELEASES OF CLAIMS. Effective on the date when Defendant fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiff, Class Members, and Class Counsel will release claims against all Released Parties as follows:

6.1 Plaintiff’s Release. Plaintiff and his respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, transactions, or occurrences that occurred during the Class Period, including, but not limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts contained, in the Operative Complaint, (b) all PAGA claims that were, or reasonably could have been, alleged based on facts contained in the Operative Complaint, Plaintiff’s PAGA Notice, and (c) all claims relating to Plaintiff's employment with Defendant or the termination of Plaintiff's employment. (“Plaintiff’s Release”). Plaintiff’s Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers’ compensation benefits that arose at any time, or based on occurrences outside the Class Period. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff’s Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff’s discovery of them.

6.1.1 Plaintiff’s Waiver of Rights Under California Civil Code Section 1542. For purposes of Plaintiff’s Release, Plaintiff expressly waives and relinquishes the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release, and that if known by him or her would have materially affected his or her settlement with the debtor or Released Party.

6.2 Release by Participating Class Members Who Are Not Aggrieved Employees: All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Operative Complaint, including any and all claims for failure for failure to provide meal periods or pay an additional hour of pay at the employee's regular rate of pay; failure to provide rest periods or pay an additional hour of pay at the employee's regular rate of pay; failure to provide recovery periods or pay an additional hour of pay at the employee's regular rate of pay; failure to pay all wages earned and owed during employment and upon the employee's termination of employment; failure to provide accurate itemized wage statements; failure to pay statutory sick pay at the correct rate of pay; and unlawful business practices. Except as set forth in Section 6.3 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

6.3 Release by Non-Participating Class Members Who Are Aggrieved Employees: All Non-Participating Class Members who are Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint and the PAGA Notice, including for failure to provide meal periods or pay an additional hour of pay at the employee's regular rate of pay; failure to provide rest periods or pay an additional hour of pay at the employee's regular rate of pay; failure to provide recovery periods or pay an additional hour of pay at the employee's regular rate of pay; failure to pay all wages earned and owed during employment and upon the employee's termination of employment; failure to provide accurate itemized wage statements; and failure to pay statutory sick pay at the correct rate of pay.

7. **MOTION FOR PRELIMINARY APPROVAL.** Plaintiff will prepare and file a motion for preliminary approval ("Motion for Preliminary Approval") that complies with the Court's current checklist for Preliminary Approvals.

7.1 Defendant's Declaration in Support of Preliminary Approval. Within 15 days of the full execution of this Agreement, Defendant will prepare and deliver to Class Counsel a signed Declaration from Defense Counsel disclosing all facts relevant to any actual or potential conflicts of interest with the Administrator, and that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

7.2 Plaintiff's Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, and memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor Code Section 2699, subd. (f)(2)); (ii) a draft proposed Order Granting Preliminary Approval and Approval of PAGA Settlement; (iii) a draft proposed Class Notice; (iv) a signed declaration from the Administrator attaching its “not to exceed” bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Class Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Class Members; and the nature and extent of any financial relationship with Plaintiff, Class Counsel or Defense Counsel; (v) a signed declaration from Plaintiff confirming willingness and competency to serve and disclosing all facts relevant to any actual or potential conflicts of interest with Class Members, or the Administrator; (v) a signed declaration from each Class Counsel firm attesting to its competency to represent the Class Members; its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699, subd. (l)(2)); and (vi) all facts relevant to any actual or potential conflict of interest with Class Members or the Administrator. In their Declarations, Plaintiff and Class Counsel Declaration shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

7.3 Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no later than 30 days after the full execution of this Agreement; obtaining a prompt hearing date for the Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court’s Preliminary Approval to the Administrator.

7.4 Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for Preliminary Approval and/or the supporting declarations and documents, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant Preliminary Approval or conditions Preliminary Approval on any material change to this Agreement, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court’s concerns.

8. SETTLEMENT ADMINISTRATION.

8.1 Selection of Administrator. The Parties have jointly selected Apex Class Action Administrator to serve as the Administrator and verified that, as a condition of appointment, _ Apex Class Action Administrator agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the

Administrator other than a professional relationship arising out of prior experiences administering settlements.

8.2 Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports state and federal tax authorities.

8.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation section 468B-1.

8.4 Notice to Class Members.

8.4.1 No later than three (3) business days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of Class Members, PAGA Members, Workweeks, and PAGA Workweeks in the Class Data.

