

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 4**

**KISS ELECTRIC, LLC**

**and**

**INTERNATIONAL BROTHERHOOD  
OF ELECTRICAL WORKERS, LOCAL  
UNION #98**

**Cases No.: 04-CA-164351  
04-CA-166954  
04-CA-180051**

**JOINT MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT**

On April 29, 2016 and October 27, 2016, the Regional Director issued Complaints against Kiss Electric, LLC (“Respondent”) that were consolidated for hearing to commence on December 7, 2016 (“Consolidated Complaint”). The allegations set for hearing in the Consolidated Complaint pertain to the Charging Party’s salting program and Respondent’s alleged refusal to consider or hire applicants referred by Charging Party.

Prior to the hearing currently scheduled for December 7, 2016, Respondent and Charging Party (along with involvement from Counsel for the General Counsel) negotiated the terms for a settlement to resolve all allegations raised in the Consolidated Complaint. The details of the settlement are set forth in the attached settlement agreement. The Region is opposed to the parties’ settlement due to the lack of inclusion of “default” language and seeks to insert default language into the Performance section of the settlement agreement. Attached as Exhibit A are the terms of the settlement to which Respondent is willing to agree (“Agreement”). (These terms mirror the terms proposed by the Region but for the absence of the default language.)

Region 4 refuses to delete the “standard” default judgment language in defiance of its

own General Counsel's guidance in Memorandum OM 14-48 (April 10, 2014). Whether out of concern that doing so will create precedent, Region 4's refusal to eliminate the default judgment language is precluding settlement in the instant matter. Respondent and Charging Party agree not to include the default language, which was a material term of reaching a settlement.

Your Honor's authority is now needed to best effectuate the remedial measures of the Act. The Board has long had a policy of encouraging the peaceful, non-litigious resolution of unfair labor practice charges including approving non-Board settlements over the objection of General Counsel. The leading case in this area is *Independent Stave*, 287 NLRB 740 (1987). In *Independent Stave*, in determining whether to give effect to a non-Board settlement, the Board stated that it will consider all of the surrounding circumstances including, but not limited to: (1) whether the charging party and respondent have agreed to be bound, and the position taken by the General Counsel regarding the settlement; (2) whether the settlement is reasonable in light of the nature of the violations alleged, the risks inherent in litigation, and the stage of the litigation; (3) whether there has been any fraud, coercion, or duress by any of the parties in reaching the settlement; and (4) whether the respondent has engaged in a history of violations of the Act or has breached previous settlement agreements resolving unfair labor practice charges. Notably, the Board's articulation of the "reasonableness" test was a change from prior Board law requiring that a settlement "substantially remedy" the violation alleged.

A review of the facts under all four factors of the *Independent Stave* analysis clearly weighs in favor of approving the Agreement reached. First, Respondent, Charging Party, and Region 4 have agreed to the substantive terms of the Agreement but for the Region's position on the default language. Second, the Agreement is reasonable in light of the violations alleged, the risks inherent in litigation and the stage of litigation. At issue is Respondent's refusal to consider

and hire five alleged discriminatees who are part of Charging Party's salting program. One of the alleged discriminatees is currently employed by Respondent and the other four alleged discriminatees agreed to placement on a preferential hire list for six months. Moreover, the alleged discriminatees have agreed to the terms of the settlement agreement. Third, there is no allegation (let alone evidence) that there was any fraud or coercion in reaching the Agreement. Fourth, there has never been an adjudicated finding against Respondent or any evidence that it has breached previous settlement agreements resolving unfair labor practice charges. Therefore, based upon the foregoing, the *Independent Stave* factors weigh heavily in favor of approval of the Agreement without such default language.

In addition to satisfying the requirements for limiting the default judgment language as provided in Memorandum OM 14-48, the proposed Agreement meets all of the *Independent Stave* factors.

Respectfully submitted,

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Alan I. Model, Esq.  
Counsel for Respondent



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Stephen Holroyd, Esq.  
Counsel for Charging Party

Dated: December 2, 2016

Copy of this Motion was hereby serviced electronically on NLRB Agent Ed Bonett  
([Edward.BonettJr.@nlrb.gov](mailto:Edward.BonettJr.@nlrb.gov))

# EXHIBIT A



**NOTIFICATION OF COMPLIANCE** — Each party to this Agreement will notify the Regional Director in writing what steps the Charged Party has taken to comply with the Agreement. This notification shall be given within 5 days, and again after 60 days, from the date of the approval of this Agreement. If the Charging Parties do not enter into this Agreement, initial notice shall be given within 5 days after notification from the Regional Director that the Charging Party did not request review or that the General Counsel sustained the Regional Director’s approval of this agreement. No further action shall be taken in the above captioned cases provided that the Charged Party complies with the terms and conditions of this Settlement Agreement and Notice.

<b>Charged Party</b> <b>Kiss Electric LLC</b>		<b>Charging Party</b> <b>International Brotherhood of Electrical Workers,</b> <b>Local Union No. 98, AFL-CIO</b>	
By:	Name and Title	Date	
By:	Name and Title	Date	