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Attorneys for Defendant NEKI, Inc.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF PLACER**

LEE ALLEN COWIN, individually on  
behalf of himself, and on behalf of all  
similarly situated individuals,

Plaintiff,

v.

NEKI, INC., a California corporation, d/b/a  
PIZZA GUYS, and DOES 1 through 10,  
inclusive,

Defendants.

CASE NO: S-CV-0049770

*Assigned to the Hon. Trisha Hirashima, Dept. 40*

**CLASS ACTION**

**SETTLEMENT AGREEMENT AND  
RELEASE OF CLAIMS**

*Complaint Filed: January 19, 2023*

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### A. Definitions.

2. Daniel F. Gaines and Alex P. Katofsky of Gaines & Gaines, APLC are counsel of record for Plaintiff. For purposes of this settlement only, the firm of Gaines & Gaines, APLC shall be designated as “Class Counsel.”

4. The “Settlement Class” shall be defined as “all non-exempt, hourly employees who have, or continue to, work for Defendant in California from October 12, 2018 to April 15, 2023 (the “Class Period”). Defendant represents that this Class contains approximately 166 members.

5. The “Aggrieved Employees” shall be defined as “all non-exempt, hourly employees who have, or continue to, work for Defendant in California from July 25, 2021 to April 15, 2023” (the “PAGA Period”).

6. Members of the Settlement Class shall collectively be referred to as “Class Members” and each individually as a “Class Member.” Any Class Member who files a timely request for exclusion, as detailed below, will be excluded from the final Settlement Class.

7. The “Effective Date” is defined as the date the Court files a signed order granting final approval of the settlement and entering judgment thereon (the “Effective Date.”) If objections to the settlement are filed, the Effective Date of the settlement is the latter of the sixtieth (60th) calendar day after notice of the final approval order is filed unless an appeal is filed, in which case the Effective Date is the seventh (7th) day after (1) the settlement is upheld by the Court of Appeals

1 with no material changes, or (2) all appeals are dismissed.

2 **B. General.**

3 1. On July 25, 2022 and August 8, 2022, Plaintiff exhausted the pre-filing requirements  
4 of the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698 *et seq.*  
5 (“PAGA”).

6 2. On or about October 12, 2022, the Parties entered into an agreement to toll the  
7 statute of limitations of Plaintiff’s alleged wage and hour claims.

8 3. On January 12, 2023, the Parties participated in a full day mediation session with  
9 Hon. David Brown (Ret.), a jurist and mediator with experience resolving employment actions.  
10 The Parties were able to agree to the basic terms of this settlement agreement with the assistance  
11 of Judge Brown.

12 4. On or about January 19, 2023, Plaintiff initiated the Action by filing a Complaint as  
13 a class and representative action, pursuant to California Code of Civil Code section 382 and PAGA,  
14 on behalf of himself and all other non-exempt California employees employed by Defendant. The  
15 Action asserts class and representative action claims against Defendant for (1) failure to pay all  
16 wages due (Labor Code §§ 510, 1194, and 1194.2); (2) failure to pay all gratuities (Labor Code §  
17 351); (3) failure to provide rest periods or compensation in lieu thereof (Labor Code § 226.7); (4)  
18 failure to provide meal periods or compensation in lieu thereof (Labor Code §§ 226.7, and 512);  
19 (5) failure to reimburse employee business expenses (Labor Code § 2802); (6) knowing and  
20 intentional failure to comply with itemized employee wage statement provisions (Labor Code §§  
21 226(a), (e), (h)); (7) failure to timely pay wages due at separation of employment (Labor Code §§  
22 201-203); (8) violation of Business and Professions Code § 17200; and (9) penalties pursuant to  
23 Labor Code § 2699(f) for violations of Labor Code §§ 201, 202, 204, 210, 226(a), 226.3, 226.7,  
24 351, 510, 512, 558, 1194, and 2802 (the “Complaint”).

25 5. Defendant denies any liability or wrongdoing of any kind associated with the claims  
26 alleged in the Action, and further denies that the Action is appropriate for class treatment for any  
27 purpose other than this settlement. Defendant contends that it has complied at all times with the  
28 California Labor Code. It is Defendant’s position that, if this case were to be litigated, class

1 certification would be inappropriate because Plaintiff is not an adequate class representative,  
2 Plaintiff's claims are not typical of putative class members, and individual issues predominate over  
3 class issues. The Action, the negotiation and execution of this Settlement Agreement, and all acts  
4 performed or documents executed pursuant to or in furtherance of the Settlement Agreement (i)  
5 shall not be used as an admission or evidence of wrongdoing on behalf of Defendant; (ii) shall not  
6 be an admission or evidence of fault on behalf of Defendant in any action before a civil, criminal,  
7 or administrative agency; and (iii) shall not be deemed to be, and may not be used as, an admission  
8 or evidence of the appropriateness of these or similar claims for class certification in the Action or  
9 with respect to any other proceeding.

