

COHELAN KHOURY & SINGER

Michael D. Singer (SBN 115301)

msinger@ckslaw.com

Diana M. Khoury (SBN 128643)

dkhoury@ckslaw.com

Jeff Geraci (SBN 151519)

jgeraci@ckslaw.com

605 C Street, Suite 200

San Diego, CA 92101

Tel: (619) 595-3001/Facsimile: (619) 595-3000

LAW OFFICES OF SAHAG MAJARIAN II

Sahag Majarian II (SBN 146621)

sahagii@aol.com

18250 Ventura Blvd.

Tarzana, CA 91356

Tel: (818) 609-0807/Facsimile: (818) 609-0892

Attorneys for Plaintiff Manuel Gutierrez, on behalf of himself
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

**DECLARATION OF JEFF GERACI IN
SUPPORT OF MOTION FOR ORDER
GRANTING PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT**

Date: February 3, 2022
Time: 2:00 p.m.
Dept: CX 102
Judge: Honorable Peter J. Wilson

Filed: February 24, 2020
Trial date: Not set

1 I, Jeff Geraci, declare as follows:

2 1. I am a Partner with the law firm of Cohelan Khoury & Singer, co-counsel of record for
3 Plaintiff Manuel Gutierrez. I make this Declaration in support of Plaintiff's Motion for Preliminary
4 Approval of Class Action Settlement. This Declaration is based on my personal knowledge and if
5 called to testify I could and would competently testify to the matters contained in this Declaration.

6 2. I am a 1990 University of San Diego School of Law graduate, admitted to the California
7 State Bar in 1990. I am admitted to all California state and federal courts. I have provided counseling
8 and representation in all areas of employment law, including wrongful termination, discrimination,
9 harassment, and wage and hour law since 1992. I founded Law Office of Jeff Geraci in 1999 and
10 managed that firm through 2009, when I joined Cohelan Khoury & Singer. I have conducted six jury
11 trials of employment law cases to verdict as sole trial counsel, prevailing in four. My practice has
12 focused solely on litigation of class and representative actions, particularly wage and hour class
13 actions, for the past 12 years. I have drafted amicus letters on a range of issues, primarily for the
14 California Employment Lawyers Association (CELA), supporting publication or depublication of
15 Court of Appeal decisions. I have been primarily responsible for dozens of wage and hour class
16 actions, from drafting the complaint, through discovery, dispositive motions, settlement, and
17 settlement approval.

18 3. I have acted as lead appellate counsel in a dozen matters, including the published
19 employment cases, *McAlindin v. County of San Diego* (1999) 192 F.3d 1226 (9th Cir. 1999) [reversing
20 summary judgment in a disability discrimination case]; *Vaquero v. Ashley Furniture Indus.*, 824 F.3d
21 1150 (9th Cir. 2016) [affirming class certification for sales associates].

22 4. In 1981, Timothy D. Cohelan and Isam C. Khoury formed Cohelan & Khoury, a
23 Partnership of Professional Law Corporations, and within a few years began to focus on class actions.
24 In 2009, Cohelan & Khoury became Cohelan Khoury & Singer. Our firm represents plaintiffs in
25 complex, class and representative action litigation, including wage and hour, labor and employment,
26 antitrust, consumer protection, construction defect and other public interest type class and
27 representative actions.

28 5. Managing Partner Michael D. Singer was admitted as a fellow to the College of Labor

1 and Employment Attorneys in 2020, and named to the Daily Journal 2012, 2013, and 2018 list of Top
2 California Labor and Employment Attorneys. He, along with Isam Khoury, a founding Partner of the
3 firm, and Partner Diana M. Khoury, have also been selected by their peers based on ethics, experience
4 and reputation as Super Lawyers in Civil Litigation by the Southern California Super Lawyers
5 Magazine for the years 2012 through the present.

6 6. Cohelan Khoury & Singer has been certified by the State Bar of California to provide the
7 Mandatory Continuing Legal Education activity entitled “Litigating California Class Actions” and has
8 conducted MCLE certified seminars on this topic. Senior Partner, Timothy D. Cohelan, is the author
9 of Cohelan on California Class Actions (1997-2021, updated annually), part of Thomson Reuters
10 Expert Series updated annually. Michael D. Singer is a contributing author on the CEB publication
11 California Wage and Hour Law: Compliance and Litigation (2010-2021 updated annually), in which
12 he wrote the opening chapter overview on California Wage and Hour laws, including the public policy
13 underpinnings for those laws, and the Private Attorneys General Act (PAGA) Claim chapter. He is
14 also a contributing author to the CEB Practitioner (2020), including guidelines for oral argument and
15 forms for PAGA litigation. Mr. Singer has served as a columnist for the California State Bar, Litigation
16 Section on wage and hour litigation and has contributed articles on wage and hour and class action
17 issues through the years to numerous California publications. Prior to COVID, he typically lectured
18 several times per year for continuing education courses on wage and hour and class action issues at
19 events in San Diego, Orange County, Los Angeles, and San Francisco. For over twelve years, Mr.
20 Singer has served as wage and hour amicus co-chair and liaison for the California Employment
21 Lawyers Association, drafting, reviewing, and coordinating amicus filings on wage and hour issues in
22 the California Supreme Court and Courts of Appeal. He has been engaged in the practice of labor and
23 employment law since 2000, handling well over 300 wage and hour class and PAGA actions and
24 several individual labor cases. He has litigated several types of employment actions, including
25 complex ERISA employee welfare benefit plan cases, as well as wage and hour class actions before
26 Federal and State Courts in California. In 2014, Mr. Singer, along with Partner J. Jason Hill, tried a
27 wage and hour class action involving claims for illegally deducted wages and unreimbursed expenses.
28 *Dilts v Penske Logistics LLC, Inc.* Mr. Singer successfully appealed the trial court ruling in *Dilts*

1 finding state laws preempted by the FAAAA for truck drivers.

2 7. Mr. Singer has participated in over 50 appellate cases and argued writs and appeals before
3 several California District Courts of Appeal, arguing for plaintiffs on rehearing in *Brinker*
4 *International Inc. v. Superior Court* before the Fourth District Court of Appeal, as well as federal
5 appeals in the Second, Third, and Ninth Circuit Courts of Appeals. In addition, Mr. Singer has drafted
6 numerous appellate briefs as the appellant, respondent, or amicus curiae in employment class and
7 individual actions. As co-Class Counsel in *Brinker Restaurant Corp. v. Superior Court* [formerly
8 reported at (2008)165 Cal.App.4th 25], Mr. Singer argued before the Fourth District Court of Appeal
9 in May 2008 on transfer from the California Supreme Court, and co-authored the successful Petition
10 for Review. My firm has successfully tried class cases, obtained appellate reversals of class
11 certification denials (*Hicks v. Kaufman and Broad*, (2001) 89 Cal.App.4th 908), and certified multiple
12 wage and hour classes.

13 8. As a part of our overall firm philosophy lawyers perform community service and pro
14 bono work. Firm volunteer work includes service through the Legal Aid at Work, San Diego Volunteer
15 Lawyer Program, the San Diego County Bar Foundation and Consumer Attorneys of San Diego.
16 During law school, I interned for the ACLU and Equal Rights Assistance assisting on impact litigation
17 class action lawsuits. I am a past recipient of the Wiley W. Manuel Award for Pro Bono Service. Mr.
18 Singer has served on the Legal Aid at Work Board of Directors since 2011. Mr. Cohelan served as the
19 Chair of the San Diego Volunteer Lawyers Program from 2015-2018, and currently sits on the Board
20 as past Chair. He completed 24 years of volunteer judicial service as a Judge Pro Tem of the San Diego
21 Superior Court. Since admission to the California Bar, Partner Diana M. Khoury has been a member
22 of the San Diego County Bar Association, Consumer Attorneys of San Diego, Consumer Attorneys of
23 California, and American Association for Justice serving and chairing various committees through the
24 years for these organizations. For six years from 2010 through 2015, Ms. Khoury served on the Board
25 of Directors for Consumer Attorneys of San Diego. Since 2013, Ms. Khoury actively serves on the
26 Board of Directors for the San Diego County Bar Foundation, the 501(c)(3) charitable arm of the San
27 Diego County Bar Association providing access to justice to the underserved and impoverished in the
28 San Diego County region. Our firm's recent pro bono victories include a settlement which prohibits

1 the City of San Diego from targeting homeless people for illegal lodging tickets under Penal Code
2 Section 467(j). (*Spencer v. City of San Diego*, USDC Case No 04CV-2314 BEN (WMC).) The *Spencer*
3 settlement had the effect of increasing the number of available shelter beds in San Diego.

4 9. Cohelan Khoury & Singer has been certified Class Counsel in the following contested
5 proceedings: *Aguilar v. Atlantic Richfield, et al.*, San Diego County Superior Court Case No.
6 00700810; *Andino v. Kaiser Foundation Hospitals*, Alameda County Superior Court Case No.
7 RG11580548; *Arellano, et al. v. Container Connection of Southern California, Inc.*, Los Angeles
8 County Superior Court Case No. BC500675; *BANK OF AMERICA WAGE AND HOUR*
9 *EMPLOYMENT PRACTICES LITIGATION*, United States District Court, District of Kansas MDL
10 Case No. 2138 (FLSA Condition Certification); *Czuchaj v. Conair Corporation*, United States District
11 Court, Southern District of California Case No. 13CV1901; *Dilts, et al. v. Penske Logistics, L.L.C., et*
12 *al.*, United States District Court, Southern District of California Case No. 08CV0318; *Englert, et al.*
13 *v. AT&T Wireless Services, Inc., et al.*, Circuit Court of the Second Circuit, State of Hawaii Case No.
14 02-1-0074; *Evans v. Washington Mutual Bank*, Orange County Superior Court Case No. 02CC15415;
15 *Filion v. Ethan Allen Retail Inc.*, United States District Court, Southern District of California Case
16 No. 05CV2340; *Gerard v. Les Schwab Tire Centers of California, Inc.*, Sacramento County Superior
17 Court Case No. 2007-30000003; *Grana, et al. v. PICO Enterprises, Inc. dba Phyle Inventory Control*
18 *Specialist and PICS L.A.S.C.* Case No. BC472891; *Gutierrez v. Save Mart Supermarkets San Mateo*
19 *Superior* Case No. CIV530955; *Wilcox v Albertsons*, San Diego County Superior Court Case No.
20 GIC833922; *Gonzalez, et al. v. Freedom Communications, Inc. d/b/a The Orange County Register*,
21 Orange County Superior Court Case No. 03CC08756; *Graham, et al. v. Overland Solutions, Inc.*,
22 United States District Court, Southern District of California Case No. 10CV0672 (FLSA Conditional
23 Certification); *Hicks v. Kaufman and Broad Home Corp.*, Los Angeles County Superior Court Case
24 No. B198414; *Hohnbaum, et al. v. Brinker Restaurant Corporation, et al.*, San Diego County Superior
25 Court Case No. GIC834348; *KEMP, et al. v. CSEA, et al.*, Circuit Court of the First Circuit, State of
26 Hawaii Case No. 98-3815-08; *LIBERTY MUTUAL OVERTIME CASES*, Los Angeles County Superior
27 Court Case No. JCCP 4234; *Mitchell, et al. v. Acosta, Inc., dba Acosta Sales and Marketing Company*,
28 United States District Court, Central District of California Case No.11CV07196 (FLSA Conditional

Certification); *Santana v. Rady Children's Hospital-San Diego*, San Diego County Superior Court Case No. 37-2014-00022411; *Schaffer v. Rady Children's Hospital-San Diego*, San Diego County Superior Court Case No. 337-2015-00022978; *Schneider, et al. v. Catholic Healthcare West*, San Francisco County Superior Court Case No. CGC-10-506243; *Salucci v. Amada Senior Care, Inc.*, Orange County Superior Court Case No. 37-2015-00778081; *Smith v. California Pizza Kitchen*, San Diego County Superior Court Case No. 37-2008-00083992; STEROID HORMONE PRODUCT CASES, Los Angeles County Superior Court Case No. JCCP 4363; *Stevenson Aibangbee v. Victoria Apartments, et al.*, Los Angeles County Superior Court Case No. BC299498; *Swift v. Liebert Corp.*, Orange County Superior Court Case No. 00CC04588; *Sylvia, et al. v. Wells Fargo Home Mortgage, Inc.*, Orange County Superior Court Case No. 03CC05747; *Vaquero v. Ashley Furniture Industries, Inc., et al.*, United States District Court, Central District of California Case No. 12CV8590; *Vaquero v. Stoneledge Furniture LLC*, Los Angeles County Superior Court Case No. BC522676; *Vazquez v. Kraft Heinz Foods Company*, United States District Court, Southern District of California Case No. 16-CV-02749; *Watson v. Raytheon Company*, United States District Court, Southern District of California Case No. 10CV0634; and *Weigle v. FedEx Ground Package System, Inc.*, United States District Court, Southern District of California Case No. 06CV1330, among others, as well as being appointed Class Counsel in connection with well over 200 class action settlements.