8.4.2 Using best efforts to perform as soon as possible, and in no event later than 14 days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service ("USPS") mail, the Class Notice with Spanish translation, substantially in the form attached to this Agreement as Exhibit A. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and the number of Workweeks and PAGA Workweeks (if applicable) used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database.

8.4.3 Not later than 3 business days after the Administrator's receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time.

8.4.4 The deadlines for Class Members' written objections, Challenges to Workweeks and/or Pay Periods, and Requests for Exclusion will be extended an additional 14 days beyond the 45 days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.

8.4.5 If the Administrator, the Company or Class Counsel is contacted by or otherwise discovers any persons who believe they should have been included in the Class Data and should have received Class Notice, the Parties will expeditiously meet and confer in person or by telephone, and in good faith. in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the Administrator will send, via email or overnight delivery, a Class Notice requiring them to exercise options under this Agreement not later than 14 days after receipt of Class Notice, or the deadline dates in the Class Notice, which ever are later.

8.5 <u>Requests for Exclusion (Opt-Outs)</u>.

8.5.1 Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than 45 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's name, address and email address or telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline.

8.5.2 The Administrator may not reject a Request for Exclusion as invalid because it fails to contain all the information specified in the Class Notice. The Administrator shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the person as a Class Member and the Class Member's desire to be excluded. The Administrator's determination shall be final and not appealable or otherwise susceptible to challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion, the Administrator may demand additional proof of the Class Member's identity. The Administrator's determination of authenticity shall be final and not appealable or otherwise susceptible to challenge.

8.5.3 Every Class Member who does not submit a timely and valid Request for Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all benefits and bound by all terms and conditions of the Settlement, including the Participating Class Members' Releases under Paragraphs 6.2 and 6.3 of this Agreement, regardless whether the Participating Class Member actually receives the Class Notice or objects to the Settlement.

8.5.4 Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and shall not receive an

Individual Class Payment or have the right to object to the class action components of the Settlement. Because future PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-Participating Class Members who are Aggrieved Employees are deemed to release the claims identified in Paragraph 6.4 of this Agreement and are eligible for an Individual PAGA Payment.

8.6 Challenges to Calculation of Workweeks. Each Class Member shall have 45 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed) to challenge the number of Class Workweeks and PAGA Workweeks (if any) allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating with the Administrator via fax, email or mail. The Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Workweeks contained in the Class Notice are correct so long as they are consistent with the Class Data. The Administrator's determination of each Class Member's allocation of Workweeks and/or PAGA workweeks shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to calculation of Workweeks and/or PAGA Workweeks to Defense Counsel and Class Counsel and the Administrator's determination the challenges.

8.7 Objections to Settlement.

8.7.1 Only Participating Class Members may object to the class action components of the Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Class Representative Service Payment.

8.7.2 Participating Class Members may send written objections to the Administrator, by fax, email, or mail. In the alternative, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than 45 days after the Administrator's mailing of the Class Notice (plus an additional 14 days for Class Members whose Class Notice was re-mailed).

8.7.3 Non-Participating Class Members have no right to object to any of the class action components of the Settlement.

8.8 Administrator Duties. The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

8.8.1 Website, Email Address and Toll-Free Number. The Administrator will establish and maintain and use an internet website to post information of interest to Class Members including the date, time and location for the Final Approval Hearing and copies of the Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and Class Representative Service Payment, the Final Approval and the Judgment. The Administrator will also maintain and monitor an email address and a toll-free telephone number to receive Class Member calls, faxes and emails.

8.8.2 Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not later than 5 days after the expiration of the deadline for submitting Requests for Exclusion, the Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the names and other identifying information of Class Members who have timely submitted valid Requests for Exclusion ("Exclusion List"); (b) the names and other identifying information of Class Members who have submitted invalid Requests for Exclusion; (c) copies of all Requests for Exclusion from Settlement submitted (whether valid or invalid).

8.8.3 Weekly Reports. The Administrator must, on a weekly basis, provide written reports to Class Counsel and Defense Counsel that, among other things, tally the number of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion (whether valid or invalid) received, objections received, challenges to Workweeks and/or Pay Periods received and/or resolved, and checks mailed for Individual Class Payments and Individual PAGA Payments ("Weekly Report"). The Weekly Reports must include provide the Administrator's assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received.