10 The Class Representative contends that Defendant violated the California Labor Code and  
11 that this case is appropriate for class certification.

12 6. Class Counsel represents that they have conducted a thorough investigation into the  
13 facts and law during the prosecution of this class action case, including the exchange of extensive  
14 informal discovery and the review and verification of statistical data and other facts and information  
15 provided by Defendant. Counsel for the Parties also represent that they have investigated the  
16 applicable law as applied to the facts discovered regarding the alleged claims of Plaintiffs and  
17 potential defenses thereto, and the damages claimed by Plaintiff.

18 7. Based on their own independent investigation and evaluation, Class Counsel are of  
19 the opinion (and will so represent to the Court) that settlement for the consideration and on the  
20 terms set forth in this Settlement Agreement is fair, reasonable, and adequate and is in the best  
21 interest of the Settlement Class in light of all known facts and circumstances, including the risk of  
22 significant delay, the risk the Settlement Class will not be certified by the Court, and the defenses  
23 asserted by Defendant. While each Class Member should decide for themselves the fairness of the  
24 agreement, Defendant and its counsel also agree (and so represent to the Court) their joint belief  
25 that this settlement is fair and in the best interest of the Settlement Class.

26 8. The Parties agree that the settlement class described herein may be certified for  
27 settlement purposes only and that any motion for approval seeking, *inter alia*, certification of the  
28 Settlement Class is for purposes of the settlement only. If for any reason the settlement is not

1 approved, the certification will have no force or effect and will immediately be revoked. The  
2 Parties further agree that certification for purposes of the settlement is in no way an admission that  
3 class certification is proper under the more stringent standard applied for litigation and that  
4 evidence of this limited stipulation for settlement purposes only will not be admissible for any  
5 purpose in this or any other proceeding.

6 **C. Terms of Settlement.**

7 1. The financial terms of the settlement are as follows:

8 (a) **Maximum Settlement Amount:** The Parties agree to settle this Action for  
9 a Maximum Settlement Amount of One Hundred Seventeen Thousand Five Hundred U.S. Dollars  
10 (\$117,500.00) ("the Maximum Settlement Amount"). The Maximum Settlement Amount includes  
11 the attorneys' fees of Class Counsel, litigation costs and expenses (which includes, without  
12 limitation, all such fees and costs incurred to date, as well as such fees and costs to be incurred in  
13 documenting the settlement, providing any notices required as part of the settlement, securing Court  
14 approval of the settlement, and obtaining judgment in the Action), the enhancement payment to the  
15 Class Representative, as approved by the Court, the payment to the LWDA pursuant to the PAGA  
16 claims in the Action, and all costs of administration, including, without limitation, settlement  
17 administration fees and expenses. Defendant shall pay all employer payroll tax obligations due on  
18 wage payments made from the Net Settlement Proceeds in addition to, and separate and apart from,  
19 the Maximum Settlement Amount.

20 (b) **Net Settlement Proceeds:** "Net Settlement Proceeds" is defined as the  
21 Maximum Settlement Amount less the amounts approved and awarded by the Court for: attorneys'  
22 fees and documented litigation costs and expenses incurred or advanced by Class Counsel, the  
23 enhancement payment to the Class Representative, the payment to the LWDA pursuant to PAGA,  
24 and the costs of administering the settlement.

25 (c) **Calculation of the Individual Payment Amounts:** "Individual Payment  
26 Amount" means the portion of the Net Settlement Proceeds distributable to each Class Member  
27 who participates in the Class Settlement (i.e., who does not submit a valid request for exclusion  
28 form) and each Aggrieved Employee, whether they participate in the Class Settlement or not. As

1 to participating Class Members, the class portion of the Individual Payment Amount will be  
2 determined by dividing the Net Settlement Proceeds, less the \$1,250 PAGA allocation, by the total  
3 number of weeks worked by the entire Settlement Class during the Class Period, net of opt outs,  
4 resulting in the class workweek value; and then multiplying the class workweek value by the  
5 number of weeks worked by each participating Class Member during the Class Period. As to the  
6 Aggrieved Employees, the PAGA portion of the Individual Payment Amount will be determined  
7 by dividing the PAGA settlement amount (\$1,250) by the total number of weeks worked by all  
8 Aggrieved Employees during the PAGA Period, resulting in the PAGA workweek value; and then  
9 multiplying the PAGA workweek value by the number of weeks worked by each Aggrieved  
10 Employee during the PAGA Period.