10. As Class and PAGA Representative Counsel, Cohelan Khoury & Singer has actively commenced, prosecuted and concluded numerous state and federal class and representative actions. Since 2016, Cohelan Khoury & Singer has played a central role in the resolution of over 200 such cases, including the following, which have received court approval: (a) *Arellano, et al. v. Container Connection of Southern California, Inc.*, Los Angeles County Superior Court, Case No. BC500675, Hon. Anne I. Jones; (b) *Castro v. Home Depot U.S.A., Inc.*, Los Angeles County Superior Court, Case No. BC577885, Hon. Elihu M. Berle; (c) *Czuchaj v. Conair Corporation*, United States District Court, Southern District of California, Case No. 13-CV-1901 BEN, Hon. Roger T. Benitez; (d) *Gardiner v. TSYS*, United States District Court, Central District of California, Case No. 18-cv-00415, Hon. David O. Carter; (e) *Grana v. PICO Enterprises, Inc.*, Los Angeles County Superior Court, Case No. BC472891, Hon. Stephanie M. Bowick; (f) *Gutierrez v. Save Mart Supermarkets*, San Mateo County

Superior Court, Case No. CIV530955, Hon. Marie S. Weiner; (g) *Hernandez v. Workforce Enterprises WFE, Inc.*, Los Angeles County Superior Court Case No. BC590913, Hon. Elihu M. Berle; (h) *Hicks v. Poway Academy of Hair Design, Inc.*, San Diego County Superior Court, Case No. 2014-00026517, Hon. Ronald L. Styn; (i) *Hubbard v. Caliber Home Loans, Inc.*, Orange County Superior Court, Case No. 2018-01017838; (j) *Klein v. Loomis Armored US, LLC*, San Bernardino County Superior Court, Case No. CIVDS1704547, Hon. David Cohn; (k) *Laureano v. The Art of Shaving*, Los Angeles County Superior Court, Case No. BC550093, Hon. Amy D. Hogue; (l) *Lopez, et al. v. Management & Training Corporation, et al.*, United States District Court, Southern District of California, Case No. 17-CV-010624 JM, Hon. Jeffrey T. Miller; (m) *Magdaleno v. Shelly Automotive, LLC*, Orange County Superior Court Case No. 2013-0043958, Hon. Kim. G. Dunning; (n) *McGrath, et al. v. Wyndham Resort Development Corporation, et al.*, United States District Court, Southern District of California, Case. No. 15-CV-1631 JM, Hon. Jeffrey T. Miller; (o) *Mena v. Wolfgang Puck Catering*, Los Angeles County Superior Court Case No. BC582743, Hon. John Shepard Wiley, Jr.; (p) *Morales v. The Los Angeles Country Club*, Los Angeles County Superior Court, Case No. BC566493, Hon. William F. Highberger; (q) *Nijmeh v. Bon Appetit Management Company, Inc.*, Santa Clara County Superior Court, Case No. 16CV294127, Hon. Thomas E. Kuhnle; (r) *Plascencia v. Aramark Services, Inc.*, Santa Clara County Superior Court, Case No. 2015-1-CV-288310, Hon. Brian C. Walsh; (s) *Plimpton v. Gordon Trucking, Inc.*, San Bernardino County Superior Court, Case No. CIV-DS-1511918, Hon. Donald Alvarez; (t) *Raya v. Amazon*, USDC, Northern District of California, Case No. 15-CV-02005 MMC, Hon. Maxine M. Chesney; (u) *Rivas v. ESA Management*, USDC, Central District of California, Case No. 14-CV-5767, Hon. Dale S. Fischer; (v) *Rodriguez v Healthcare Partner Medical Group, Inc.*, Los Angeles County Superior Court, Case No. BC541313, Hon. Kenneth Freeman; (w) *Ryan v. Dignity Health*, Sacramento County Superior Court Case No. 2013-00147371, Honorable Alan G. Perkins; (x) *Santana v. Rady Children's Hospital-San Diego*, San Diego County Superior Court Case No. 37-2014-00022411, Hon. Joel R. Wohlfeil; (y) *Schaffer v. Rady Children's Hospital-San Diego*, San Diego County Superior Court Case No. 337-2015-00022978; Hon. Joel R. Wohlfeil; (z) *Schneider v. Catholic Healthcare West*, San Francisco County Superior Court, Case No. CGC-10-506243, Hon. Angela Bradstreet; (aa) *Schwartz v Bank of the West*, San Francisco County Superior Court, Case No.

CGC-14-538955, Hon. Harold E. Kahn; (bb) *Syed v. M.I. Swaco*, USDC, Eastern District of California, Case No. 12-CV-01718 DAD, Hon. Dale A. Drozd; (cc) *Vaquero, et al. v. Stoneledge Furniture, LLC*, Los Angeles County Superior Court Case No. BC522676, Hon. Elihu M. Berle; (dd) *Vazquez v. Kraft Heinz Foods Company*, USDC, Southern District of California Case No. 16-CV-02749, Hon. William Q. Hayes; (ee) *Walsh v. Cedars-Sinai Medical Center*, Los Angeles County Superior Court Case No. BC487290, Hon. William F. Highberger; among others.

11. We are experienced and consider ourselves qualified to evaluate the claims and defenses in this Action. This allowed our firm to assist in achieving an efficient resolution of the claims in this matter for a non-reversionary Settlement Payment of \$458,991 for approximately 101 electricians employed by Kite Electric, Incorporated (“Kite”) in California at any time from February 24, 2016 to February 19, 2021 (“Class Period”). The proposed Settlement is memorialized in the Stipulation of Class and Representative Action Settlement Agreement and Release, (“Settlement Agreement”), attached as Exhibit 1.

12. Approximately three months after the lawsuit was filed, by the end of May 2020, after receiving LWDA charges and being served with the Action, Kite paid 98 Class Members for past damages based on the number of weeks each was paid with piece-rate wages, a total of \$238,991, in exchange for purported releases of the claims alleged.

13. Kite is an electrical contractor that began in 2000 in Irvine, California. It performs work on new construction projects, such as apartment and other multi-family projects in Orange County.

14. Plaintiff Manual Gutierrez worked for Kite as an electrician from June to October 2019, and was paid on a piece-rate basis. Mr. Gutierrez is not related to any attorney working on this case, and has no adverse interests to the interests of the proposed class members.

15. The Class is, “all persons employed by Kite in California as non-exempt electricians at any time during the period from February 24, 2016 through February 19, 2021.” An estimated 101 Class Members worked an estimated 13,016 workweeks during the Class Period. An estimated 71 aggrieved employees worked 2,675 Pay Periods from December 21, 2018 to February 19, 2021 (“PAGA Period”).

16. Class Members generally performed electrical work on new construction. They generally

1 worked in groups, normally left work together by 3:30 p.m., and overtime work was relatively rare.

2 17. Some Class Members were paid solely or partially by the “piece,” or specific task
3 completed, rather than by the hour. This arguably caused Class Members to perform unpaid work,
4 such as unloading trucks; returning to a warehouse, or central location on a large job site, to retrieve
5 supplies; traveling from one part of a job site to another; or remaining on a job site when the next
6 project was not immediately available. It also arguably caused unpaid rest periods.

7 18. All Class Members would handwrite a generally standard number of hours at the end of
8 a pay period, confirm scheduled hours had been worked. Some would record the number of “pieces”
9 completed. Class Members were paid by the piece in only an estimated 6,424 shifts.

10 19. Kite advised employees they were “required to take a 30-minute lunch and [are] entitled
11 to rest periods each workday at the rate of 10 minutes net rest time for each four hours of work or
12 major fraction,” and employees attested each period they had taken these breaks.

13 20. Before December 31, 2019, Kite issued wage statements that did not reflect all hours
14 worked, but showed the amount earned in hourly and piece work, with a standard number of hours.
15 For example, a total amount of piece work earning might be arbitrarily divided into 80 hours of regular
16 pay with the remainder of the piece rate earnings shown as incentive pay, or with another reference.

17 21. Starting in January 2020, Kite changed payroll providers and began to issue compliant
18 wage statements, even in pay periods which included piece-rate wages.

19 22. On October 16, 2019, Plaintiff’s counsel formally requested his personnel file and
20 obtained job applications, work schedules, timesheets, and bi-weekly earnings statements.

21 23. Kite produced the requested documents in November 2019. In January 2020, Plaintiff
22 filed charges with the Labor and Workforce Development Agency (LWDA). On February 24, 2020,
23 Plaintiff filed the above-captioned Action.

24 24. Plaintiff filed a First Amended Class Action Complaint (FAC) adding PAGA claims
25 (submitted April 3, 2020, filed May 26, 202 due to the pandemic). The FAC alleged Kite failed to
26 provide (1) minimum and overtime wages (Labor Code §1194); (2) rest periods or premium wages in
27 lieu (Labor Code §226.7); (3) timely final wages (Labor Code §203); (4) accurate wage statements
28 (Labor Code §226); and violated the (5) Unfair Competition Laws (Bus. & Prof. Code §§17200 et

1 seq); and, (6) PAGA (Labor Code §§2699 et seq.)

2 25. By the end of May 2020, after receiving LWDA charges and being served with the
3 Action, Kite paid 98 Class Members for past damages based on the number of weeks each was paid
4 with piece-rate wages, a total of \$238,991, in exchange for purported releases of the claims alleged.

5 26. In January 2020, Kite's new payroll provider, Heartland Payroll, began calculating any
6 piecework wages, and separately paying rest periods and non-productive time as required.

7 27. Plaintiff served Kite with form interrogatories (employment), special interrogatories,
8 requests for admission, and requests for production of documents, and a notice of taking deposition of
9 Kite's person most qualified about topics relevant to the allegations.

10 28. During discussions regarding outstanding discovery responses, the Parties agreed to
11 mediate, and Plaintiff requested and Kite informally produced bankers boxes containing over 2,000
12 pages of documents and data for the relevant time period, including: (a) Employee Handbooks (in
13 English and Spanish); (b) documents which allowed Plaintiff to determine the number of Class
14 Members, including current and former employees; (c) aggregate number of Work Weeks; (d)
15 aggregate number of Pay Periods during the PAGA Period; (e) a breakdown of pay periods in which
16 at least some piece work was performed; (f) wage statements and time sheets for each Pay Period for
17 each Class Member from February 24, 2016 to May 2020, (g) Pick Up Stix settlement agreements and
18 releases (in English and Spanish); and (h) unredacted spreadsheets reflecting \$238,991 in Pick Up Stix
19 payments to 98 Class Members, ranging from \$350 to \$10,900, in exchange for purported releases;
20 and (i) detailed information showing how payments were calculated.

21 29. Kite could not locate two Class Members who worked briefly in 2016, whose payments
22 would have been \$200 and \$350. Plaintiff's payment, \$2,020, was calculated, but not paid.

23 30. Kite contended no employee ever received less than the applicable minimum wage for
24 all time worked during any pay period; not all Class Members received piece rate wages or received
25 them in every pay period; there was little to no time that could be characterized as non-productive or
26 unpaid when piece-rate was paid, as all time spent earned piece rate wages, or was directly related to
27 tasks which earned those wages; if any overtime was worked, Kite's compensation plan properly paid
28 for that small amount of time; Kite began to take steps to insure compliance, and did comply, with all

1 Labor Code requirements after receiving a request for documents from an attorney, a PAGA charge,
2 and this lawsuit, and paid all sums it believed in good faith could arguably be owed to current and
3 former employees; that in practice, it followed California law at all times by authorizing and permitting
4 rest breaks, not discouraging employees from taking them, and that to the extent any missed a break,
5 it was voluntarily.

6 31. Plaintiff acknowledged Kite's good faith in calculating and paying amounts owed, but
7 contended not all damages and penalties were paid, and that the Court might not uphold its "Pick-Up
8 Stix" settlement agreements.

9 32. With substantial investigation, research, and analysis of the voluminous data, and a
10 Class-wide damage model, the Parties attended mediation with Hon. Jeffrey Winikow (Ret.) on
11 February 19, 2021, and engaged in serious and informed arms'-length negotiations. By the end of the
12 day, the Parties reached agreement on principle settlement terms, including a credit for the \$238,991
13 prior payments, and \$220,000 "new money." The Parties continued to negotiate and entered a
14 Stipulation of Class and Representative Action Settlement Agreement and Release.

15 33. Kite will pay the Gross Settlement Amount (GSA) of \$458,991, (\$220,000, plus
16 \$238,991 paid to 98 class members pre-mediation) which includes: (a) attorneys' fees of \$152,997
17 (one-third of GSA) to compensate Class Counsel for all work performed and remaining to be
18 performed securing final Court approval (apportioned 50/50 between Class Counsel with Plaintiff's
19 consent; (b) litigation costs up to \$9,500; (c) Service Payment of \$10,000 for work as Class
20 Representative, foregoing an individual settlement payment, risks undertaken for costs if the case had
21 not successfully concluded, and benefits conferred on the Class; (d) \$10,000 in PAGA Penalties
22 (\$7,500/75% LWDA, \$2,500/25% Class Members in PAGA Period); and (e) Administration expenses
23 up to \$7,500. Payments are allocated one-third each to wages (W-2), penalties, and interest (Form
24 1099). Kite will pay the employer's share of payroll taxes in addition to the GSA.

25 34. Counsel entered a joint prosecution agreement allocating fees 50% to Cohelan Khoury &
26 Singer and 50% to Law Offices of Sahag Majarian II, which Plaintiffs consented to in writing.

27 35. After Court-approved deductions, the estimated Net Settlement Amount (NSA) \$30,003
28 will be distributed based on the number of weeks worked during the Class Period. Class Members

1 who do not opt-out will receive an estimated \$2.31 for each week worked during the Class Period, and
2 an average estimated \$297.06 (\$30,003/101), in addition to payments received after the Action was
3 filed and before mediation.

4 36. Class Members employed during the PAGA Period will receive a share of the \$2,500
5 PAGA Penalties based on number of Pay Periods worked during the PAGA Period whether they opt-
6 out or not.

7 37. No portion of the GSA will revert to Kite under any circumstances. After 180 days of
8 issuance, all uncashed checks will be sent to the State of California Controller, Unclaimed Property
9 Division for further handling on behalf of the Class Member's whose check was voided.

10 38. Class Members who do not opt out, will release all:

11 [C]laims, debts, liabilities, demands, obligations, damages, liens and/or actions or causes of
12 action of any kind that were alleged in the Complaint, or could have been alleged based on
13 the same nucleus of operative facts alleged in the Complaint, and including, but not limited
14 to, claims under California Labor Code sections 201, 202, 203, 226(a), 226(e), 226.7, 558,
15 1174, 1174.5, 1194, 1194.2, 2699(f), 2699.3, and the Wage Orders promulgated thereunder;
16 and California Business & Professions Code section 17200 *et seq.* The Released Claims
specifically exclude claims for workers' compensation, unemployment insurance and state
disability compensation, claims under the Employment Retirement Income Security Act of
1974, and claims for previously vested benefits under any Employer-sponsored benefits plan.

17 39. Class Members employed during the PAGA Period will receive a share of PAGA
18 Penalties, and release claims for PAGA penalties alleged, even if they opt-out.

