

NOTE: This cover sheet is to be used to electronically file and submit to the court a proposed order. The proposed order sent electronically to the court must be in PDF format and must be attached to this cover sheet. In addition, a version of the proposed order in an editable word-processing format must be sent to the court at the same time as this cover sheet and the attached proposed order in PDF format are filed.

1. Name of the party submitting the proposed order:
Plaintiff Manuel Gutierrez
2. Title of the proposed order:
Proposed Order Granting Final Approval of Class Action Settlement
3. The proceeding to which the proposed order relates is:
 - a. Description of proceeding: Motion
 - b. Date and time: July 7, 2022; 2:00 p.m.
 - c. Place: CX 102
4. The proposed order was served on the other parties in the case.

Jeff Geraci / June 14, 2022
(TYPE OR PRINT NAME)


(SIGNATURE OF PARTY OR ATTORNEY)

CASE NAME:
GUTIERREZ v. KITE ELECTRIC INCORPORATED

CASE NUMBER:
30-2020-01133960

**PROOF OF ELECTRONIC SERVICE
PROPOSED ORDER**

1. I am at least 18 years old and **not a party to this action.**

a. My residence or business address is (*specify*):

b. My electronic service address is (*specify*):

2. I electronically served the *Proposed Order (Cover Sheet)* with a proposed order in PDF format attached, and a proposed order in an editable word-processing format as follows:

a. On (*name of person served*) (*If the person served is an attorney, the party or parties represented should also be stated.*):

b. To (*electronic service address of person served*):

c. On (*date*):

☐ Electronic service of the *Proposed Order (Cover Sheet)* with the attached proposed order in PDF format and service of the proposed order in an editable word-processing format on additional persons are described in an attachment.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME OF DECLARANT)



(SIGNATURE OF DECLARANT)

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and all others similarly situated

SUPERIOR COURT OF CALIFORNIA

FOR THE COUNTY OF ORANGE

MANUEL GUTIERREZ, on behalf of himself
and all others similarly situated,

Plaintiff,

v.

KITE ELECTRIC INCORPORATED, a
California corporation; and DOES 1 through 10,
Inclusive,

Defendants.

CASE NO. 30-2020-01133960-CU-OE-CXC
ASSIGNED FOR ALL PURPOSES TO:
The Honorable Peter J. Wilson
Department CX 102

CLASS ACTION

**[PROPOSED] ORDER GRANTING
FINAL APPROVAL OF
CLASS ACTION SETTLEMENT AND
ENTERING JUDGMENT**

Hearing Set by Court
(03/04/2022 Order - ROA 137)

Date: July 7, 2022
Time: 2:00 p.m.
Dept: CX 102
Judge: Honorable Peter J. Wilson

Filed: February 24, 2020
Trial date: Not set

1 This matter came on for hearing on July 7, 2022 in Department CXC102 of the above-
2 captioned Court on Plaintiff's Unopposed Motion for Order Granting Final Approval of Class Action
3 Settlement and Entering Judgment ("Motion") pursuant to California Rule of Court 3.769, the Court's
4 Order Granting Preliminary Approval filed March 4, 2022 (ROA 137), and the Stipulation of Class and
5 Representative Action Settlement and Release filed as Exhibit 1 to the Declaration of Jeff Geraci on
6 January 4, 2022 (ROA 103) and the fully-executed Amendment to the Stipulation of Class and
7 Representative Action Settlement and Release filed as Attachment 1 to the Notice of filing Fully-
8 executed Amendment on March 1, 2022 (ROA 133) (collectively, "Settlement Agreement").

9 Having received and considered the Settlement Agreement, the supporting papers filed by the
10 Parties, and the evidence and argument received by the Court in conjunction with the Motion for
11 Preliminary Approval of Class Action Settlement, and the supporting papers, and evidence and
12 argument received by the Court in conjunction with the Motion for Order Granting Final Approval of
13 Class Action Settlement and Entering Judgment, the Court grants final approval of the Settlement and
14 ORDERS AND MAKES THE FOLLOWING DETERMINATIONS:

15 1. Pursuant to the Preliminary Approval Order filed March 4, 2022, a Notice of Class
16 Action Settlement, Change of Address form, and pre-printed return envelope in both English and
17 Spanish ("Notice Packet") were sent to each Class Member by first-class United States mail. The
18 Notice informed the Class of the terms of the Settlement, their right to receive a Settlement Payment
19 without any required action, their right to comment upon or object to the Settlement, and their right to
20 appear in person or by counsel at the final approval hearing and to be heard regarding approval of the
21 Settlement. Adequate periods of time were provided for each of these procedures.

22 2. No member of the Class filed a request to be excluded from the Settlement or a written
23 objection to the proposed Settlement as part of this notice process or stated an intention to appear at the
24 final approval hearing.

25 3. The Court finds and determines this notice procedure afforded adequate protections to
26 the Class and provides the basis for the Court to make an informed decision regarding approval of the
27 Settlement based on the responses of the Class. The Court finds and determines the notice provided in
28 this case was the best notice practicable, which satisfies the requirements of law and due process.

1 4. With respect to the Class and for purposes of approving this Settlement only, this
2 Court finds and concludes that: (a) the members of the Class are ascertainable and so numerous that
3 joinder of all members is impracticable; (b) there are questions of law or fact common to the Class, and
4 there is a well-defined community of interest among members of the Class with respect to the subject
5 matter of the Action; (c) the claims of the Class Representative are typical of the claims of the members
6 of the Class; (d) the Class Representative has fairly and adequately protected the interests of the
7 members of the Class; (e) a class action is superior to other available methods for an efficient
8 adjudication of this controversy; and (f) the counsel of record for Plaintiff, the Class Representative,
9 i.e., Class Counsel, are qualified to serve as counsel for Plaintiff in his individual and representative
10 capacity for the Class.

