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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

**NOTICE OF ENTRY OF ORDER
GRANTING FINAL APPROVAL OF
CLASS AND PAGA ACTION
SETTLEMENT**

Filed: February 24, 2020
Trial date: Not set

1 TO: THE LABOR AND WORKFORCE DEVELOPMENT AGENCY, AND TO ALL
2 PARTIES AND THEIR COUNSEL OF RECORD:

3 NOTICE IS GIVEN that on August 5, 2022, the Court issued an Order Granting Final Approval
4 of Class and PAGA Action Settlement ("Order"), in the above-captioned matter. A true and correct
5 copy of this Order is attached as Exhibit 1.

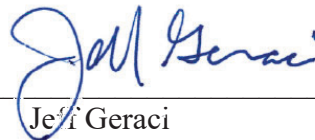
6 PLEASE TAKE FURTHER NOTICE a Final Accounting Hearing has been scheduled for April
7 7, 2023 at 9:00 a.m. in Department CX-102 of the above-entitled Court.

8 Respectfully submitted,

9 COHELAN KHOURY & SINGER
10 LAW OFFICES OF SAHAG MAJARIAN II

11
12 Dated: August 10, 2022

By: _____


Jeff Geraci

13 Attorneys for Plaintiff Manuel Gutierrez, on behalf of
14 himself and all others similarly situated

EXHIBIT 1

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;

Defendants.

CASE NO. 30-2020-01133960-CU-OE-CXC

ASSIGNED FOR ALL PURPOSES TO:
The Honorable Peter J. Wilson
Department CX 102

CLASS ACTION
ORDER GRANTING FINAL APPROVAL OF
CLASS AND PAGA ACTION SETTLEMENT
(Related to ROA 144)

Date: August 4, 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 August 4, 2022 in Department CXC102 of the above-
2 captioned Court on Plaintiff's Unopposed Motion for Order Granting Final Approval of Class and
3 PAGA Action Settlement ("Motion") pursuant to California Rule of Court 3.769, the Court's Order
4 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 all papers filed in support of the settlement, and the
10 arguments of counsel in support thereof, the Court grants final approval of the Settlement and
11 ORDERS AND MAKES THE FOLLOWING DETERMINATIONS:

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

19 2. No member of the Class filed a request to be excluded from the Settlement or a
20 written objection to the proposed Settlement or stated an intention to appear at the final approval
21 hearing.

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

26 4. With respect to the Class and for purposes of approving this Settlement only, this
27 Court finds and concludes that: (a) the members of the Class are ascertainable and so numerous that
28 joinder of all members is impracticable; (b) there are questions of law or fact common to the Class,

1 and there is a well-defined community of interest among members of the Class with respect to the
2 subject matter of the Action; (c) the claims of the Class Representative are typical of the claims of the
3 members of the Class; (d) the Class Representative has fairly and adequately protected the interests of
4 the members of the Class; (e) a class action is superior to other available methods for an efficient
5 adjudication of this controversy; and (f) the counsel of record for Plaintiff, the Class Representative,
6 i.e., Class Counsel, are qualified to serve as counsel for Plaintiff in his individual and representative
7 capacity for the Class.

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

11 6. For settlement purposes, Aggrieved Employees are defined as: “all persons
12 employed by Defendant as non-exempt electricians in the State of California at any time during the
13 period from December 21, 2018 through February 19, 2021 (“PAGA Period”).”

14 7. 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
16 informed and non-collusive arms’-length negotiations facilitated by a neutral mediator, directs the
17 Parties to effectuate the Settlement according to the terms set forth in the Settlement Agreement.

18 8. The Court further finds and determines that the terms of the Settlement are fair,
19 reasonable and adequate to the Class and to each Class Member and that the Settlement is ordered
20 finally approved, and that all terms and provisions of the Settlement Agreement should be and are
21 ordered to be consummated.

22 9. The Court finds and determines that the fees and expenses in administering the
23 Settlement incurred by ILYM Group, Inc. in the amount of \$7,500.00 are fair and reasonable. The
24 Court grants final approval to and orders that the payment of that amount in accordance with the
25 Settlement Agreement.

26 10. The Court finds and determines the Class Representative Service Payment of \$7,500
27 to Plaintiff Manual Gutierrez is fair and reasonable. The Court orders the Administrator to make this
28 payment to the Plaintiff Manual Gutierrez, in accordance with the terms of the Settlement Agreement.

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

5 12. Pursuant to the terms of the Settlement Agreement, and the authorities, evidence and
6 argument submitted by Class Counsel, the Court awards Class Counsel attorneys’ fees of
7 \$152,997.00 and litigation costs of \$8,845.99. The Court finds such amounts to be fair and
8 reasonable. The Court orders the Administrator to make these payments in accordance with the terms
9 of the Settlement Agreement.

10 13. Without affecting the finality of this Order in any way, the Court retains jurisdiction
11 of all matters relating to the interpretation, administration, implementation, effectuation, and
12 enforcement of this Order and the Agreement.

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

16 15. The Settlement is not an admission of liability by Defendant or any of the other
17 Released Parties, nor is this Order or subsequent Judgment a finding any claims in the Actions against
18 Defendant or any of the other Released Parties is valid. Neither this Order or subsequent Judgment,
19 nor the Settlement, may be construed as, or used as an admission of any fault, wrongdoing or liability
20 whatsoever by Defendant or any Released Party. The entering into or carrying out of the Settlement,
21 and any related negotiations, shall not be offered in evidence against Defendant or any Released Party
22 in any action or proceeding in any court, administrative agency or other tribunal for any purpose other
23 than to enforce this Order of subsequent Judgment, the Settlement, or any related agreement or
24 release. Notwithstanding these restrictions, any Released Party may file in the Action or any other
25 proceeding, this Order or subsequent Judgment, the Settlement, or any other papers on file in the
26 Action as evidence of the Settlement and to support a defense of res judicata, collateral estoppel,
27 release, waiver or other theory of claim preclusion, issue preclusion or similar defense to the released
28 claims.

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

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

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

8 19. The Court orders the Settlement Administrator to post this Order and the subsequent
9 Judgment on its website: www.ilymgrouppclassaction.com/kite. The Order is to remain on the website
10 until after the Final Accounting Hearing, and the Judgment is to remain on the website for 90 days
11 after its entry.

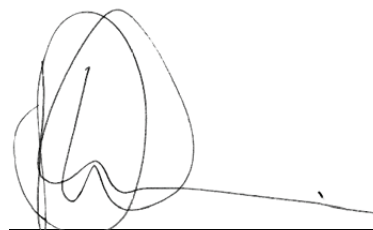
12 20. The Court sets a Final Accounting hearing for April 7, 2023 at 9:00 a.m. in
13 Department CX-102. A final accounting declaration/report shall be filed no later than ten (10)
14 calendar days prior to the hearing to confirm that settlement distribution efforts are complete.

15 21. Assuming full compliance with the Settlement Agreement and this Order by the final
16 accounting hearing, the Court will enter a final Judgment after the final accounting hearing.

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

22 IT IS SO ORDERED.

23
24
25 Date: August 5, 2022



Hon. Peter J. Wilson
Judge of the Superior Court