19 40. After the grant of Preliminary approval, ILYM Group, Inc. ("Settlement Administrator"),
20 will search the National Change of Address database, update Class Member addresses, perform skip-
21 tracing, and mail the Notice of Class Action Settlement ("Class Notice") to each Member in Kite's
22 employment records.

23 41. The Class Notice explains: how to participate in the Settlement without submitting a
24 claim; dispute the basis of an Individual Settlement Payment; object or opt-out; release to be given,
25 date of Final Approval hearing, and how to obtain further information.

26 42. The method of distributing the Settlement is fair and reasonable and does not give
27 preferential treatment to any Class Member. The information used is readily available from Kite's
28 records, and the Administrator can apply the formula fairly and transparently.

1 43. The Settlement was reached as a result of arm's-length negotiations facilitated by retired
2 Los Angeles County Superior Court Judge, Hon. Jeff Winikow (Ret.). Though cordial and
3 professional, negotiations have been adversarial and non-collusive. While Plaintiff believes in the
4 merits of his case, he recognizes the inherent risks of litigation and the benefit of the Class receiving
5 settlement funds immediately as opposed to risking an unfavorable decision on class certification, the
6 merits of the case after trial, damages awarded, or an appeal that may take several more years to
7 litigate.

8 44. Plaintiff's Counsel investigated the claims and Kite's defenses before filing PAGA
9 charges. When the Parties agreed to mediate, Plaintiff requested, and Defendant produced documents,
10 information and data for the entire Class for nearly the entire Class Period, to allow liability to be
11 assessed and Class-wide damages to be calculated. Proof of Class claims in a case of this type is based
12 almost entirely on written policies and an analysis of time and pay records.

13 45. Extensive investigation and information exchanged gave the Parties a clear
14 understanding of the strengths and weaknesses of their positions before negotiations.

15 46. Plaintiff's Counsel have significant experience in litigating wage and hour employment
16 class actions. This allowed Counsel to compare settlement of Class claims with the risks of further
17 litigation, including trial and appeals. Defense counsel, James W. Michalski is a skilled and an
18 experienced wage and hour litigator who defended his clients vigorously throughout this case,
19 including through mediation and subsequent negotiations.

20 47. Plaintiff's Counsel believes the Settlement is fair, reasonable, and in the Class' best
21 interest in light of the monetary recovery, risks of certification/decertification, summary adjudication,
22 the lengthy process of establishing damages, delay and uncertainty of appeals, the substantial prior
23 settlement payments, and the risk releases obtained would be found enforceable.

24 48. Class Counsel relied on documents and data, including time and pay records for all Class
25 Members. Class Counsel reviewed, organized, and analyzed all information, and calculated Class-
26 wide damages through the date of mediation.

27 49. Class Members worked an estimated 13,016 weeks, an average of 4 shifts per week, at
28 an average rate of \$25.00 per hour. In 6,424 shifts, piece-rate wages were paid.

1 50. Based on Plaintiff's work experiences, and the typical physical layout of Kite's projects,
2 an average of 20 minutes of non-productive time per shift was assumed, and unpaid wages estimated
3 at \$25,156 to which liquidated damages of \$25,156 were added for maximum exposure of \$50,314.
4 Labor Code § 1194.2. (1,606 weeks piece work paid x average 4 shifts per week = 6,424 shifts x 20
5 minutes per shift = 128,480/60 = 2,141 hrs x avg minimum wage \$11.75 per hr = \$25,156).

6 51. Plaintiff's counsel believed there was a 50% probability this claim would be certified,
7 based on potential individual issues and differences among employees in the need to perform allegedly
8 "non-earning" work in shifts piece-rate wages were paid. It was also believed liquidated damages were
9 unlikely given the relatively small amount of piece-rate work and the apparent good faith of Kite
10 demonstrated by its post-suit payments and change of policy. Plaintiff's counsel concluded realistic
11 exposure was 25% of maximum, or \$12,579.

12 52. Kite's recording and payment of overtime was inconsistent before December 31, 2019,
13 and overtime wages were not paid in all pay periods in which piece-work was paid. Kite contended
14 class members could not have worked more than 30 minutes of overtime per week at an aggregate
15 average \$20 per hour base rate, and \$30 per overtime rate, and based its pre-mediation payment on
16 that calculation. Based on a review of all time and pay data, including pay periods in which only hourly
17 rates were paid, Plaintiff assumed an average base rate of \$25 per hour, \$37.50 overtime rate, and an
18 average of one hour of overtime per employee per week, for maximum exposure of \$60,225 [1,606
19 piece work weeks x 1 hour OT x \$37.50 (\$25 x 1.5)].

20 53. Plaintiff's counsel believed this claim was likely to be certified, but complete recovery
21 was unlikely as it appeared little overtime was worked generally, Kite did pay overtime, primarily in
22 non-piece-rate shifts, and proof that overtime was worked specifically during a piece-work shift would
23 be difficult. Plaintiff's counsel concluded realistic exposure was 25% of maximum, or \$15,056.

24 54. Plaintiff assumed a violation for rest periods during shifts class members were paid piece-
25 rate wages for maximum exposure of \$160,600. (6,424 shifts x \$25).

26 55. Plaintiff's counsel believed this claim was likely to be certified, and liability proven, but
27 Defendant would receive a significant offset, particularly for this claim, as the majority of its post-
28 filing payments were based on the number of pay periods in which Class Members received some

1 piece-rate wages. Based on the offset, Plaintiff's counsel concluded realistic exposure was likely only
2 10% of maximum, or \$16,060.

3 56. Kite's wage statements did not consistently show actual hours or rates paid until 2020.
4 Based on estimated class members and pay periods from February 24, 2017, three years before filing,
5 through December 31, 2019, Plaintiff estimates maximum exposure of \$373,750. (\$50 x 57 class
6 members + \$100 x 3,709 pay periods).

7 57. Plaintiff believed realistic exposure was no more than 10% of the piece-rate wage
8 statement maximum exposure, or no more than \$8,305.

9 58. Based on a review of original time records and wage statements, there were 40 former
10 employees in the period starting three years before filing, February 24, 2017. Maximum exposure was
11 \$240,000. [40 class members x 8 hours x \$25 per hour x 30 days = \$240,000].

12 59. Plaintiff believed realistic exposure was no more than 5% of maximum exposure, or no
13 more than \$12,000.

14 60. There are 2,675 pay periods during the PAGA period, December 21, 2018 to February
15 19, 2021, but only 1,233 through December 31, 2019, after which Kite remedied its arguably non-
16 compliant policies. Using initial violation rates for 1,333 pay periods, maximum penalties were
17 estimated at \$603,850, for four violations: Sec. 1194 (wages) – \$133,300; Sec. 226.7 (rest) - \$133,300;
18 Sec. 226.3 (wage statements)– \$333,250; Sec. 203 – \$4,000 (final pay) (40 formers). (all at \$100 per
19 pay period, 226.3 at \$250).

20 61. The Gross Settlement Amount represents over 85% of the maximum value of Class
21 claims. ($\$458,991/\$534,189 = 0.859$). The “new money” obtained represents over 41% of maximum
22 exposure ($\$220,00/\$458,991 = 0.411$). The proposed Settlement reflects an excellent recovery for the
23 Class and is well within the “ballpark” of reasonableness and should be granted preliminary approval.

24 62. Settlement Payments are characterized as 20% wages and 80% penalties and interest.
25 This is roughly consistent with alleged maximum exposure: $\$1,333,609/100\% - \$271,139/20.33\%$
26 (overtime, rest period premium wages), $\$135,570/10.16\%$ (interest), $\$926,900/69.51\%$ (wage
27 statement, waiting time, PAGA penalties).

28 ///

1 63. On the same date this motion and its exhibits are filed with the Court, they will be served
2 upon Defendant and provided to the Labor and Workforce Development Agency (“LWDA”) via the
3 LWDA’s website, www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act,
4 using the appropriate intake form. Attached as Exhibit 2 is a true and correct copy of the LWDA
5 confirmation of Receipt.

6 I declare under the penalty of perjury under the laws of the State of California the
7 foregoing is true and correct and this declaration is executed January 4, 2022, in San Diego, California.

8
9 

Jeff Geraci

EXHIBIT 1

COHELAN KHOURY & SINGER

Michael D. Singer (SBN 115301)

Msinger@ckslaw.com

Jeff Geraci (SBN 115301)

JGeraci@ckslaw.com

605 C Street, Suite 200

San Diego, California 92101

Tel: (619) 595-3001 / Fax: (619) 595-3000

LAW OFFICES OF SAHAG MAJARIAN II

Sahag Majarian, II (SBN 146621)

Sahagii@aol.com

18250 Ventura Blvd.

Tarzana, CA 91356

Telephone: (818) 609-0807/Facsimile: (818) 609-0892

Attorneys for Plaintiff Manuel Gutierrez,
on behalf of himself and the Putative Class

MICHALSKI LAW OFFICES

James W. Michalski, (SBN 177015)

james@jamesmichalskilaw.com

17011 Beach Boulevard, Suite 900

Huntington Beach, CA 92647

Telephone: (818) 489-5069 / Facsimile: (714) 968-0426

Attorneys for Defendant, Kite Electric, Incorporated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE**

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

Plaintiff,

vs.

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 – Dept. CX102

**STIPULATION OF CLASS AND
REPRESENTATIVE ACTION
SETTLEMENT AGREEMENT AND RELEASE**

Exhibits:

- A. Notice of Class Action Settlement**
- B. Change of Address Form**
- C. Preliminary Approval Order**
- D. Final Approval Order and Judgment**

IT IS STIPULATED, by Plaintiff Manuel Gutierrez, individually, and on behalf of all others similarly-situated and aggrieved, and Defendant Kite Electric Incorporated, subject to the approval of the Court, this class action is compromised and settled pursuant to the terms and conditions set forth below in this Stipulation of Class and Representative Action Settlement Agreement and Release, (“Settlement Agreement”):

DEFINITIONS

1. “Action” means the putative class action entitled *Manuel Gutierrez v. Kite Electric Incorporated* filed on February 24, 2020 and amended on May 26, 2020 by a First Amended Complaint, in the Superior Court for the State of California, County of Orange, Case No. 30-2020-01133960-CU-OE-CXC, and assigned to the Honorable Peter J. Wilson.

2. “Agreement,” or “Settlement Agreement,” or “Settlement” means this Stipulation of Class and Representative Action Settlement Agreement and Release.

3. “Attorneys’ Fees and Costs Payment” means such payment of attorneys’ fees and litigation costs as the Court may award to Class Counsel for services rendered to the Plaintiff and the Class and expenses they have incurred in prosecuting the Action, including, but not limited to, costs associated with documenting the Settlement, providing any notices required as part of the Settlement or Court order, and securing Court approval of the Settlement. The Attorneys’ Fees and Costs Payment will be paid out of—and will not increase—the Gross Settlement Amount. Any portion of the Attorneys’ Fees and Costs Payment not awarded shall remain with the Maximum Settlement Amount and made available for payments to Participating Class Members.

4. “Class Member(s)” means: “all persons employed by Defendant as non-exempt electricians in the State of California at any time during the period from February 24, 2016 through February 19, 2021.” There are an estimated 100 members of the Class.

5. “Class” means the collective group of those individuals who are Class Members.

6. “Class Counsel” means Cohelan Khoury & Singer and Law Office of Sahag Majarian, II.

7. “Class Notice” (or “Notice”) means the Court-approved Notice of Class Action Settlement to be mailed to Class Members to inform them of the terms of the proposed Settlement, substantially in the form attached as Exhibit “A.” The Notice will be mailed together with a

1 Change of Address Form, attached as Exhibit “B”, and pre-printed return envelope, (“Notice
2 Packet”). The Notice and Change of Address form will also be translated into Spanish.

3 8. “Class Period” means February 24, 2016 through February 19, 2021.

4 9. “Complaint” means the First Amended Complaint (“FAC”) filed May 26, 2020
5 which alleges the following claims on behalf of Plaintiff and the putative Class: failure to provide
6 (1) minimum wages for all hours worked (Labor Code § 1194 and IWC Wage Order 16-2001; (2)
7 pay overtime compensation wages (Labor Code § 1194 and IWC Wage Order 16-2001; (3)
8 authorize paid rest periods or pay compensation in lieu of breaks (Labor Code §§ 226.7 and
9 applicable IWC Order); (4) timely pay wages to terminated or resigned employees (Labor Code §
10 203); (5) accurate wage statements (Labor Code §§ 226); and, (6) violation of the Unfair
11 Competition Law (Business & Professions Code §§ 17200, *et seq.*); (7) civil penalties pursuant to
12 the PAGA for failure to provide minimum and overtime wages, rest periods, wages due at
13 separation, and accurate itemized wage statements (Labor Code §§ 2698, *et seq.*).

14 10. “Court” means the Superior Court of the State of California County of Orange.

15 11. “Defendant” (or “KITE”) means Kite Electric Incorporated, a California
16 corporation, that provides electrical subcontractor work to the residential construction industry.

17 12. “Defendant’s Counsel” means attorney James W. Michalski.

18 13. “Employer Tax Obligations” means Defendant’s share of payroll taxes, including,
19 but not limited to, FICA, Medicare, ETT, FUTA, and SUTA, for the portion of the Gross
20 Settlement Amount treated as wages. The Tax Obligations shall be paid by Defendant in addition
21 to the Gross Settlement Amount. The Parties agreed to allocate the Settlement Payment, 20% as
22 wages for which an IRS Form W-2 will be issued, and 80% as penalties and interest for which IRS
23 Forms 1099 will be issued.

24 14. “Effective Date of Settlement” means the later of (a) if any timely objections are
25 filed and not subsequently withdrawn, the 65th day after the Court enters an order granting final
26 approval of the Agreement; (b) if any timely appeals are filed, the date of the resolution (or
27 withdrawal) of any such appeal in a way that does not alter the terms of the Settlement; or (c) if
28 no timely objections are filed, or if all objections are withdrawn, the date upon which the Court
enters an order granting final approval of the Agreement and entering Judgment.

1 15. “Final Approval” means the date a Final Approval Order and Judgment are entered.

