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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

**SUPPLEMENTAL BRIEF IN SUPPORT
OF PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Date: March 3, 2022

Time: 2:00 p.m.

Dept: CX 102

Judge: Hon. Peter J. Wilson

[Continued From: February 3, 2022]

1 **I. INTRODUCTION**

2 Plaintiff Manuel Gutierrez provides this Supplemental Brief in response to the Court's ruling on
3 Plaintiff's Motion for Order Granting Preliminary Approval of Class Action Settlement issued February
4 2, 2022, seeking edits to the operative settlement agreement and to the Class notice. The Court
5 continued the hearing to March 3, 2022, and directed briefing be supplemented by February 22, 2022.

6 An Amendment to the Stipulation of Class and Representative Action Settlement Agreement and
7 Release, ("Amendment"), which make the edits addressing the Court's concerns, is attach as Exhibit
8 "1" to the Supplemental Declaration of Jeff Geraci, ("Supp. Geraci Decl."), filed with this Supplemental
9 Brief. Briefly, items to be revised or considered as identified in the Court's ruling are set forth below
10 together with a summary of the edits made.

11 **THE SETTLEMENT**

12 1. Confirm the Net Settlement Amount is
13 correct.

The Net Settlement Amount to be disbursed to
the Class is correctly stated in the Class Notice,
as \$30,003. It is calculated as follows:

GSA: \$458,991 (comprised of \$238,991 previously
paid, and the \$220,000 new money):

Less, Attorneys' Fees: \$ 152,997.00
Less, Costs, up to: \$ 9,500.00
Less, Pltf Service Payment: \$ 10,000.00
Less, Admin (ILYM): \$ 7,500.00
Less, PAGA Payment
(75% to LWDA): \$ 7,500.00
Less, PAGA Payment
(25% to PAGA Members): \$ 2,500.00
NSA: **\$ 30,003.00**

See, the Redline Class Notice, attached as Exhibit
"2" to Supp. Geraci Decl.

22 2. Under ¶ 59, the Court makes the final
23 determination on any disputes the
24 parties cannot resolve, but ¶ 69 is
25 contrary, allowing the Administrator's
26 decision to be conclusive, final and
binding on the Parties.

See, Amendment attached as Exhibit 1 to the
Supp. Geraci Decl. The second sentence of ¶ 69,
shown below, has been deleted.

*"The Settlement Administrator's determination of
eligibility for, and the calculations of, Settlement
Payments shall be conclusive, final, and binding
on all Parties, including all Class Members."*

3. At final approval, Counsel should provide billing records in support of fees and documentation of costs	Plaintiff's counsel will submit at Final Approval.
4. At final approval, Plaintiff should submit a declaration addressing the factors set forth in <i>Golba v. Dick's</i> , and <i>Clark v. Am. Residential Servs.</i> , and include an estimate of the hours spent on this litigation	Plaintiff's counsel will submit at Final Approval.
5. With the motion for final approval, Plaintiff must present a full report on all disputes, exclusions, objections. The Court will consider any objections at the final approval hearing.	Plaintiff's counsel will submit at Final Approval. The Class Notice informs Class Members no written objection is needed to be heard at the final approval hearing. See Supp. Geraci Decl. Exhibit "2" – the redline version of the Class Notice, and Exhibit "E", attached to the Amendment.
6. With the final approval motion, the Administrator should provide estimated high and low settlement payments and Plaintiff's individual payout	Plaintiff's counsel will submit this information with the Final Approval motion.

THE CLASS NOTICE

7. The notice is to be revised consistent with the issues addressed above.	Completed. See Supp. Geraci Decl. Exhibit "2" – the redline version of the Class Notice, and Exhibit "E" to Amendment (the English and certified Spanish Translation of the revised Notice)
8. The Class Notice does not explain what a PAGA Action is, how it is different from the class action or the difference between the release for the class action and the PAGA Action.	See Supp. Geraci Decl. Exhibit "2" – the redline version of the Class Notice. Paragraphs 2, 3, 7, 8, 12, 13, and 15
9. The Class Notice incorrectly states the tax allocation is 1/3 wages, 1/3 penalties, and 1/3 interest. Class Notice §11, p. 5.	The Class Notice now correctly identifies the allocation as 20% wages and 80% penalties and interest.