8.8.4 Workweek and/or PAGA Workweek Challenges. The Administrator has the authority to address and make final decisions consistent with the terms of this Agreement on all Class Member challenges over the calculation of Workweeks and/or PAGA Workweeks. The Administrator's decision shall be final and not appealable or otherwise susceptible to challenge.

8.8.5 Administrator's Declaration. Not later than 14 days before the date by which Plaintiff is required to file the Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement, including, but not limited to, its mailing of Class

Notice, the Class Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total number of Requests for Exclusion from Settlement it received (both valid or invalid), the number of written objections and attach the Exclusion List. The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator's declaration(s) in Court.

8.8.6 Final Report by Settlement Administrator. Within 10 days after the Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide Class Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number only of all payments made under this Agreement. At least 15 days before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement. Class Counsel is responsible for filing the Administrator's declaration in Court.

9. CLASS SIZE ESTIMATES and ESCALATOR CLAUSE. Based on its records, Defendant estimates that, as of July 31, 2022, Class Members worked a combined 92,146 Total Workweeks during the Class period. If the actual number of Workweeks as of July 31, 2022 increases by more than 10 %, the Gross Settlement Amount will increase by 1 % for every 1 % increase over the 10 % threshold. If Defendant does not agree to increase the Gross Settlement Amount as provided by this Paragraph, Plaintiff has the right to rescind the Settlement. The Parties agree that, if the Plaintiff rescinds the Settlement under this Paragraph, the Settlement shall be void ab initio, have no force or effect whatsoever, and that neither Party will have any further obligation to perform under this Agreement; provided, however, Defendant will remain responsible for paying all Settlement Administration Expenses incurred to that point. Plaintiff must notify Defense Counsel and the Court of its election to rescind the settlement not later than 7 days after Defendant notifies Plaintiff that it will not agree to increase the Gross Settlement Amount as provided in this Paragraph. Late elections will have no effect.

10. DEFENDANT'S RIGHT TO WITHDRAW. If the number of valid Requests for Exclusion identified in the Exclusion List exceeds 5 % of the total of all Class Members, Defendant may, but is not obligated, elect to withdraw from the Settlement. The Parties agree that, if Defendant withdraws, the Settlement shall be void ab initio, have no force or effect whatsoever, and that neither Party will have any further obligation to perform under this Agreement; provided, however, Defendant will remain responsible for paying all Settlement Administration Expenses incurred to that point. Defendant must notify Class Counsel and the Court of its selection to withdraw not later than seven days after the Administrator sends the final Exclusion List to Defense Counsel. Late elections will have no effect.

11. MOTION FOR FINAL APPROVAL. Not later than 16 court days before the calendared Final Approval Hearing, Plaintiff will file in Court, a motion for final approval of the Settlement that includes a request for approval of the PAGA settlement under Labor Code section 2699, subd. (l), a Proposed Final Approval Order and a proposed Judgment (collectively "Motion for Final Approval"). Plaintiff shall provide drafts of these documents to Defense Counsel not later than 7 days prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel will expeditiously meet and confer in person or by telephone, and in good faith, to resolve any disagreements concerning the Motion for Final Approval.

11.1 Response to Objections. Each Party retains the right to respond to any objection raised by a Participating Class Member, including the right to file responsive documents in Court no later than 5 court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.

11.2 Duty to Cooperate. If the Court does not grant Final Approval or conditions Final Approval on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Class Members), the Parties will expeditiously work together in good faith to address the Court's concerns by revising the Agreement as necessary to obtain Final Approval. The Court's decision to award less than the amounts requested for the Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Administrator Expenses Payment shall not constitute a material modification to the Agreement within the meaning of this paragraph.

11.3 Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

11.4 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment reflected set forth in this Settlement, the Parties, their respective counsel, and all Participating Class Members who did not object to the Settlement as provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.

11.5 Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material modification of this Agreement (including, but not limited to, the scope of release to be granted by Class Members), this Agreement shall be null and void. The Parties shall nevertheless expeditiously work together in good faith to address the appellate court's concerns and to obtain Final Approval and entry of

Judgment, sharing, on a 50-50 basis, any additional Administration Expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify the Court's award of the Class Representative Service Payment or any payments to Class Counsel shall not constitute a material modification of the Judgment within the meaning of this paragraph, as long as the Gross Settlement Amount remains unchanged.

12. AMENDED JUDGMENT. If any amended judgment is required under Code of Civil Procedure section 384, the Parties will work together in good faith to jointly submit and a proposed amended judgment.