2 16. “Final Approval Hearing” means a Court hearing Court to consider Final Approval
3 of the Settlement, the amount of the attorneys’ fees and litigation costs to be awarded to Class
4 Counsel, Service Payment awarded to the Class Representative Manual Gutierrez, and the merits
5 of any objections to the Settlement, if any.

6 17. “Final Approval Order and Judgment” means an Order and Judgment issued by the
7 Court in substantially the form attached as Exhibit “D,” approving the Settlement and this
8 Agreement as binding upon the Parties and the Class Members.

9 18. “General Release” means the release in which Plaintiff in his individual capacity
10 releases his individual claims only, and agrees to release the Released Parties from all claims,
11 demands, rights, liabilities, and causes of action of every nature and description whatsoever,
12 known or unknown, asserted or that might have been asserted, whether in tort, contract, or for
13 violation of any collective bargaining agreement, and/or any state or federal statute, rule or
14 regulation arising out of, relating to, or in connection with any act or omission by any Released
15 Parties during the Class Period, including a waiver of Civil Code §1542.

16 Section 1542. A general release does not extend to claims that the creditor or
17 releasing party does not know or suspect to exist in his or her favor at the time of
18 executing the release, that if known to him or her must have materially affected his
or her settlement with the debtor or released party.

19 19. “Gross Settlement Amount” (or “GSA”) means the total amount Defendant will
20 pay under this Settlement in full satisfaction of all claims arising from the Action, and includes all
21 Payments to Participating Class Members, the Class Representative Service Payment, Settlement
22 Administration Costs to the appointed Administrator, the PAGA Payment to the Labor and
23 Workforce Development Agency, and Attorneys’ Fees and Costs. The GSA is equal to and shall
24 not exceed Four Hundred Fifty-Eight Thousand Nine Hundred Ninety-One Dollars (\$458,991).
25 The GSA consists of: (a) \$238,991 previously paid by Defendant after receipt of the PAGA Notice
26 to 98 of the estimated 100 Class Members and, (b) \$220,000 new money. KITE will receive full
27 credit for all sums paid to the Class following receipt of the PAGA Notice. No portion of the GSA
28 may revert to Defendant under any circumstances. Defendant shall be required to pay only the
Gross Settlement Amount and Employer Tax Obligations as defined in paragraph 13.

20. “Individual Settlement Payment” or “Settlement Payments” means the payment to, Participating Class Members based upon the formula set forth in this Agreement.

21. “Net Settlement Amount” (or “NSA”) means the amount remaining after Court-approved deductions from the GSA for the Settlement Administration Payment, Attorneys’ Fees and Costs Payment, Class Representative Service Payment, PAGA Payment, and the amount previously paid by Kite. The NSA will be distributed to all Participating Class Members.

22. “Notice Packet” means the Notice of Class Action Settlement (Exhibit “A”), Change of Address Form (Exhibit “B”), and the pre-printed return envelope mailed by the Settlement Administrator. The content of the Notice Packet will be mailed to each Class Member together with a Spanish translation of the Notice and Change of Address form.

23. “PAGA Notice” means the letter Plaintiff mailed to the Labor Workforce Development Agency (“LWDA”) on January 28, 2020 informing it of Plaintiff’s intention to file a representative action on behalf of all other similarly aggrieved employees.

24. “PAGA Payment” means the allocation from the GSA of \$10,000 of which 75% (\$7,500) will be paid to the California’s Labor and Workforce Development Agency (“LWDA”) for all applicable PAGA civil penalties and of which 25% (\$2,500) will be distributed to Participating Class Members based on the number of Pay Periods worked during the PAGA Period.

25. “PAGA Period” means that period from December 21, 2018 through February 19, 2021. Defendant has represented there are an estimated 2,675 Pay Periods during the PAGA Period. Class Members were paid every 14 days, a “Pay Period.” If the number of Pay Periods increases by more than five percent (5%), the GSA will increase proportionately.

26. “Participating Class Members” means Class Members who do not submit a request for exclusion postmarked by the Response Deadline. Upon the Effective Date of Settlement, all Participating Class Members will be mailed an “Individual Settlement Payment.”

27. “Parties” means Plaintiff and Defendant collectively.

28. “Plaintiff” or “Class Representative” means Manual Gutierrez.

29. “Preliminary Approval” means entry of a court Order preliminarily approving the Settlement terms, notice to the Class, and setting a Final Approval Hearing.

1 30. “Preliminary Approval Order” means the order issued by the Court substantially in
2 the form attached as Exhibit “C,” preliminarily approving the terms and conditions of this
3 Settlement, including the form and manner of providing notice to the Class.

4 31. “Released Claims” means all claims, debts, liabilities, demands, obligations,
5 damages, liens and/or actions or causes of action of any kind that were alleged in the Complaint,
6 or could have been alleged based on the same nucleus of operative facts alleged in the Complaint,
7 and including, but not limited to, claims under California Labor Code sections 201, 202, 203,
8 226(a), 226(e), 226.7, 558, 1174, 1174.5, 1194, 1194.2, 2699(f), 2699.3, and the Wage Orders
9 promulgated thereunder; and California Business & Professions Code section 17200 *et seq.* The
10 Released Claims specifically exclude claims for workers’ compensation, unemployment insurance
11 and state disability compensation, claims under the Employment Retirement Income Security Act
12 of 1974, and claims for previously vested benefits under any Employer-sponsored benefits plan.

13 32. “Released Parties” means Defendant and its past, present, and future owners,
14 officers, directors, principals, heirs, joint employers, employees, agents, representatives,
15 accountants, auditors, attorneys, consultants, insurers, reinsurers, partners, investors, shareholders,
16 parent companies, subsidiaries, affiliates, predecessors, successors, assigns, and joint venturers.

17 33. “Response Deadline” means the deadline by which Class Members postmark and
18 return valid Requests for Exclusion, written statements of objections, or disputes to the information
19 on which their Settlement Payment is based. The Response Deadline will be forty-five (45)
20 calendar days from the initial mailing of the Notice Packet by the Settlement Administrator, unless
21 the 45th day falls on a Sunday or Federal holiday, in which case the Response Deadline will be
22 the next day on which the U.S. Postal Service is open. The Response Deadline will be extended
23 fifteen (15) calendar days for any Class Member who is re-mailed a Notice Packet by the
24 Settlement Administrator, unless the 15th day falls on a Sunday or Federal holiday, in which case
25 the Response Deadline will be the next day on which the U.S. Postal Service is open. The Response
26 Deadline may also be extended by express agreement between Class Counsel and Defendant. The
27 Settlement Administrator will not have the authority to unilaterally extend the deadline for Class
28 Members to submit a Request for Exclusion or objection to the settlement.

1 34. “Service Payment” means the amount the Court authorizes to be paid to the
2 Plaintiff over and above his Individual Settlement Payment, in recognition of his work, efforts and
3 burdens in obtaining the benefits of the Settlement for the Class, for the policy changes that benefit
4 employees now and in the future, for undertaking the risk for payment of costs in the event this
5 matter had not successfully resolved, and for providing a General Release of all claims against
6 Released Parties. Plaintiff will request, and Defendant will not oppose, a Service Payment of
7 \$10,000 (Ten Thousand Dollars). The Service Payment shall be paid from—and will not
8 increase—the Gross Settlement Amount.

9 35. “Settlement” means the terms and conditions in this Settlement Agreement.

10 36. “Settlement Administrator” means ILYM Group, Inc. the third-party entity which
11 the Parties mutually agree shall serve as Settlement Administrator.

12 37. “Settlement Administration Payment” means the payment to the Settlement
13 Administrator for the actual and direct costs reasonably charged by the Administrator for its
14 services in administering the Settlement. The Settlement Administration expenses are not to
15 exceed \$7,500. The Settlement Administration Payment shall be paid from the GSA.

16 38. “Workweeks” means any week in which the Class Member worked at least one (1)
17 day in that week as shown in Defendant’s employment records. Defendant has represented there
18 are an estimated 13,016 Workweeks worked by the Class during the Class Period. If the aggregate
19 number of Workweeks increases by more than five percent (5%), the GSA shall be increased
20 proportionately.

21 **PROCEDURAL HISTORY AND INVESTIGATION OF THE CLAIMS**

22 39. On January 28, 2020, Plaintiff served his PAGA Notice on the LWDA and KITE
23 informing them of his intention to file a representative action on behalf of himself and all other
24 aggrieved employees seeking civil penalties for violation of various Labor Code provisions.

25 40. On February 24, 2020, Plaintiff filed a complaint initiating this Action. Without a
26 response or indication from the LWDA it intended to investigate the charges contained in the
27 PAGA Notice, Plaintiff filed a First Amended Complaint (“FAC”) on May 26, 2020 adding claims
28 for PAGA penalties.

41. After receiving Plaintiff's January 28, 2020 PAGA Notice outlining Plaintiff's and the non-exempt electricians' claims, KITE reviewed its policies and, without notifying Plaintiff and without admitting liability, made payments to, and obtained releases from, 98 of the 100 estimated Class Members. Plaintiff contends not all claims were released, that his actions were the catalyst for the Class Member payments and, in addition to other amounts, that he may recover attorneys' fees for amounts paid for which his actions were the catalyst.

42. On August 12, 2020, Plaintiff served KITE with special and form interrogatories, requests for production of documents, request for admissions, and a Notice of Deposition.

43. During discussions regarding outstanding discovery, counsel for the Parties discussed mediation. Following agreement to mediate the Action, Plaintiff requested and Defendant informally produced over 2,000 pages of documents and information which included: the number of current and former Class Members, their aggregate number of Workweeks, a breakdown of weeks in which at least some piece work was performed, wage statements and time sheets for each Pay Period from 2016 through 2020, payroll histories for each current and former employee from 2016 through 2019, the amounts paid to current and former employees after service of Plaintiff's PAGA Notice, the number of Class Members during the PAGA Period, and their Pay Periods, and examples of the settlement agreement and release used by Defendant. Plaintiff analyzed the data and prepared a Class damage model, extrapolated through the mediation date.

44. On February 19, 2021, the Parties attended mediation with Hon. Jeff Winikow (Ret.), an experienced wage and hour mediator who facilitated the serious and informed negotiations. By the end of the day, the Parties reached agreement upon the Gross Settlement Amount, and other material terms and entered a written Memorandum of Understanding.

PLAINTIFF'S CLAIMS

45. Plaintiff has claimed and continues to claim the Released Claims have merit and give rise to the Released Parties' liability. Neither this Agreement nor any documents referred to, or any action taken to carry out this Agreement is, or may be construed as, or may be used as, an admission by or against the Class Members or Class Counsel or any Party or Counsel as to the merits or lack thereof of the claims asserted, except to show resolution of the Released Claims.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

47. This Agreement is made for the sole purpose of consummating settlement of all causes of action contained in the First Amended Complaint. By entering into this Agreement, the Parties do not admit the allegations or contentions of the other Party, and each Party is entering into this Agreement for the sole purpose of resolving this matter and avoiding the time and expense incidental to protracted litigation. The Released Parties specifically deny all of Plaintiff's claims, as well as Plaintiff's class and representative allegations, and expressly reserve all rights to challenge all such claims and allegations upon all procedural and substantive grounds, including the assertion of any and all defenses if this Settlement is not approved by the Court.

48. Whether or not the Settlement is finally approved, neither the Settlement, nor its terms, nor any document, statement, proceeding, or conduct related to this Agreement, shall be:

B. Disclosed, referred to or offered or received in evidence against any of the Released Parties, in any further proceeding in the Action, or in any other civil, criminal, or administrative action or proceeding except for purposes of settling this Action pursuant to the terms of this Agreement or enforcing the release of the Released Claims.

1 **FAIRNESS AND BENEFITS OF SETTLEMENT TO THE CLASS**

2 49. Plaintiff and Class Counsel recognize the expense and length of continued
3 proceedings necessary to continue the litigation against Defendant through trial and through any
4 possible appeals. Plaintiff has also considered the uncertainty and risk of the outcome of further
5 litigation, and the difficulties and delays inherent in such litigation, including those involved in the
6 maintenance of class certification. Plaintiff is also aware of the burdens of proof necessary to
7 establish liability for the claims asserted in the Action, Defendant's affirmative defenses, and the
8 difficulties in establishing damages for the Class. Plaintiff has also considered the information
9 exchanged at the mediation facilitated by Judge Winikow to reach agreement on all material terms
10 of this Settlement Agreement. Based on the foregoing, Plaintiff, Class Counsel, Defendant, and
11 Defendant's Counsel have determined that the Settlement set forth in this Agreement, and its
12 terms, are fair, adequate, equitable and reasonable, the product of good faith, arms'-length
13 negotiations between the Parties, are consistent with public policy, and fully comply with
14 applicable provisions of law, and in the best interests of all Class Members.

15 **RELEASE AS TO ALL CLASS MEMBERS**

16 50. Plaintiff does, and all Participating Class Members will, agree that upon the
17 Effective Date, they shall be deemed to have, and by operation of the Final Approval Order and
18 Judgment shall have, released the Released Parties from the Released Claims. The Settlement
19 Payments shall be paid to Participating Class Members specifically in exchange for the release of
20 the Released Parties from the Released Claims.

21 **FUNDING AND DISTRIBUTION OF GROSS SETTLEMENT AMOUNT**

22 51. Within five days (5) days of the Effective Date, Defendant shall pay \$220,000, the
23 new money component of GSA to the Settlement Administrator. Defendant shall also pay the
24 Employer Tax Obligations as calculated by the Administrator and communicated by it to the
25 Defendant by at least the Effective Date of Settlement.

26 52. Following anticipated Court-approved deductions for the Attorneys' Fees of one-
27 third of the GSA (\$152,997), and Costs Payment (up to \$9,500), Service Payment (\$10,000),
28 PAGA payment to the LWDA (\$7,500), and Settlement Administration expenses (up to \$7,500),

1 the remaining sum, the Net Settlement Amount estimated at \$30,003 will be entirely distributed to
2 all Participating Class Members on a proportionate basis using the number of Workweeks he or
3 she worked during the Class Period in relation to the aggregate number of Workweeks worked by
4 all Participating Class Members during the Class Period. Participating Class Members who worked
5 during the PAGA Period will receive a portion of the \$2,500 portion of the PAGA Payment
6 allocated to them based on the number of Pay Periods during the PAGA Period they worked.

