

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

---

THE KROGER CO.,

Plaintiff,

v.

ORDER

07-C-151-S

PINNACLE LABS, LLC, JENNICO2, INC.,  
DART TRANSIT COMPANY, WISEWAY MOTOR  
FREIGHT, INC., FREIGHTMASTERS, INC.,  
20/20 FINANCIAL SERVICES, INC., J.B.  
HUNT TRANSPORT, INC. and DOUGLAS A. LARSON,

Defendants.

---

Plaintiff Kroger Company purchased goods from defendant Pinnacle Labs, LLC. The purchases were reflected in six invoices issued between June 22, 2006 and July 20, 2006 and each including the term: "2%, 30 days, net 31." The total amount of the six invoices is \$58,228.20. On August 7, 2006 Pinnacle informed plaintiff that Pinnacle had ceased trading and intended to liquidate. Subsequently, several of Pinnacle's creditors advised plaintiff that they had a claim to the outstanding account payable. Plaintiff has made no payments on the invoices.

On March 16, 2007 plaintiff filed this interpleader action pursuant to 28 U.S.C. § 1335. Plaintiff conceded its obligation to pay the invoices, sought to deposit the amount of the account payable (which it alleged to be \$54,250.84) with the Court, and obtain a declaration that it has no further liability arising from

the purchase of the goods from Pinnacle. Subsequently, all parties conceded that defendant Douglas A. Larson has a superior interest in the accounts payable proceeds and is entitled to them.

Although plaintiff has moved to deposit the amount owed as reflected in the invoices, such a deposit has not yet been made or ordered by the Court. The sole remaining issue in the case is the exact amount owed under the invoices. The Court now finds that the net amount of the invoices, \$58,228.20, is due. Plaintiff having failed to pay the invoices within thirty days there is no basis to claim a 2% discount on the purchase price. The fact that plaintiff may have routinely paid within thirty days on previous invoices is irrelevant.

#### ORDER

IT IS ORDERED that in lieu of depositing the amount of the invoices with the Court, plaintiff The Kroger Co. shall pay \$58,228.20 directly to defendant Douglas A. Larson.

IT IS FURTHER ORDERED that judgment be entered declaring that upon payment of \$58,228.20 to Douglas A. Larson plaintiff The Kroger Co. shall be discharged from further liability to any of the above-named defendants based on its obligation to pay for goods purchased from defendant Pinnacle Labs, LLC between June 22 and July 20, 2006.

IT IS FURTHER ORDERED that any remaining claims between the parties are dismissed without prejudice for lack of subject matter jurisdiction.

IT IS FURTHER ORDERED that all parties shall bear their own costs.

Entered this 22nd day of June, 2007.

BY THE COURT:  
/s/

---

JOHN C. SHABAZ  
District Judge