13. ADDITIONAL PROVISIONS.

13.1 No Admission of Liability, Class Certification or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Defendant that any of the allegations in the Operative Complaint have merit or that Defendant has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that Defendant's defenses in the Action have merit. The Parties agree that class certification and representative treatment is for purposes of this Settlement only. If, for any reason the Court does grant Preliminary Approval, Final Approval or enter Judgment, Defendant reserves the right to contest certification of any class for any reasons, and Defendant reserves all available defenses to the claims in the Action, and Plaintiff reserves the right to move for class certification on any grounds available and to contest Defendant's defenses. The Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

13.2 Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel, Defendant and Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement is filed, they and each of them will not disclose, disseminate and/or publicize, or cause or permit another person to disclose, disseminate or publicize, any of the terms of the Agreement directly or indirectly, specifically or generally, to any person, corporation, association, government agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses, all of whom will be instructed to keep this Agreement confidential; (2) counsel in a related matter; (3) to the extent necessary to report income to appropriate taxing authorities; (4) in response to a court order or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal government agency. Each Party agrees to immediately notify each other Party of any judicial or agency order, inquiry, or subpoena seeking such information. Plaintiff, Class Counsel, Defendant and Defense Counsel separately agree not to, directly or indirectly, initiate any conversation or other communication, before the filing of the Motion for Preliminary Approval, any with third party regarding this Agreement or the matters giving rise to this Agreement except to respond only that "the matter was resolved," or words to that effect. This paragraph does not restrict Class Counsel's communications with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.

13.3 No Solicitation. The Parties separately agree that they and their respective counsel and employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel's ability to communicate with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.

13.4 Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.

13.5 Attorney Authorization. Class Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and the Company, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.

13.6 Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.

13.7 No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.

13.8 No Tax Advice. Neither Plaintiff, Class Counsel, Defendant nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.

13.9 Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.

13.10 Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.

13.11 Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.

13.12 Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.

13.13 Confidentiality. To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.

13.14 Use and Return of Class Data. Information provided to Class Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the Class Data provided to Class Counsel by Defendant in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than 90 days after the date when the Court discharges the Administrator's obligation to provide a Declaration confirming the final pay out of all Settlement funds, Plaintiff shall destroy, all paper and electronic versions of Class Data received from Defendant unless, prior to the Court's discharge of the Administrator's obligation, Defendant makes a written request to Class Counsel for the return, rather than the destructions, of Class Data.

13.15 Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.

13.16 Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.

13.17 Notice. All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiff:

James Hawkins
Gregory Mauro
James Hawkins APLC
9880 Research Drive, Suite 200
Irvine, CA 92618

To Defendant:

John Golper
Jeffrey Fuchsman
Matthew Golper
Ballard Rosenberg Golper & Savitt
15760 Ventura Blvd., 18th Floor
Encino, CA 91436

13.18 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

13.19 Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

Dated: April 27, 2023

PLAINTIFF

Thomas Longacre, Plaintiff

Dated: May 2, 2023

CLASS COUNSEL
JAMES HAWKINS APLC

By:
James R. Hawkins
Gregory Mauro
Attorneys for Plaintiff

Dated: May 3, 2023

DEFENDANT
KEHE DISTRIBUTORS, INC.

By:
Justin Mallott for Defendant

Dated: May 3, 2023

DEFENDANT'S COUNSEL

BALLARD ROSENBERG GOLPER & SAVITT LLP

By: Matthew B. Golper

John. B. Golper
Matthew B. Golper
Attorneys for Defendant

AMENDMENT TO CLASS ACTION AND PAGA SETTLEMENT AGREEMENT

Pursuant to Paragraphs 13.5 and of the 13.9 the Class Action and PAGA Settlement Agreement (the "Agreement") made by and between Plaintiff THOMAS LONGACRE ("Plaintiff") and Defendant KEHE DISTRIBUTORS, INC. ("Defendant"), the Parties to that Agreement, through their respective counsel of record, hereby enter into this Amendment to Class Action and PAGA Settlement Agreement (the "Amendment").

The Parties to the Agreement agree to the following:

1. Paragraph 3.2.3 in the Agreement is stricken and replaced with:

3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed $35,000 except for a showing of good cause and as approved by the Court. To the extent the Administration Expense Payment is less or the Court approves payment less than $35,000, the Administrator will retain the remainder in the Net Settlement Amount.

2. The Class Notice attached to and referenced in the Agreement is stricken and replaced with Exhibit A to this Amendment, and is incorporated by reference into the Agreement.