7 53. Within ten (10) business days of the receipt of the GSA, the Settlement
8 Administrator shall distribute the Settlement Payments to Participating Class Members, the PAGA
9 Payment to the LWDA, the Court-approved sums for Attorneys' Fees and Litigation Costs, the
10 Service Payment, and the Settlement Administration Payment.

11 **NOTICE AND APPROVAL OF SETTLEMENT AND IMPLEMENTATION**

12 54. The Parties agree to the following procedures for obtaining Preliminary Approval
13 of the Settlement, and providing notice of the Settlement to the Class:

14 A. Preliminary Approval Hearing. Class Counsel shall move the Court for
15 Preliminary Approval of the Settlement, and will submit this Agreement with that motion.

16 B. Information Regarding Class. Within fourteen (14) calendar days of
17 Preliminary Approval, Defendant shall provide the Settlement Administrator with a list showing
18 for each member of the Class the following information: name, most current or last known mailing
19 address, telephone number(s) and email address as indicated in Defendants' records, social
20 security number, dates of employment, and the aggregate number of Workweeks, and aggregate
21 number of Pay Periods (the "Class Data List").

22 C. Notice to Class Members. The Settlement Administrator shall mail the
23 Court-approved Notice of Class Action Settlement, Change of Address Form, and pre-printed
24 return envelope ("Notice Packet") in English and Spanish by U.S. First Class Mail to all Class
25 Members within ten (10) business days of receipt of the Class Data List.

26 D. Settlement Administrator. The Settlement Administrator shall be
27 responsible (a) for printing and mailing the Notice Packet as directed by the Court; (b) establishing
28 a toll-free number and post-office box for receipt of Class Member communications; (c) receiving

1 and reviewing all communications from Class Members and others seeking information on
2 eligibility as a Class Member; (d) consulting with counsel for the Parties as necessary concerning
3 the data, resolution of disputed claims, and status of the settlement process, and weekly status
4 reports; (e) receiving and tracking Class Member communications; (f) weekly status reports; (g)
5 calculating and informing Defendant of the Employer Tax Obligations; (h) calculating Individual
6 Settlement Payments, including applicable taxes and withholdings; (i) distributing Individual
7 Settlement Payments as Ordered by the Court; (j) submitting tax documents to applicable taxing
8 authorities; (k) handling uncashed checks; (l) cooperating with counsel for the Parties as necessary
9 to prepare declarations in support of the motion for preliminary and/or final approval of the
10 Settlement; and (m) for such other tasks as the Parties set forth in this Agreement or as the Parties
11 mutually agree or the Court orders the Settlement Administrator to perform. The Parties each
12 represent they do not have any financial interest in the Settlement Administrator or otherwise have
13 a relationship with the Settlement Administrator that could create a conflict of interest. The Parties
14 agree to cooperate in the settlement administration process and to make all reasonable efforts to
15 control and minimize the Settlement Administration Payment.

16 **CLASS NOTICE**

17 55. The Parties agree to the following for giving notice of this Settlement to the Class:

18 A. Before mailing the Notice Packets, the Settlement Administrator will update
19 the addresses for all Class Members using the National Change of Address database and other
20 resources deemed suitable by the Administrator. For each former employee Class Member, the
21 Settlement Administrator shall undertake reasonable address verification using Accurant, or
22 similar skip tracing. If these processes yield an updated address, that updated address shall be used
23 to mail the Class Notice and subsequent Settlement mailings. After updating the addresses, the
24 Settlement Administrator shall mail a Notice Packet to each Class Member by first class U.S. Mail
25 within ten (10) business days of receipt of the Class Data List. The envelope containing the Notice
26 and Change of Address shall include the following language on the exterior:

27 **IMPORTANT LEGAL DOCUMENT:**
28 **You may get Money from a Class Action
Settlement; your prompt reply to correct a
BAD address is required.**

1 B. Notice Packets returned to the Settlement Administrator with a forwarding
2 address shall be re-mailed by the Administrator within five (5) business days of receipt of the
3 returned Notice Packet. All Notice Packets returned to the Settlement Administrator as non-
4 deliverable shall be researched by the Administrator using the Class Member's social security
5 number to determine any possible new address, and if a new address is located, the Notice Packet
6 shall be re-mailed within five (5) business days of receipt of the returned Notice Packet. Class
7 Members who received a re-mailed Notice Packet shall have their Response Deadline extended
8 fifteen (15) calendar days from the original Response Deadline. If a Notice Packet belonging to a
9 currently employed Class Member is returned as undeliverable, the Settlement Administrator will
10 notify the Parties and Defendant shall confirm the most recent address they have and provide it to
11 the Settlement Administrator for remailing of the Notice Packet within five (5) business days of
12 receipt of the updated address.

13 C. Class Members will be responsible for keeping the Settlement
14 Administrator apprised of any changes of address to ensure receipt of their Individual Settlement
15 Payment checks.

16 **PROCEDURE FOR OBJECTING TO**
17 **OR REQUESTING EXCLUSION FROM THE SETTLEMENT**

18 56. Class Members who wish to object to the Settlement or to exclude themselves from
19 the Class shall use the following procedures:

20 A. Procedure for Objecting. The Class Notice shall state any Class Member
21 who wishes to object to the Settlement may return to the Settlement Administrator, a written
22 statement which includes the specific reasons for the objections on or before the Response
23 Deadline, and as set forth in the Notice.

24 B. Procedure for Requesting Exclusion. Class Members must return a written
25 statement (as directed by the Notice) postmarked no later than the Response Deadline. The written
26 request for exclusion must contain the name of the person requesting exclusion. In the event the
27 postmark is illegible, the request for exclusion shall be deemed untimely unless it is received within
28 five (5) calendar days of the Response Deadline. Any Class Member who properly opts out of the

1 Class will not receive any payment from the Net Settlement Amount, will not be bound by the
2 Settlement or have any right to object or appeal. Class Members who do not submit a valid and
3 timely request for exclusion, shall receive a Settlement Payment and be bound by all Settlement
4 terms and any Judgment entered in this Action.

5 **NO SOLICITATION OF SETTLEMENT OBJECTIONS OR EXCLUSIONS**

6 57. The Parties agree to use their best efforts to carry out the terms of this Agreement.
7 At no time shall any Party or their counsel (or the Settlement Administrator) seek to solicit or
8 otherwise encourage anyone to submit written objections to the Settlement or requests for
9 exclusion from eligible Class Members or encourage anyone to appeal from the Court's Judgment.

10 **CALCULATION OF INDIVIDUAL SETTLEMENT PAYMENTS**

11 **AND TAX OBLIGATIONS PAYMENT**

12 58. The Settlement Administrator shall have the authority and obligation to calculate
13 the Individual Settlement Payments in accordance with the methodology in this Agreement and
14 orders of the Court. Participating Class Members will receive an Individual Settlement Payment
15 based upon their number of Workweeks in relation to the aggregate number of Workweeks worked
16 by all Participating Class Members during the Class Period. All Class Members who worked
17 during the PAGA Period will also receive a proportionate share of the \$2,500 PAGA Payment
18 based on their number of Pay Periods during the PAGA Period in relation to the aggregate number
19 of Pay Periods worked by all Participating Class Members during the PAGA Period.

20 59. Any dispute regarding a Class Member's aggregate number of Workweeks will be
21 resolved and decided by the Settlement Administrator and Counsel for the Parties based on
22 Defendant's records which, for purposes of this Settlement only, will be presumptively
23 determinative, subject to rebuttal by competent information and evidence. Each Class Member's
24 aggregate number of Workweeks will be stated on the Class Member's Class Notice. Any Class
25 Member wishing to dispute the Workweek information must do so in writing by the Response
26 Deadline and submit all supporting evidence to the Settlement Administrator at that time. Within
27 seven (7) days after receipt of any letter raising a dispute, but no later than seven (7) days after
28 the Response Deadline, the Settlement Administrator and Counsel for the Parties will determine,
based on information and documentary evidence provided, whether the information provided by

1 the Defendant was correct. The Settlement Administrator will consult with Counsel for the Parties
2 in reaching this determination. The Settlement Administrator will give written notice to the Class
3 Member of the determination of each dispute. Any disputes over the Class Member's aggregate
4 number of Workweeks on which the Parties cannot agree upon shall be resolved by the Court.

5 60. The Parties agree the formula for allocating the Individual Settlement Payments to
6 the Class is reasonable and that the payments are designed to provide a fair settlement to the Class,
7 despite the uncertainties of the compensation and penalties alleged and their calculation.

8 61. Each Participating Class Member will be responsible for paying all applicable local,
9 state, and federal taxes on Settlement Payments paid under the terms of this Settlement and will
10 be provided with W-2 and 1099 tax forms. Each Participating Class Member shall cooperate with
11 Defendant and the Settlement Administrator and provide documentation to demonstrate such
12 payment should any taxing authority challenge the allocation of the Settlement Payments.

13 62. It shall be the responsibility of the Settlement Administrator or its designee to
14 timely calculate and withhold from the Settlement Payments all Participating Class Member tax
15 obligations on the portion allocated as wages; to timely calculate and withhold from the Net
16 Settlement Amount the appropriate payroll deductions; to calculate and report to Defendant the
17 necessary Employer Tax Obligations, and to prepare and deliver the necessary tax documentation
18 for signature by all necessary parties, and to cause the appropriate deposits of withholding taxes
19 and informational and other tax return filing to occur. Once received from Defendant, the
20 Settlement Administrator shall pay the Employer Tax Obligations to the appropriate taxing
21 authorities within thirty (30) days of the distribution.

22 63. Defendant makes no representations as to the tax treatment or legal effect of the
23 payments under the Settlement, and Plaintiff and Participating Class Members are not relying on
24 any statement or representation by Defendant in this regard. Plaintiff and Participating Class
25 Members understand and agree that except for Defendant's payment of the employer's portion of
26 any payroll taxes, they will be solely responsible for the payment of any taxes and penalties
27 assessed on the Settlement payments.

28 ///

1 **ATTORNEYS' FEES AND COSTS PAYMENT AND SERVICE PAYMENT**

2 64. Class Counsel shall be request up to \$152,997 (one-third of the \$458,991 GSA) as
3 Attorneys' Fees, and up to \$9,500 as reimbursement of litigation costs. The amounts paid in fees
4 and costs shall be for all claims for attorneys' fees, expenses, or costs past, present, and future
5 incurred in the Action. Defendant shall not oppose Class Counsel's Attorneys' Fees and Costs
6 Payment request in these amounts.

7 65. Individual Settlement Payment, Plaintiff Manual Gutierrez shall request up to
8 \$10,000 as a Service Payment for having initiated this Action, work performed in furtherance of
9 the Action, and the risks associated with the payment of attorneys' fees and costs in the event this
10 matter had not successfully concluded, for the substantial benefits conferred upon the Class,
11 including benefits conferred upon current and future employees as a result actions taken following
12 initiation of the Action, and a General Release of all claims. Defendant shall not oppose the Service
13 Payment request in this amount. The Service Payment approved by the Court shall be a part of,
14 and paid from, the GSA. This payment shall not have any state or federal taxes withheld and shall
15 be reported on IRS Form 1099. Plaintiff shall be responsible for paying any taxes owing.

16 **PAGA PAYMENT**

17 66. The Parties allocated \$10,000 to settle the Class' PAGA claims under Labor Code
18 § 2699, ("PAGA Payment"). Labor Code § 2699(i) requires any settlement under this section be
19 distributed 75% to the State's Labor Workforce Development Agency ("LWDA") for enforcement
20 of labor laws and education of employers, and 25% to the aggrieved employees, and \$7,500 will
21 be paid to the LWDA, and the remaining \$2,500 will remain in the Net Settlement Amount to be
22 distributed on a proportional basis to Class Members based on the number of Pay Periods worked
23 during the PAGA Period.

24 **FINAL APPROVAL HEARING AND ENTRY OF ORDER AND JUDGMENT**

25 67. Following the Response Deadline, on a date set by the Court, the Court will conduct
26 a Final Approval Hearing upon the filing of a Motion for Order Granting Final Approval and
27 Entering Judgment. The proposed Order Granting Final Approval of the Class Action Settlement
28 and Entering Judgment is attached as Exhibit "D".

1 **PROCEDURE FOR PAYMENT OF INDIVIDUAL SETTLEMENT PAYMENTS**

2 68. Following Final Approval, and solely for purposes of this Agreement, the
3 Settlement Payments shall be distributed based on the following eligibility:

4 A. Participating Class Members shall receive a Settlement Payment under the
5 plan of allocation and will be bound by the terms of the Settlement and any order or judgment
6 entered by the Court approving this Settlement.

7 B. Class Members who request exclusion and return a valid and timely request
8 for exclusion, are not Participating Class Members, and will not be bound by this Settlement or
9 any order or judgment entered by the Court approving this Settlement. The funds associated with
10 Class Member's opting-out will remain part of the Net Settlement Amount and proportionally
11 increase each Participating Class Member's final Settlement Payment. Even Class Members who
12 opt out, however, will receive a proportionate share of the 25% portion of the PAGA Penalty.

13 69. Individual Settlement Payments to Participating Class Members shall be paid
14 pursuant to the formula and at the times stated in this Agreement. The Settlement Administrator's
15 determination of eligibility for, and the calculations of, Settlement Payments shall be conclusive,
16 final, and binding on all Parties, including all Class Members.

17 70. Settlement Payment checks issued to Participating Class Members shall remain
18 valid and negotiable until 180 calendar days after the date of issuance and may automatically be
19 canceled if not cashed within that time. All sums represented by uncashed checks will be forwarded
20 to the State of California, Controller's Unclaimed Property Division for further handling on behalf
21 of the Class Member whose check was voided.

22 71. No person shall have any claim against the Released Parties, Defendant's Counsel,
23 the Plaintiff, the Class, Class Counsel, or the Settlement Administrator based on mailings,
24 calculations, distributions and payments made in accordance with or pursuant to this Agreement.