11 (d) For tax purposes, the class portion of each Individual Payment Amount will  
12 be apportioned (a) 33-1/3% as wages (reported on an IRS Form W-2 and subject to applicable  
13 withholdings); and (b) 66-2/3% as penalties and interest (reported on an IRS Form 1099, if  
14 required). The PAGA portion of each Individual Payment Amount will be apportioned 100% as  
15 penalties (reported on an IRS Form 1099, if required). All Individual Payment Amounts paid to  
16 Class Members will be subject to any applicable wage garnishments, liens, or other legally  
17 mandated treatment as required by law.

18 (e) **PAGA Payments:** The Parties agree that Five Thousand Dollars  
19 (\$5,000.00) shall be allocated to settle Plaintiff's claims brought pursuant to PAGA. Of this  
20 amount, Seventy-Five Percent (75%), or Three Thousand Seven Hundred Fifty Dollars (\$3,750.00)  
21 shall be paid to the LWDA, and Twenty-Five Percent (25%), or One Thousand Two Hundred Fifty  
22 Dollars (\$1,250.00) shall be paid to Aggrieved Employees as part of the Net Settlement Proceeds.

23 (f) **Enhancement Payment to Class Representative:** The amount awarded to  
24 the Class Representative as an enhancement payment will be set by the Court in its discretion, not  
25 to exceed Five Thousand Dollars (\$5,000.00). This amount will be deducted from the Maximum  
26 Settlement Amount. An IRS Form 1099 will be issued to the Class Representative for his  
27 enhancement payment. Defendant agrees not to dispute or otherwise object to the enhancement  
28 payment if Plaintiff requests \$5,000 or less.

1 (g) **Attorneys' Fees:** An award to Class Counsel of attorneys' fees will be  
2 deducted from the Maximum Settlement Amount in an amount to be set by the Court taking into  
3 account the settlement award that has been made available for the Settlement Class by the efforts  
4 of Class Counsel. The amount awarded shall not exceed 35% of the Maximum Settlement Amount  
5 (i.e., Forty-One Thousand One Hundred Twenty-Five Dollars (\$41,125.00) based on the current  
6 projected \$117,500 Maximum Settlement Amount). An IRS Form 1099 will be issued to Class  
7 Counsel with respect to its award of attorneys' fees. Defendant agrees not to dispute or otherwise  
8 object to the attorneys' fee award requested by Class Counsel so long as the request does not exceed  
9 35% of the Maximum Settlement Amount.

10 (h) **Attorneys' Costs and Expenses:** Class Counsel will be reimbursed from  
11 the Maximum Settlement Amount in an amount to be set by the Court for documented out-of-  
12 pocket litigation costs and expenses, not to exceed Ten Thousand Dollars (\$10,000.00). An IRS  
13 Form 1099 will be issued to Class Counsel with respect to its award of costs and expenses.  
14 Defendant agrees not to dispute or otherwise object to the attorneys' cost award requested by Class  
15 Counsel so long as the request does not exceed \$10,000.

16 (i) **Settlement Administration Costs:** The fees and other charges of the  
17 Settlement Administrator to administer the Settlement are expected to total no more than Five  
18 Thousand Dollars (\$5,000.00), and will be paid from the Maximum Settlement Amount. These  
19 fees shall include any costs associated with the required tax reporting on any Individual Payment  
20 Amounts, and the issuing of any and all W-2 and 1099 forms. Subject to approval of the Court, the  
21 Parties have agreed that Phoenix Settlement Administration will serve as a neutral third-party  
22 claims' administrator ("Settlement Administrator") to perform all acts related to providing notice  
23 to the Settlement Class. Settlement Administrator shall be responsible for (a) printing and  
24 distributing the Court-approved Notice of Class Action Settlement ("Class Notice") to all Class  
25 Members; (b) administering the settlement; (c) processing exclusions and objections; (d) resolving  
26 disputes; (e) distributing the Maximum Settlement Amount as directed by the Court and set forth  
27 herein; (f) tax reporting; (g) providing necessary weekly status reports; and (h) other duties and  
28 responsibilities set forth herein.

1 (j) **No Warranty by Defendant:** Plaintiff understands and agrees that  
2 Defendant is not providing Plaintiff or Class Members with tax or legal advice and that Defendant  
3 makes no representations regarding tax obligations or consequences, if any, related to this  
4 Settlement Agreement.