3. Except as otherwise expressly set forth herein: (a) all of the terms of the Agreement are hereby incorporated into this Amendment by reference, and (b) this Amendment is not intended and shall not be construed to alter any provision of the Agreement in any way, shape, or form

4. This Amendment may be signed in one or more counterparts and electronic signatures are acceptable. All executed copies of this Amendment, and photocopies thereof (including facsimile copies of the signature pages), shall have the same force and effect and shall be as legally binding and enforceable as the original.

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Dated: June 15, , 2023

CLASS COUNSEL
JAMES HAWKINS APLC

By: ____________________
James R. Hawkins
Gregory Mauro
Attorneys for Plaintiff

Dated: June 14 , 2023

DEFENDANT'S COUNSEL
BALLARD ROSENBERG GOLPER & SAVITT LLP

By: ____________________
John B. Golper
Matthew B. Golper
Attorneys for Defendant

EXHIBIT B

Matter Billing Detail

JAMES HAWKINS APLC

Date Range: **01/01/1900 to 12/18/2023**
Client: **LONGACRE001 - Thomas Longacre**
Matter: **KEHEDISTRIBUTOR - KeHE Distributors, Inc. PAGA - Thomas Longacre**

Date	Expense Code	Description	Debit	Credit	Billing Status	On Hold	Invoice Number	Check Number	Payee
		Balance Forward:	$0.00						
12/20/2021	FIL	Filing Fee - 12.09.2021 LWDA Filing Fee	$75.00		Unbilled				
12/20/2021	POS	Postage - 12.09.2021 Ntc of LWDA Filing to Agent(s) via Certified Mail	$7.73		Unbilled				
02/16/2022	FST	First Legal Network - Filing branch pdf same day , PAGA complaint and initial docs IN#30188503	$1,686.31		Unbilled				
04/19/2022	FST	First Legal Network - E-Filing - NAR Signed IN#30195930	$33.50		Unbilled				
07/29/2022	FST	First Legal Network- E-Filing: Pltf CMC Stmt IN#30209403	$33.50		Unbilled				
10/13/2022	MED	Mediation Services -CK#10305	$9,000.00		Unbilled				
11/11/2022	EXA	Expert Analysis - IN#6939 Berger Consulting Group CK#10330	$1,850.00		Unbilled				
11/21/2022	FST	First Legal Network - E-Filing - CMC Statement IN# 30219274	$33.50		Unbilled				
12/02/2022	EXA	Expert Analysis - IN#6939 CK#10430	$1,850.00		Unbilled				
12/13/2022	FST	First Legal Network - Filing - Stip to File FAC & Prop Order IN# 30222171	$161.21		Unbilled				
12/21/2022	FST	First Legal Network - Filing - First Amended Complaint IN# 30222171	$128.01		Unbilled				
06/15/2023	FST	First Legal Network - Filing - Motion, Dec (2), Order IN# 30240914	$294.91		Unbilled				
06/20/2023	FST	First Legal Network - Filing - Amended Notice IN# 30240914	$114.11		Unbilled				
12/14/2023	FST	First Legal Network-Anticipated Case Completion costs- Final Approval Motion, Declaration re Distribution, Notices	$492.91		Unbilled				
		Total:	$15,760.69	$0.00					
		Balance:	$15,760.69						

Matter Billing Detail

JAMES HAWKINS APLC

Date	Expense Code	Description	Debit	Credit	Billing Status	On Hold	Invoice Number	Check Number	Payee

Total Fees Billed- - - - - - - - - - - - - - - - - - -	**$0.00**
Total Fees Unbilled : - - - - - - - - - - - - - - - - -	**$0.00**
Total Fees Received : - - - - - - - - - - - - - - - - -	**$0.00**
Total Soft Cost Billed : - - - - - - - - - - - - - - -	**$0.00**
Total Soft Cost Unbilled : - - - - - - - - - - - -	**$0.00**
Total Soft Cost Received : - - - - - - - - - - - -	**$0.00**
Total Hard Cost Billed : - - - - - - - - - - - - - -	**$0.00**
Total Hard Cost Unbilled : - - - - - - - - - - - -	**$15,760.69**
Total Hard Cost Received : - - - - - - - - - - - -	**$0.00**
Total Taxes Billed : - - - - - - - - - - - - - - - - - -	**$0.00**
Total Taxes Unbilled : - - - - - - - - - - - - - - - -	**$0.00**
Total Taxes Received : - - - - - - - - - - - - - - - -	**$0.00**
Total Late Charges Billed : - - - - - - - - - -	**$0.00**
Total Late Charges Unbilled: - - - - - - - - -	**$0.00**
Total Late Charges Received : - - - - - - - - -	**$0.00**
Trust Balance: -	**$0.00**