25 **NULLIFICATION OF SETTLEMENT AGREEMENT**

26 72. In the event: (i) the Court does not enter any Order as requested; (ii) the Court does
27 not finally approve the Settlement; (iii) the Court does not enter a final Judgment; or (iv) the
28 Settlement does not become effective for any other reason, this Agreement shall be null and void

1 and any order or judgment entered by the Court in furtherance of this Settlement shall be treated
2 as withdrawn or vacated by stipulation of the Parties. In such a case, the Parties shall be returned
3 to their status as of the date and time immediately before the execution of this Agreement, and the
4 Parties shall proceed in all respects as if this Agreement had not been executed. In the event an
5 appeal is filed from the Court's Judgment, or any other appellate review is sought before the
6 Effective Date, administration of the Settlement shall be stayed pending final resolution of the
7 appeal or other appellate review.

8 **NOTIFICATION AND CERTIFICATION BY SETTLEMENT ADMINISTRATOR**

9 73. The Settlement Administrator shall keep Defendant's Counsel and Class Counsel
10 apprised of all distributions of Settlement Payments and upon completion of administration of that
11 portion of the Settlement, the Settlement Administrator shall provide written certification of
12 progress of such completion to counsel for all Parties and the Court as requested.

13 **NO EFFECT ON EMPLOYEE BENEFITS**

14 74. The Settlement Payments issued and paid to Participating Class Members and the
15 Service Payment issued and paid to Plaintiff shall be deemed not to be "pensionable" earnings and
16 shall not have any effect on the eligibility for, accrual of, or calculation of, any employee benefits
17 (e.g. vacations, holiday pay, retirement plans, 401(k), Employee Stock Purchase Plan, etc.) of the
18 Plaintiff or Participating Class Members. The Parties agree any Settlement Payments to
19 Participating Class Members and the Service Payment under the terms of this Agreement do not
20 represent any modification of Participating Class Members' previously credited hours of service
21 or other eligibility criteria under any employee plan for stock purchase, pension benefit, or
22 employee welfare benefit sponsored by Defendant.

23 **GENERAL PROVISIONS**

24 75. Exhibits. The terms of this Agreement include the terms in Exhibits A - D, which
25 are incorporated by reference as though fully set forth. Any exhibits to this Agreement are an
26 integral part of the Settlement. Any changes to exhibits following preliminary approval by the
27 Court, shall be approved by all Parties, but shall not be re-submitted to the Court if changes are
28 minor, clerical, and do not materially alter the originally submitted documents.

1 76. Headings. The descriptive headings of any paragraphs or sections of this
2 Agreement are for convenience of reference only and do not constitute a part of this Agreement.

3 77. Interim Stay of Proceedings. The Parties agree to hold all proceedings in the Action,
4 except proceedings necessary to implement and complete the Settlement, in abeyance pending the
5 Final Approval Hearing.

6 78. Amendment or Modification. This Agreement may be amended or modified only
7 by a written instrument signed by counsel for all Parties or their successors-in-interest.

8 79. Entire Agreement. This Agreement and any attached Exhibits constitute the entire
9 agreement among these Parties, and no oral or written representations, warranties, inducements,
10 or covenants have been made to any Party concerning this Agreement or its Exhibits. All prior
11 negotiations, agreements, understandings, and representations, written or oral, are expressly
12 superseded and are of no further force and effect. Each Party acknowledges it has not relied on
13 any promise, representation, or warranty, express or implied, not contained in this Agreement.

14 80. Authorization to Enter Into Settlement Agreement. Counsel for all Parties warrant
15 and represent they are expressly authorized by the Parties whom they represent to negotiate this
16 Agreement and to take all appropriate action required or permitted to be taken by such Parties to
17 effectuate this Agreement, and to execute any other documents required to effectuate its terms.
18 The Parties and their counsel will cooperate with each other and use their best efforts to effectuate
19 the implementation of the Settlement. In the event the Parties are unable to reach agreement on
20 the form or content of any document needed to implement the Settlement, or on any supplemental
21 provisions that may become necessary to effectuate the terms of this Settlement, the Parties may
22 seek the assistance of the Mediator or the Court to resolve such disagreement.

23 81. Binding Agreement. The Parties intend this Agreement to be fully enforceable and
24 binding on all Parties, including Class Members, and shall be admissible in any proceeding to
25 enforce its terms, notwithstanding the mediation confidentiality provisions that otherwise might
26 apply under federal or state law, pursuant to California Code of Civil Procedure section 664.6.

27 82. Binding on Successors. This Agreement shall be binding upon, and inure to the
28 benefit of, the heirs, beneficiaries, or successors of the Parties.

1 83. Assignment. None of the rights, commitments, or obligations recognized under
2 this Agreement may be assigned by any Party, Class Member, Class Counsel, or Defendant's
3 Counsel without the express written consent of each other Party and their respective counsel. The
4 representations, warranties, covenants, and agreements contained in this Agreement are for the
5 sole benefit of the Parties and shall not be construed to confer any right to any other person.

6 84. California Law Governs. All terms of this Agreement and the Exhibits shall be
7 governed by and interpreted according to the laws of the State of California.

8 85. Venue. Any adjudicated dispute regarding the interpretation or validity of or
9 otherwise arising out of this Agreement, or relating to the Action or the Released Claims, shall be
10 subject to the exclusive jurisdiction of the Court in which the Parties seek approval of this
11 Settlement, and the Plaintiff, Class Members, and Defendant agrees to submit to the personal and
12 exclusive jurisdiction and venue of that Court.

13 86. Class Action Certification for Settlement Purposes Only. The Parties agree to
14 stipulate to class action certification only for purposes of the Settlement. If, for any reason, the
15 Settlement is not approved, the stipulation to certification will be void. The stipulation to
16 certification will not be admissible in this or any other proceeding as evidence a class action
17 should or would be certified.

18 87. Confidentiality. Plaintiff, Plaintiff's Counsel, Class Counsel, Defendant and their
19 counsel agree they will not issue any press releases, initiate any contact with the press, respond
20 to any press inquiry or have any communication with the press about the fact, amount or terms of
21 the Settlement Agreement before Preliminary Approval.

22 88. Binding Agreement. The Parties warrant that they understand and have full
23 authority to enter into this Settlement, and further intend this Settlement Agreement will be fully
24 enforceable and binding on all parties.

25 89. Counterparts. This Agreement may be executed in one or more counterparts. All
26 executed counterparts and each of them shall be deemed to be one and the same instrument.

27 90. Facsimile and Electronic Signatures. A signed facsimile or electronic version of
28 this Agreement shall have the same force and effect as a signed original of this Agreement.

91. Jurisdiction of the Court. The Court shall retain jurisdiction solely with respect to the interpretation, implementation, and enforcement of the terms of this Agreement and all orders and judgments entered in connection with the Agreement, and the Parties and their counsel submit to the jurisdiction of the Court for these purposes. In the event judicial intervention or enforcement is necessary, the prevailing Party shall be entitled to an award of attorneys' fees, costs and interest.

92. Cooperation and Drafting. Each of the Parties has cooperated in the drafting and preparation of this Agreement and its language shall not be construed against any of the Parties.

93. Invalidity of Any Provision. The Parties request before declaring any provision of this Agreement invalid, the Court first attempt to construe all provisions valid to the fullest extent possible consistent with applicable precedents.

THE PARTIES SO AGREE:

5/17/2021
Date: _____, 2021
By: Manual Gutierrez
Manual Gutierrez, Plaintiff Class Representative

KITE ELECTRIC INCORPORATED

Date: _____, 2021
By: _____
Mr. Tracy Adams, President

May 18
Date: _____, 2021
By: Jeff Geraci
Jeff Geraci
Attorneys for Plaintiff / Class Representative

COHELAN KHOURY & SINGER

May 17, 2021
Date: _____, 2021
By: James W. Michalski
James W. Michalski
Attorneys for Defendant

MICHALSKI LAW OFFICES

91. Jurisdiction of the Court. The Court shall retain jurisdiction solely with respect to the interpretation, implementation, and enforcement of the terms of this Agreement and all orders and judgments entered in connection with the Agreement, and the Parties and their counsel submit to the jurisdiction of the Court for these purposes. In the event judicial intervention or enforcement is necessary, the prevailing Party shall be entitled to an award or attorneys' fees, costs and interest.

92. Cooperation and Drafting. Each of the Parties has cooperated in the drafting and preparation of this Agreement and its language shall not be construed against any of the Parties.

93. Invalidity of Any Provision. The Parties request before declaring any provision of this Agreement invalid, the Court first attempt to construe all provisions valid to the fullest extent possible consistent with applicable precedents.

THE PARTIES SO AGREE:

Plaintiff/Class Representative

Date: _____, 2021

By: _____
Manual Gutierrez, Plaintiff Class Representative

KITE ELECTRIC INCORPORATED

Date: 1-4, 2021

By: 
Mr. Tracy Adams, President

Date: _____, 2021

COHELAN KHOURY & SINGER

By: _____
Jeff Geraci
Attorneys for Plaintiff / Class Representative

Date: _____, 2021

MICHALSKI LAW OFFICES

By: _____
James W. Michalski
Attorneys for Defendant

EXHIBIT A

Superior Court of California, County of Orange
Manuel Gutierrez vs. Kite Electric Incorporated
Case No. 30-2020-01133960-CU-OE-CXC

*A court authorized this Notice. This is not a solicitation.
This is not a lawsuit against you and you are not being sued.
However, your legal rights are affected whether you act or don't act.*

NOTICE OF CLASS ACTION SETTLEMENT

To: All persons employed by Kite Electric in California as a non-exempt electrician at any time during the period from February 24, 2016 through February 19, 2021 (the “Class” or “Class Members”).

If you are a Class Member, as described above, you are eligible for a payment from the Class Action Settlement. You do not need to return a claim form.

PLEASE READ THIS NOTICE CAREFULLY.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING	To receive your Settlement Payment, you do not need to do anything. Your payment will be automatically mailed to you after the Court grants final approval of the Settlement. The amount of your Settlement Payment is shown on page 9 of this Notice. <u>NOTE:</u> You must keep a current address on file with the Settlement Administrator to ensure receipt of your check.
UPDATE YOUR ADDRESS	Update your personal information with the Settlement Administrator to make sure your Settlement Payment is sent to the correct address. (A Change of Address Form and return envelope are enclosed with this Notice.)
EXCLUDE YOURSELF	If you do not wish to participate in the Settlement, you can exclude yourself from the Settlement and retain all rights you may have against Kite for the Class Claims. However, PAGA does not allow individuals to exclude themselves, so if you exclude yourself from the Settlement, you will still receive your share of the PAGA Payment, and release your PAGA claims.
OBJECT	Write to the Court if you think the Settlement is not fair. You may speak in Court about why you think the Settlement is not fair. <u>NOTE:</u> If you ask to exclude yourself from the Settlement, you cannot also object.

- **THIS NOTICE EXPLAINS YOUR RIGHTS AND THE DEADLINES TO EXERCISE THEM**
- **DEFENDANT SUPPORTS THE SETTLEMENT AND WILL NOT RETALIATE AGAINST ANY CLASS MEMBER FOR EXERCISING THE RIGHTS DESCRIBED IN THIS NOTICE**

WHAT THIS NOTICE CONTAINS

BASIC INFORMATION

1. Why did I get this Notice?Page
2. What is this Action about?Page
3. Who are the Parties in this Action?.....Page
4. Why is this a Class Action?Page
5. Who are the attorneys for the Parties?Page
6. Why is there a Settlement?Page

THE TERMS OF THE SETTLEMENT

7. What is the Settlement Amount?Page
8. How much will my Settlement Payment be?Page

HOW TO GET A PAYMENT

9. How can I get my Settlement Payment?Page
10. What do I do if I think my information and/or number of Work Weeks are wrong?Page
11. When can I expect to receive my Settlement Payment?Page
12. What am I giving up to get a Settlement Payment?Page

EXCLUDING YOURSELF FROM THE SETTLEMENT

13. How do I get out of the Settlement?Page
14. If I don't exclude myself from the Settlement, can I sue Kite for the same thing later?Page
15. If I exclude myself, can I get money from this Settlement?Page

OBJECTING TO THE SETTLEMENT

16. How do I tell the Court if I don't like the Settlement?Page
17. What's the difference between objecting and requesting to be excluded from the Action?.....Page

THE COURT'S FINAL FAIRNESS HEARING

18. When and where will the Court decide whether to approve the Settlement?Page
19. Do I have to come to the hearing?Page
20. May I appear and speak at the hearing?Page

GETTING MORE INFORMATION

21. Who can I contact if I have questions about the Settlement?Page

ADDITIONAL IMPORTANT INFORMATION.....Page

EMPLOYEE INFORMATION SHEET.....Page

BASIC INFORMATION

1. **Why did I get this Notice?**

You received this Notice because Kite Electric Incorporated's records show you worked for Kite as a non-exempt electrician in California sometime from February 24, 2016 through February 19, 2021.

The purpose of this Notice is to explain the lawsuit, the Settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them.

The Court in charge of the case is the Superior Court of the State of California, County of Orange, and the case is known as *Gutierrez v. Kite Electric Incorporated*, Case No. 30-2020-01133960-CU-OE-CXC (the "Action").

2. **What is this Action about?**

The Action alleges Kite did not provide Class Members all wages, including overtime wages due for all hours worked, and failed to provide legally compliant rest breaks, or compensation for missed rest breaks, and this caused inaccurate wage statements, and failure to timely pay all wages due when leaving employment.

Kite denies all allegations in the Action and contends it complied with California law at all times. The Settlement is not an admission of any wrongdoing by Kite or an indication any law was violated.

3. **Who are the Parties in this Action, and the Proposed Class Members?**

Plaintiff Manual Gutierrez was employed in California by Kite as a non-exempt electrician in Orange County, California from June to October 2019.

Kite Electric Incorporated, ("Kite") a California Corporation, is the Defendant.

Class Members are defined as all non-exempt electricians employed by Kite in California at any time from February 24, 2016 through February 19, 2021. There are an estimated 100 members of the Class.