11 5. The Court confirms certification, for settlement purposes only, of the Class: “all
12 persons employed by Defendant as non-exempt electricians in the State of California at any time during
13 the period from February 24, 2016 through February 19, 2021.”

14 6. The Court finds and determines the terms set forth in the Settlement Agreement are
15 fair, reasonable, and adequate and, having found that the Settlement was reached as a result of informed
16 and non-collusive arms’-length negotiations facilitated by a neutral and experienced mediator, directs
17 the Parties to effectuate the Settlement according to the terms set forth in the Settlement Agreement.
18 The Court further finds the Parties conducted extensive investigation, research, and informal discovery,
19 and that their attorneys were able to reasonably evaluate their respective positions. The Court also finds
20 that Settlement will enable the Parties to avoid additional and potentially substantial litigation costs, as
21 well as delay and risks if the Parties were to continue to litigate the case. The Court has reviewed the
22 monetary recovery and recognizes the significant value provided to the Class.

23 7. The Court further finds and determines that the terms of the Settlement are fair,
24 reasonable and adequate to the Class and to each Class Member and that the Settlement is ordered
25 finally approved, and that all terms and provisions of the Settlement Agreement should be and are
26 ordered to be consummated.

27 8. The Court finds and determines that the Settlement Payments to be paid to
28 Participating Class Members as provided for by the Settlement are fair and reasonable. The Court grants

1 final approval to and orders the payment of those amounts be made to the Participating Class Members
2 in accordance with the Agreement.

3 9. The Court finds and determines that the fees and expenses in administrating the
4 Settlement incurred by ILYM Group, Inc. in the amount of \$7,500.00 are fair and reasonable. The Court
5 grants final approval to and orders that the payment of that amount in accordance with the Settlement
6 Agreement.

7 10. The Court finds and determines the Class Representative Service Payment of \$10,000
8 to Plaintiff Manual Gutierrez is fair and reasonable. The Court orders the Administrator to make this
9 payment to the Plaintiff Manual Gutierrez, in accordance with the terms of the Settlement Agreement.

10 11. The Court finds and determines the PAGA Payment in the amount of \$7,500 to be
11 paid to the California Labor and Workforce Development Agency ("LWDA") representing the 75%
12 share of the \$10,000 for civil penalties is fair, adequate and reasonable. The Court grants final approval
13 to and orders that amount be paid in accordance with the Settlement Agreement.

14 12. Pursuant to the terms of the Settlement Agreement, and the authorities, evidence and
15 argument submitted by Class Counsel, the Court awards Class Counsel attorneys' fees of \$152,997.00
16 and litigation costs of \$8,995.09. The Court finds such amounts to be fair and reasonable. The Court
17 orders the Administrator to make these payments in accordance with the terms of the Settlement
18 Agreement.

19 13. Without affecting the finality of this Order or the entry of judgment in any way, the
20 Court retains jurisdiction of all matters relating to the interpretation, administration, implementation,
21 effectuation, and enforcement of this Order and the Agreement.

22 14. Neither Defendant nor any related persons or entities shall have any further liability
23 for costs, expenses, interest, attorneys' fees, or for any other charge, expense, or liability, except as
24 provided for by the Settlement Agreement.

25 15. The Settlement is not an admission of liability by Defendant or any of the other
26 Released Parties, nor is this Judgment a finding any claims in the Actions against Defendant or any of
27 the other Released Parties is valid. Neither this Judgment, nor the Settlement, may be construed as, or
28 used as an admission of any fault, wrongdoing or liability whatsoever by Defendant or any Released

1 Party. The entering into or carrying out of the Settlement, and any related negotiations, shall not be
2 offered in evidence against Defendant or any Released Party in any action or proceeding in any court,
3 administrative agency or other tribunal for any purpose other than to enforce this Judgment, the
4 Settlement, or any related agreement or release. Notwithstanding these restrictions, any Released Party
5 may file in the Action or any other proceeding, this Judgment, the Settlement, or any other papers on
6 file in the Action as evidence of the Settlement and to support a defense of res judicata, collateral
7 estoppel, release, waiver or other theory of claim preclusion, issue preclusion or similar defense to the
8 released claims.

9 16. Nothing in this Order shall preclude any action to enforce the Parties' obligations
10 under the Settlement Agreement or this Order, including the requirement Defendant make payments to
11 the Participating Class Members in accordance with the Settlement.

12 17. The Parties will bear their own costs and attorneys' fees except as otherwise provided
13 by this Court's Order awarding Class Counsels' attorneys' fees and litigation costs.

14 18. The Court enters final judgment in accordance with the terms of the Settlement
15 Agreement, the Court's Preliminary Approval Order, and this Order.

16 19. The Court sets a Compliance Hearing for _____, 2022; the Administrator's
17 declaration regarding its work and final disbursements will be filed with the Court five (5) court days
18 before the hearing.

19 **JUDGMENT**

20 20. This document shall constitute a judgment for purposes of California Rules of Court,
21 Rule 3.769(h). In accordance with, and for the reasons stated in this Order, judgment shall be entered
22 within the meaning and for purposes of Code of Civil Procedure §§ 577 and 904.1(a), and the Plaintiff
23 / Class Representative and all Class Members shall take nothing from Defendant Kite Electric
24 Incorporated except as expressly set forth in the Settlement Agreement.

25 IT IS SO ORDERED.

26
27 Date: _____

28 _____
Hon. Peter J. Wilson
Judge of the Superior Court