10. The Class Notice should give an example of the language needed to properly exclude the Class Member from the Settlement. Class Notice §13, p. 5-6	The Class Notice now includes the following: “I wish to be excluded from the case entitled <i>Gutierrez v. Kite Electric Incorporated</i> , Case No. 30-2020-01133960-CU-OE-CXC in the Superior Court of California, County of Orange and the Settlement. I understand by requesting to be excluded from the Class and Settlement, I will not receive a share of the Class settlement funds described in this Notice.”
11. The Class Notice should advise that the Court has the right to review and reverse the Settlement Administrator’s decision on any disputes. Class Notice, §10, p. 5	The Class Notice has been revised consistent with the request. See ¶10, last sentence: “The Court will retain the right to review, and to reverse, any decision made by the Administrator concerning a dispute of the number of the Work Weeks or Pay Period information.”
12. The Class Notice should advise that Class Members may appear in person, or through their attorney, to object at the Final Approval Hearing. Class Notice, §16, p. 6.	The Class Notice, ¶16 includes: “You, or your lawyer at your expense, are welcome to attend the Final Approval Hearing to discuss your objections directly with the Court, without the need to return a written objection first. The Final Approval Hearing is set for _____, 2022 at _____ p.m. in Dept. CX102 of the Orange County Superior Court.
13. The Class Notice does not indicate what will happen if the Class Member submits an objection and a request for exclusion.	Subparagraph 56 (C) has been added to the Amendment to the Agreement describing what happens, and the following is added to ¶17 of the Class Notice: “You should not return to the Settlement Administrator both an objection and a request for exclusion from the Settlement. In the event you return both a valid and timely request for exclusion <u>and</u> a written objection, the valid and timely request for exclusion will be accepted, and your written objection will be rejected.”

THE PROPOSED ORDER

14. The proposed Order is to be revised consistent with the issues addressed above.	See Exhibits “E” and “F” to Amendment – Class Notice and Proposed Order Granting Preliminary Approval.
15. The Settlement and Class Notice, including a certified Spanish translation, should be attached to the proposed Order.	See, Exhibit “F” to Amendment, and the English and certified Spanish translation of the Class Notice attached to Order as Exhibit 1.

16. A date for the final approval hearing should be proposed. Final Approval hearings are held on Thursdays at 2 p.m. in Department CX102; with moving papers to be filed at least 16 court days prior to the hearing and served on the LWDA.

The proposed Final Approval Hearing date is **July 14, 2022**, assuming Preliminary Approval will be granted on March 3, 2022, based on the following timeline:

II. SCHEDULE OF SETTLEMENT PROCEEDINGS

- | | |
|---|------------------------------|
| 1. Preliminary Approval Granted: | March 3, 2022 |
| 2. Class Data List to Administrator:
(14 calendar Days of Preliminary Approval, ¶54) | March 17, 2022 |
| 3. Notice Packet Mailed to the Class:
(10 business days of receipt - Class Data List, ¶54C) | April 1, 2022 |
| 4. Response Deadline:
(45 days of initial mailing, ¶33)
(Extended 15 days if remailed, ¶¶33, 55B) | May 16, 2022
May 31, 2022 |
| 5. File Final Approval Motion
(16 court days prior to hearing) | June 27, 2022 |
| 6. Final Approval Hearing (proposed): | July 14, 2022 at 2:00 p.m. |

**COHELAN KHOURY & SINGER
LAW OFFICES OF SAHAG MAJARIAN II**

By: 
Jeff Geraci

Date: February 22, 2022

Attorneys for the Plaintiff, and all others similarly
Situating and Aggrieved Employees