4. **Why is this a Class Action?**

In a class action, one or more people called Class Representatives (in this case, Manual Gutierrez) sue on behalf of themselves and other people who they allege have similar claims. This group of people is called a "class." Each person receiving this notice is a "Class Member" for purposes of this Settlement.

5. **Who are the attorneys for the Plaintiff and the Class?**

COHELAN KHOURY & SINGER

Jeff Geraci / Diana M. Khoury
605 "C" Street, Suite 200
San Diego, California 92101-5305
Telephone: (619) 595-3001

LAW OFFICE OF SAHAG MAJARIAN, II

Sahag Majarian II
18250 Ventura Blvd.
Tarzana, California 91356
Telephone: (818) 609-0807

If you have questions regarding this Settlement, you should contact Plaintiff's Counsel or the Settlement Administrator. Do **NOT** contact the attorneys for Kite, its managers, or supervisors.

6. **Why is there a Settlement?**

The Court did not decide in favor of Plaintiff or Kite. There was no trial. Both sides agreed to settle the Action to avoid the cost and risks of a trial, and ensure Class Members get compensation from the Settlement.

THE TERMS OF THE SETTLEMENT

7. What is the Settlement Amount?

The proposed Settlement provides for a maximum settlement amount of **\$458,991** to fully and finally resolve all claims in the Action (referred to as the “Gross Settlement Amount”). The Gross Settlement Amount includes amounts already paid by Kite to Class Members in the sum of \$238,991 after Mr. Gutierrez filed charges against Kite with the State of California, and before the Parties agreed to a settlement of all claims described in this Notice. In addition to the prior amount paid, Kite will pay an additional maximum sum of \$220,000 from which Class Counsel will apply to the Court for: (1) attorneys’ fees of up to one-third of the Gross Settlement; (2) litigation costs estimated to be \$9,500; (3) a Class Representative service payment of \$10,000 to Manual Gutierrez for his work, efforts and burdens in prosecuting the Action, and for undertaking the risks of a judgment for costs in the event of an unsuccessful outcome; (4) administration expenses estimated to be \$7,500, and (5) a payment to the California Labor Workforce and Development Agency, under the Private Attorneys General Act of 2004 (“PAGA”) in the sum of \$7,500 (75% of \$10,000) for the government’s share of civil penalties alleged, and a payment of \$2,500 (25% of \$10,000) to be distributed to PAGA Members.

The exact amount of attorneys’ fees and litigation costs, Class Representative Service payment, and Administration expenses will be determined by the Court at a Final Approval hearing. The remaining portion of the Settlement, the “Net Settlement,” estimated at \$30,003.00 will be apportioned and paid entirely to all Class Members who do not request to be excluded from the Settlement, (“Participating Class Member”). **Claim forms are not required.** Participating Class Members will receive a proportionate share of the Net Settlement Amount based on the number of Work Weeks worked anytime from February 24, 2016 to February 19, 2021. Participating Class Members who worked during the PAGA Period, December 21, 2018 to December 31, 2019, will receive a share of the \$2,500 PAGA Payment.

8. How much will my Settlement Payment be?

The estimated amount of your Settlement Payment is shown on the Employment Information Sheet, page 9 of this Notice. The amount shown is an estimate. The actual amount you receive may be more or less than the estimated amount shown, depending on a number of factors including whether other Class Members request exclusion from the Settlement and how much the Court approves in attorneys’ fees, litigation expenses, and other costs of suit. This Settlement Payment is in addition to the amount Kite paid to you in 2020.

HOW TO GET A PAYMENT

9. How can I get my Settlement Payment?

If you do nothing, you will automatically receive your Settlement Payment if the Court approves the Settlement at the Final Approval hearing. You must, however, notify the Settlement Administrator of any change in your name or mailing address if the name, or address to which this Notice was mailed, is not correct. **It is your responsibility to keep the Settlement Administrator informed of any change in your mailing address. Your Settlement Payment will be mailed to the last known address it has on file for you.** You may call the Settlement Administrator at 1-8xx-xxx-xxxx. You may also contact attorneys for the Class. (See Paragraph 5).

10. What do I do if I think my information or Number of Work Weeks is wrong?

The amount of your Settlement Payment is based on the number of Work Weeks you worked during the Class Period. The number of Work Weeks shown on the Employment Information Sheet (on page 9), was obtained

from Kite's records. If you believe this information is not correct, you may send a letter to the Settlement Administrator stating what you believe is the correct information. Your letter must be postmarked on or before _____, 2022 [45 days after the initial mailing of the Notice Packet]. You should include any documents or other information supporting your belief the information in the Employment Information Sheet is not correct. The Settlement Administrator will resolve any dispute about the number of Work Weeks based on Kite's records and any information you provide.

11. When can I expect to receive my Settlement Payment?

If you do not exclude yourself from the Settlement, and there are no objections submitted, your share of the Settlement will be mailed to you about 30 days after the Court grants final approval of the Settlement and enters judgment. ***Your share of the Settlement will be mailed to the address the Settlement Administrator has on file for you, which is the address this Notice was mailed to.*** Again, if this address is not right, or if you move after you receive this Notice, you must inform the Settlement Administrator.

The Settlement Payment will be allocated one-third for wages, one-third for penalties, and one third for interest. Participating Class Members will be responsible for correctly characterizing this compensation for tax purposes and paying taxes due, if any. The Administrator will issue IRS W-2 for the amount of the wages and 1099 forms for the penalties and interest together with your Settlement Payment. If checks remain uncashed after 180 days of issuance, the Settlement Administrator will place a stop payment on those checks and send the funds, in your name, to the State of California's Secretary of State, Unclaimed Property Division for further handling.

12. What am I giving up to get a payment?

After the Court has approved the Settlement, unless you excluded yourself, you are staying in the Class and you can't sue, continue to sue, or be part of any other lawsuit against Defendants concerning the legal issues in this Action. You will be bound by the judgment in this Action and you will "give up" or release these claims:

Released Claims: All Class Members who do not return a valid and timely request for exclusion fully release and discharge Kite Electric Incorporated and its past, present, and future officers, directors, principals, heirs, joint employers, client employers, employees, agents, representatives, accountants, auditors, attorneys, consultants, insurers, reinsurers, partners, investors, shareholders, parent companies, subsidiaries, affiliates, predecessors, successors, assigns, and joint venturers ("Released Parties") from any and all claims, debts, liabilities, demands, obligations, damages, liens and/or actions or causes of action of any kind that were alleged in the Complaint, or that could have been alleged based on the same nucleus of operative facts, including any claims that have been or could have been alleged against the Released Parties, or any of them, arising out of the same nucleus of operative facts alleged in the Complaint, and including claims under California Labor Code sections 201, 202, 203, 226(a), 226(e), 226.7, 558, 1174, 1174.5, 1194, 1194.2, 2699, subd.(f), 2699.3, and the Wage Orders promulgated thereunder; and California Business & Professions Code section 17200 *et seq.* The Released Claims specifically exclude claims for workers' compensation, unemployment insurance and state disability compensation, claims under the Employment Retirement Income Security Act of 1974, and claims for previously vested benefits under any Employer-sponsored benefits plan.

EXCLUDING YOURSELF FROM THE CLASS AND SETTLEMENT

13. How do I get out of the Class and Settlement?

If you wish to pursue a separate lawsuit, with a separate attorney at your own expense, or do not want to participate in the Settlement for other reasons, you should exclude yourself from this case (that is, "opt out" of the Class and this Settlement). To opt out of the Class and Settlement, you must return a written statement

(postmarked no later than the Response Deadline) which includes your full name, via first-class U.S. Mail addressed to the Administrator at:

Kite Electric Class Action Settlement Administrator
c/o ILYM Group, Inc.
P. O. Box _____
Irvine, CA 9____

Even if you return a valid and timely Request for Exclusion Form, you will still receive a share of the \$2,500 PAGA Penalties available to those Class Members who worked any time during the PAGA Period, December 21, 2018 through December 31, 2019 based on the number of Pay Periods you may have worked during the PAGA Period, and will release only the PAGA penalties.

14. If I don't exclude myself from the Settlement, can I sue Kite for the same thing later?

No. Unless you exclude yourself from this Action, you give up any right to sue Kite for the claims settled in this Lawsuit. ***If you have a claim or lawsuit already against Kite, you must speak to your lawyer in that case immediately.*** You must ask to exclude yourself from this Lawsuit to continue your own lawsuit.

15. If I exclude myself, can I get money from this Settlement?

No. If you exclude yourself, you will not receive a Settlement Payment, but you will receive a share of the PAGA Penalties as mentioned in Paragraph 13. The Settlement Payment you would have received will be go to Participating Class Members.

OBJECTING TO THE SETTLEMENT

16. How do I tell the Court that I don't like the Settlement?

If you don't think the Settlement is fair, you may object to the Settlement and tell the Court why you disagree with the Settlement as a whole. But if you only think your Settlement Payment was miscalculated, use the process in Paragraph 10 to try and correct that information. If you return a Notice of Objection to Settlement Form, the Court will consider your views. To object to the Settlement, you should return to the Settlement Administrator, a written statement which includes the specific reasons for the objection on or before the Response Deadline. If you intend to use any documents to support your objection, a copy of the documents must be included with the written objection at the time of submission. The written objection must be mailed to the Administrator on or before _____, 2022 [45 days of the initial mailing]

Kite Electric Class Action Administrator
ILYM Group, Inc.
P. O. Box _____,
Irvine, CA 9____

You may also appear in person at the Final Approval Hearing set for _____, 2022 at ____ p.m. in Dept. CXC102 of the Orange County Superior Court to discuss your objections with the Court.

If you wish to preserve your right to appeal if your valid objection is denied, you, or a lawyer on your behalf, must file formal papers with the Court intervening in the Action, before a final judgment is entered.

17. What's the difference between objecting and requesting to be excluded from the Action?

Objecting is telling the Court you don't like something about the Settlement. You may object only if you stay in the Class. Requesting to be excluded is telling the Court you don't want to be part of the Class or the Settlement. If you request exclusion, you have no basis to object because the case no longer affects you.

If you remain in the Class and object to the Settlement, the Court will consider your objections when deciding whether to grant final approval to the Settlement. If you have submitted a timely written objection, you do not need to appear to discuss the objection with the Court.

THE COURT'S FINAL FAIRNESS HEARING

18. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Approval Hearing in Department CXC102 of the Superior Court of California, County of Orange, Civil Complex Center located at 751 West Santa Ana Blvd., Santa Ana, California 92715 on _____, 2022 at ____ a.m. At this hearing, the Court will determine whether the Settlement should be finally approved as fair, reasonable, and adequate. The Court will also be asked to approve Class Counsel's request for attorneys' fees and litigation costs, the Class Representative Service payment, and the Settlement Administrator's fees and expenses.

The Court may reschedule the Final Approval hearing without further notice to Class Members. However, any Class Member who has filed a written objection will be notified by Class Counsel of any rescheduling of the date and time of the Final Approval hearing. Should the Court grant Final Approval of the Settlement and Enter Judgment, the Court's Order approving the Settlement and Judgment may be viewed on the Administrator's website, www._____.com.

19. Do I have to come to the hearing?

No. Class Counsel will answer any questions the Judge may have. If you return a Notice of Objection to Proposed Settlement Form, you do not have to come to Court to talk about it. If you mailed your written objection in the manner discussed in Paragraph 16, the Court will consider it. You or your own lawyer, at your own expense, are also welcome to come to the hearing and discuss your objections with the Court.

20. May I appear and speak at the hearing?

Yes, but you cannot speak at the hearing if you have excluded yourself from the Settlement.

GETTING MORE INFORMATION

21. Who can I contact if I have questions about the Settlement?

This Notice is only a summary of the case and the Settlement. For more detailed information, you may view a complete copy of the settlement agreement, and any of the papers filed in the Action, at the Filing Department of the Orange County Superior Court, Civil Complex Center located at 751 West Santa Ana Blvd., Santa Ana, California, 92701 during regular Court hours.

You may also examine case records online on the Orange County Superior Court's website, at <https://ocjustice.occourts.org/civilwebShoppingNS/>. Once you've read the Court's "Information Disclaimer" and clicked "Accept Terms," type case number "01133960" and year field "2020," confirm you are not a robot and click "search." The documents filed in this case are listed in the Register of Actions, many may be available to view at a minimal charge.

You may also contact the attorneys for the Plaintiff and the Class at the contact information listed above in Paragraph 5 if you have any questions about the Settlement. You may also contact the Court-appointed Settlement Administrator by calling toll free at [REDACTED] or by writing to the Administrator at the address shown above in Paragraph 13.

**PLEASE DO NOT CONTACT THE CLERK OF THE COURT, THE JUDGE,
OR THE DEFENDANT, ITS SUPERVISORS, OR ATTORNEYS ABOUT THIS SETTLEMENT.**

ADDITIONAL IMPORTANT INFORMATION

- A. **Kite supports the Settlement** and will not retaliate in any manner against any Class Member who stays in the Class and receives a Settlement Payment or requests to opt out of the Action.
- B. **It is your responsibility to ensure the Settlement Administrator** has your current mailing address and telephone number on file. This will be the address Settlement Payments will be mailed to.
- C. **Settlement Payment checks must be cashed soon after receipt.** Checks which are not cashed after 180 days of the date of issuance will be forwarded to California's Secretary of State Controller, Unclaimed Property Division for further handling on behalf of the Class Member whose check was voided. If your check is lost or misplaced, immediately contact the Settlement Administrator and request a replacement.

Superior Court of California, County of Orange
Manuel Gutierrez vs. Kite Electric Incorporated
Case No. 30-2020-01133960-CU-OE-CXC

EMPLOYMENT INFORMATION SHEET

Class Member's Address on File with the Settlement Administrator:

Name: _____

Address: _____

City, State, Zip Code: _____

The number of Work Weeks you worked during the Class Period (February 24, 2016 to February 19, 2021) according to Kite's records is _____.

The number of Pay Periods you worked during the PAGA Period, (December 21, 2018 to December 31, 2019) according to Kite's records is _____.

Based on the information above, it is estimated that if you do not request exclusion from the Class and Settlement, you will receive an estimated \$_____, less applicable payroll taxes. The amount shown is an estimate. The actual amount you receive may be more or less than the estimate shown, depending on a number of factors.