EXHIBIT C

DECLARATION OF THOMAS LONGACRE

I, **THOMAS LONGACRE**, hereby declare as follows:

1. I am over the age of eighteen and I submit this Declaration in support of the motion for preliminary approval of the class action settlement and fees, costs and enhancement. The following is based upon my personal knowledge and if called as a witness, I could and would competently testify thereto.

2. I was employed by Defendant KEHE Distributors Inc., ("Defendant") in approximately March 2021 as a Non-Exempt Employee working as an Order Selector and worked during the liability period for Defendants until my separation from Defendants' employ in approximately June 2021. My preformed duties included but were not limited to placing orders on double EPJs with pallets, drop off orders at loading dock, warehouse loading and unloading.

3. As a non-exempt employee, I suffered the same damages as other employees. These included not being provided meal periods or permitted rest periods, not provided accurate wage statements, and not paid all my wages on time, and not accurately paid sick leave all in accordance with California law. As a result of these alleged violations, I sought consultation with my attorneys at James Hawkins, APLC.

4. Based upon my allegations, and after consultation and full disclosure from my attorneys about the potential risks I faced as a Plaintiff in a putative class action, I freely decided to pursue this lawsuit to try and vindicate my rights and the rights of others who also worked for Defendants and suffered similar harms due to Defendant's common practices and policies.

5. Prior to filing my action, my attorneys and I had multiple conferences about the factual bases for the claims that I wanted to pursue against Defendants. During those conferences, my attorneys provided me with an overview of how those claims would be litigated and generally educated me about the nature of complex/representative litigation and my role as the representative Plaintiff.

6. My attorneys provided me with a draft of the complaint for my review and approval. I closely reviewed the complaint to ensure accuracy and completeness. As a result, I

caused my attorneys to file the class action complaint alleging claims for the allegations alleged therein. Thereafter, I have been fully involved in my case. Following the filing of the complaint, I collaborated with my attorneys on the prosecution of my claims, and I regularly contacted my attorneys to stay current on the status of the litigation, and to discuss my attorneys' progress in prosecuting the claims.

7. Since I believe I was not provided lunches and not permitted my rest breaks, not accurately paid sick leave, and therefore not provided accurate itemized wage statements, I believe that I have been similarly injured as to all other class members in the settlement who worked for Defendant during the class period. I believe the claims asserted in the Complaint is also shared by the other Class Members. I worked with various other non-exempt employees and I believe we were all treated the same and subject to the same unlawful policies.

8. Since I agreed to become a Class Representative, I have worked every step of the way with my attorneys. During the course of the litigation I have always kept the best interest of the Class Members on equal footing as mine. I have been, and I am willing to continue to pursue the Class Members' claims vigorously on our collective behalf if the Settlement is not finally approved. As a result, I firmly believe that I do not have any interests adverse to the interests of the Class Members. I have maintained the Class Members best interest from the inception of the case.

9. As a Class Representative, I have spent numerous hours consulting with my attorneys, providing documentation, consulting with other Class Members, responding to questions form my attorneys, providing documents to my attorneys, working with my attorneys to review documents received, preparing for my deposition, which was not taken, helping my attorneys in preparing for the mediation and attending the mediation via telephone. I was consulted about the status of the case and provided constant feedback about the case from my attorneys including the mediation, settlement negotiations and eventual settlement. I estimate I have spent approximately 55 hours working on this case.

10. From the beginning of this case, I have freely chosen to accept the risks of being a Class Representative in this class action lawsuit. I chose to assume these risks and pursue the

claims on behalf of the Class Members as I wanted to vindicate their rights. I believe we have achieved that result with the settlement and the individual payments to the Class Members. I believe the settlement is fair reasonable and adequate based on the numerous defenses asserted by Defendant. I believe the efforts and work I put forth helped to achieve the fair settlement that will benefit the Class Members. As a result of my efforts, I also believe the Class Representative Award is reasonable, and I respectfully request the Court approve the amount of $10,000.00 as fair and reasonable.

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct. Executed on April 27, 2023, at French Camp, County of San Joaquin, California.

THOMAS LONGACRE