You do not have to take any action to receive your share of the Settlement. Your share of the Settlement will be mailed to you at the address shown above.

If your address has changed, or is different than the address shown above, you must notify the Settlement Administrator at 1-8xx-xxx-xxxx to receive your Settlement Payment. You may also contact attorneys for Plaintiff and the Class, Cohelan Khoury & Singer at (619) 595-3001.

Please Note: It is highly recommended you immediately deposit or cash your check when you receive it. It will be voided after 180 days and funds represented by uncashed checks will be forwarded to California's Secretary of State, Controller, Unclaimed Property Division for further handling.

EXHIBIT B

Superior Court of California, County of Orange
Manuel Gutierrez vs. Kite Electric Incorporated
Case No. 30-2020-01133960-CU-OE-CXC

CHANGE OF ADDRESS FORM

I wish to change my name or mailing address or other contact information to the following:

Name: _____

Former Name (if applicable): _____

Street and Apt. No., if any: _____

City, State and Zip Code: _____

Telephone(s): (Home): _____; (Cell): _____

Email: _____

I understand all future correspondence in this Action, including but not necessarily limited to important notices or Settlement Payments, will be sent to the address listed above and not to the address previously used. I request and consent to the use of the address listed above for these purposes.

Submitted by:

DATED: _____, 2022

Print Name: _____

Signature: _____

**PLEASE RETURN THIS FORM IN THE ENVELOPE PROVIDED
OR VIA UNITED STATES FIRST-CLASS MAIL TO:**

Kite Electric Class Action Settlement Administrator
c/o _____
P. O. Box _____
Irvine, CA 9____,

EXHIBIT C

COHELAN KHOURY & SINGER

Michael D. Singer (SBN 115301)

msinger@ckslaw.com

Diana M. Khoury (SBN 128643)

dkhoury@ckslaw.com

Jeff Geraci (SBN 151519)

jgeraci@ckslaw.com

605 C Street, Suite 200

San Diego, CA 92101

Tel: (619) 595-3001/Facsimile: (619) 595-3000

LAW OFFICES OF SAHAG MAJARIAN II

Sahag Majarian II (SBN 146621)

sahagii@aol.com

18250 Ventura Blvd.

Tarzana, CA 91356

Tel: (818) 609-0807/Facsimile: (818) 609-0892

Attorneys for Plaintiff Manuel Gutierrez, on behalf of himself
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
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT,
CONDITIONAL CERTIFICATION,
APPROVAL OF CLASS NOTICE, AND
SETTING FINAL APPROVAL HEARING**

Date: February 3, 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 February 3, 2022 in Department CX-102 of the above-
2 captioned Court on Plaintiff's Motion for Order Granting Preliminary Approval of Class Action
3 Settlement ("Motion").

4 The Court, having fully reviewed the Motion, the supporting memorandum of Points and
5 Authorities, Declaration of Jeff Geraci of Cohelan Khoury & Singer, Declaration of Sahag Majarian II
6 of the Law Offices of Sahag Majarian II, the Stipulation of Class and Representative Action Settlement
7 And Release ("Settlement Agreement"), the proposed Notice of Class Action Settlement ("Class
8 Notice") and Change of Address Form attached as exhibits to the Settlement Agreement, having
9 carefully analyzed the Settlement Agreement and its exhibits, and in recognition of the Court's duty to
10 make a preliminary determination as to the reasonableness of any proposed class action settlement, and
11 if preliminarily determined to be reasonable, to ensure proper notice is provided to all Class Members
12 in accordance with due process requirements, and to set a Final Approval Hearing to consider the
13 proposed Settlement as to the good faith, fairness, adequacy and reasonableness of any proposed
14 Settlement, THE COURT MAKES THE FOLLOWING DETERMINATIONS AND ORDERS:

15 1. The Court conditionally finds, for the purpose of approving this settlement only, the
16 proposed Class meets the requirements for certification under California Code of Civil Procedure
17 section 382: (a) the proposed Class is ascertainable and so numerous joinder of all members of the class
18 is impracticable; (b) there are questions of law or fact common to the proposed Class, and a well-
19 defined community of interest among members of the proposed Class with respect to the subject matter
20 of the class action; (c) the claims of the Class Representative are typical of the claims of the proposed
21 Class Members; (d) the Class Representative has and will fairly and adequately protect the interests of
22 the Class Members; (e) a class action is superior to other available methods for efficient adjudication
23 of this controversy in the settlement context; and (f) counsel of record for the Class Representative are
24 qualified to serve as counsel for the Class.

25 2. The Court finds on a preliminary basis that the Settlement Agreement, attached to the
26 Declaration of Jeff Geraci as Exhibit "1," incorporated by this reference in full, and made a part of this
27 Order of preliminary approval, appears to be within the range of reasonableness of a settlement which
28 could ultimately be given final approval by this Court.

3. It appears to the Court on a preliminary basis that: (a) the settlement amount is fair and reasonable to the Class Members when balanced against the probable outcome of further litigation relating to class certification, liability and damages issues and potential appeals; (b) significant investigation, research, and informal discovery have been conducted and counsel for the Parties are able to reasonably evaluate their respective positions; (c) settlement will avoid substantial costs, delay and risks presented by further prosecution of the Action; and (d) the proposed Settlement has been reached as the result of intensive, serious and non-collusive negotiations facilitated by an experienced mediator at mediation and between the Parties.

4. Accordingly, good cause appearing, the Motion for Order Granting Preliminary Approval of Class Action Settlement is GRANTED, and as a part of preliminary approval, the Court accepts and incorporates the Settlement Agreement and orders the Class be conditionally certified for settlement purposes only pursuant to the terms and conditions of the Agreement.

5. For purposes of the settlement of the Action, the Class is defined as: “all persons employed by Defendant as non-exempt electricians in the State of California at any time during the period from February 24, 2016 through February 19, 2021.”

6. The Court further finds the proposed Notice of Class Action Settlement (“Class Notice”) fairly and adequately advises Class Members of a) the pendency of the Class Action; b) the conditional certification of the Class for settlement purposes only; c) preliminary Court approval of the proposed Settlement; d) the date of the Final Approval Hearing; e) the terms of the proposed Settlement and benefits available to Class Members; f) their right to receive a proportionate share of the Net Settlement Amount without the need to return a claim form; g) their right to request exclusion from the settlement and the procedures and deadline for doing so; h) their right to object to, or file documents in opposition to the Settlement, and the procedure for doing so; and i) their right to appear at the Final Approval hearing. The Court further finds that the Class Notice clearly comports with all constitutional requirements, including those of due process. Accordingly, good cause appearing, the Court APPROVES the Class Notice.

///

///

1 7. The Court further finds the mailing of the Class Notice, Change of Address Form, and
2 pre-printed return envelope, (collectively, "Notice Packet"), to the last known address of Class
3 Members as described in the Settlement Agreement, with the measures taken for verification of
4 addresses and skip tracing set forth, is an effective method of notifying Class Members of their rights
5 with respect to the class action and Settlement. Accordingly, it is ORDERED, that:

6 A. ILYM Group, Inc., be appointed the Settlement Administrator to administer the
7 Settlement of this matter as more specifically set forth in the Settlement Agreement.

8 B. The law firms Cohelan Khoury & Singer and Law Office of Sahag Majarian II be
9 appointed as Class Counsel.

10 C. Plaintiff Manual Gutierrez be appointed as the Class Representative.

11 D. Within fourteen (14) calendar days after entry of a Preliminary Approval Order,
12 Defendant shall transmit to the Settlement Administrator in a readable, ready to use electronic excel
13 format spreadsheet, the Class Data List.

14 E. Within ten (10) business days after receipt of the Class Data List, the Settlement
15 Administrator shall mail to each Class Member, in English and Spanish, Notice Packets by first class,
16 regular U.S. mail, using the most current mailing address information available, with measures taken
17 for updating an address as provided by the terms of the Settlement Agreement. The exterior of the
18 mailing envelope shall include the following language below the Administrator's address:

19 **IMPORTANT LEGAL DOCUMENT:**
20 **You may get Money from a Class Action**
21 **Settlement; your prompt reply to correct a**
 BAD address is required.

22 F. On or before forty-five (45) calendar days from the initial date the Settlement
23 Administrator first mails the Notice Packet to Class Members ("Response Deadline"), Class Members
24 who wish to exclude themselves from the Class must postmark and submit a written request for
25 exclusion in the manner set forth in the Class Notice by the Response Deadline. The Response Deadline
26 will be extended fifteen (15) calendar days for any Class Member who is re-mailed a Notice Packet by
27 the Settlement Administrator, unless the 15th day falls on a Sunday or Federal holiday, in which case
28 the Response Deadline will be the next day on which the U.S. Postal Service is open.

1 G. On or before the Response Deadline, Class Members who dispute the number of
2 Workweeks must postmark and submit a written explanation to the Settlement Administrator describing
3 why the Workweeks are incorrect, with any supporting information, as set forth in the Class Notice.
4 The Response Deadline will be extended fifteen (15) calendar days for any Class Member who is re-
5 mailed a Notice Packet by the Settlement Administrator, unless the 15th day falls on a Sunday or
6 Federal holiday, in which case the Response Deadline will be the next day on which the U.S. Postal
7 Service is open.

8 H. On or before the Response Deadline, Class Members who wish to object to the
9 Settlement, may submit to the Settlement Administrator, a written Notice of Objection which includes
10 the specific reasons for the objection. Whether a written objection is submitted or not, Class Members
11 may appear at the time of the Final Approval Hearing to comment upon the Settlement. The Response
12 Deadline will be extended fifteen (15) calendar days for any Class Member who is re-mailed a Notice
13 Packet by the Settlement Administrator, unless the 15th day falls on a Sunday or Federal holiday, in
14 which case the Response Deadline will be the next day on which the U.S. Postal Service is open.

15 8. IT IS FURTHER ORDERED that the Final Approval Hearing shall be held before the
16 undersigned at ____ p.m. on _____, 2022, in Department CX-102 of the Superior Court for the
17 State of California, County of Orange located at the Civil Complex Center located at 751 West Santa
18 Ana Blvd., Santa Ana, California 92701, to consider the fairness, adequacy and reasonableness of the
19 proposed Settlement preliminarily approved by this Order of Preliminary Approval, and to consider the
20 application for a Service Payment award to the Plaintiff/Class Representative, for Settlement
21 Administration expenses and for Class Counsel's Attorneys' Fees and Costs Payment. All briefs and
22 materials in support of an Order Granting Final Approval and Entering Judgment, the Service Payment,
23 Settlement Administration Payment, and Class Counsel's Attorneys' fees and Costs Payment costs
24 shall be filed with this Court on or before sixteen (16) court days prior to the scheduled hearing.

25 9. All proceedings in this matter, except those contemplated by the Settlement Agreement
26 or this Order, are stayed.

27 ///

28 ///

1 10. The Court expressly reserves the right to adjourn or continue the Final Approval Hearing
2 from time to time without further notice to Class Members.

3 IT IS SO ORDERED.

4
5 Date: _____

6 Hon. Peter J. Wilson
7 Judge of the Superior Court
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT D

COHELAN KHOURY & SINGER

Michael D. Singer (SBN 115301)

msinger@ckslaw.com

Diana M. Khoury (SBN 128643)

dkhoury@ckslaw.com

Jeff Geraci (SBN 151519)

jgeraci@ckslaw.com

605 C Street, Suite 200

San Diego, CA 92101

Tel: (619) 595-3001/Facsimile: (619) 595-3000

LAW OFFICES OF SAHAG MAJARIAN II

Sahag Majarian II (SBN 146621)

sahagii@aol.com

18250 Ventura Blvd.

Tarzana, CA 91356

Tel: (818) 609-0807/Facsimile: (818) 609-0892

Attorneys for Plaintiff Manuel Gutierrez, on behalf of himself
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**

Date:
Time:
Dept: CX 102
Judge: Honorable Peter J. Wilson

Filed: February 24, 2020
Trial date: Not set

1 This matter came on for hearing on _____, 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 _____, 2022, and the Stipulation of Class and
5 Representative Action Settlement Agreement and Release, ("Settlement Agreement").

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

12 1. Pursuant to the Preliminary Approval Order filed _____, 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 written
20 objection to the proposed Settlement as part of this notice process or stated an intention to appear at the
21 final approval hearing.

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

27 4. With respect to the Class and for purposes of approving this Settlement only, this
28 Court finds and concludes that: (a) the members of the Class are ascertainable and so numerous that

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

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

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

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

25 8. The Court finds and determines that the Settlement Payments to be paid to
26 Participating Class Members as provided for by the Settlement are fair and reasonable. The Court
27 hereby grants final approval to and orders the payment of those amounts be made to the Participating
28 Class Members in accordance with the Agreement.

1 9. The Court finds and determines that the fees and expenses in administering the
2 Settlement incurred by Class Counsel in the amount of \$_____ are fair and reasonable. The Court
3 hereby grants final approval to and orders that the payment of that amount in accordance with the
4 Settlement Agreement.

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

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

13 12. Pursuant to the terms of the Settlement Agreement, and the authorities, evidence and
14 argument submitted by Class Counsel, the Court hereby awards Class Counsel attorneys' fees of
15 \$152,997 and litigation costs of \$_____ (up to \$9,500). The Court finds such amounts to be fair and
16 reasonable. The Court hereby orders the Administrator to make these payments in accordance with the
17 terms of the Settlement Agreement.

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

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

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

1 offered in evidence against Defendant or any Released Party in any action or proceeding in any court,
2 administrative agency or other tribunal for any purpose other than to enforce this Judgment, the
3 Settlement, or any related agreement or release. Notwithstanding these restrictions, any Released Party
4 may file in the Action or any other proceeding, this Judgment, the Settlement, or any other papers on
5 file in the Action as evidence of the Settlement and to support a defense of res judicata, collateral
6 estoppel, release, waiver or other theory of claim preclusion, issue preclusion or similar defense to the
7 released claims.

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

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

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

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

18 **JUDGMENT**

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

24 IT IS SO ORDERED.

25
26 Date: _____

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

EXHIBIT 2