5 **D. Release of Claims.**

6 1. Upon the Effective Date, and subject to Defendant's full payment of the Maximum  
7 Settlement Amount, Plaintiff and all Class Members who do not opt out of the settlement will  
8 release any and all claims contained in the Complaint, and any additional wage and hour claims  
9 that could have been brought based on the facts alleged in the operative Complaint, during  
10 employment in a non-exempt position in California during the Class Period. Aggrieved  
11 Employees will release any and all claims for civil penalties that were brought under the Private  
12 Attorneys General Act, Labor Code §§ 2698 *et seq.*, contained in Plaintiff's Complaint and any  
13 additional wage and hour claims under PAGA that could have been brought based on the facts  
14 alleged in the Complaint during employment in a non-exempt position in California during the  
15 PAGA Period. The Released Parties shall include Defendant, as well as Defendant's present and  
16 former owners, officers, shareholders, directors, agents, employees, attorneys, and insurers.

17 **E. Notice and Exclusion Process.**

18 1. Within twenty-one (21) calendar days after entry of the order granting preliminary  
19 approval of this Settlement, Defendant shall provide to the Settlement Administrator a list of all  
20 Class Members, including their last known addresses, telephone numbers, social security numbers,  
21 and their dates of employment in California during the Class Period ("Settlement Class  
22 Information"). The names, addresses, telephone numbers, and Social Security numbers will only  
23 be disclosed to the Settlement Administrator and not to Plaintiff's Counsel. All information  
24 provided to the Settlement Administrator will be marked CONFIDENTIAL. This information shall  
25 be kept confidential and shall not be disclosed, either in writing or orally, by the Settlement  
26 Administrator. The Settlement Administrator shall use due care with respect to the storage,  
27 custody, use, and/or dissemination of the confidential information. Such information must be  
28 stored in a secure fashion and all persons who access the data must agree to keep it confidential.

1           2.       A notice of pendency of class action, proposed settlement and hearing date for Court  
2 approval ("Class Notice") in the form attached hereto as Exhibit 1, and as approved by the Court,  
3 shall be sent by the Settlement Administrator to the Class Members, by first class mail, within  
4 fourteen (14) calendar days after entry the Settlement Administrator receives the Settlement Class  
5 Information from Defendant. Attached to the Class Notice will be a request for exclusion form  
6 ("Request for Exclusion Form") in the form attached hereto as Exhibit 2.

7           3.       The Settlement Administrator will make reasonable efforts to ensure that the Class  
8 Notice and Request for Exclusion Form are sent to all Class Members. It will conclusively be  
9 presumed that if an envelope has not been returned within thirty (30) days of the mailing that the  
10 Class Member received the Class Notice. In the event of returned or non-deliverable notices prior  
11 to the response deadline, the Settlement Administrator will make reasonable efforts to locate Class  
12 Members and re-send the notices.

13           4.       Each Class Member will be fully advised of the settlement, the ability to object to  
14 the settlement, and the ability to submit a Request for Exclusion Form. The Class Notice will  
15 inform the Class Members of the Court-established deadlines for filing objections and a Request  
16 for Exclusion Form.

17           5.       Each Class Notice will contain personalized information setting forth the number of  
18 weeks each Class Member worked for Defendant in California during the Class Period and PAGA  
19 Period and their estimated Individual Payment Amount. To the extent a Class Member disputes  
20 any of the information listed on his or her Class Notice, the Class Member may produce evidence  
21 to the Settlement Administrator showing such information the Class Member contends should be  
22 reflected in the Class Notice. Defendant's records will be presumed determinative, however, and  
23 the Settlement Administrator's decision on these matters will be final. The Class Notice will also  
24 set forth IRS W-9 information if required.

25           6.       All Class Members who do not submit a timely Request for Exclusion Form will be  
26 eligible to receive an Individual Payment Amount, which shall be mailed to them if and when the  
27 Effective Date occurs.

1           7.       In order to elect not to participate in the Settlement, a Class Member must submit a  
2 Request for Exclusion Form, and mail it to the Settlement Administrator no later than forty-five  
3 (45) calendar days after the initial mailing of the Class Notice and Request for Exclusion Form to  
4 Class Members, unless the Court requires a longer period, in which case the Court ordered  
5 exclusion period will apply. The date of the postmark shall be deemed the date of submission. The  
6 timeliness of submitted Request for Exclusion Forms will be determined by valid postmark. If the  
7 45th day falls on a Sunday or federal holiday, the time to request exclusion will be extended to the  
8 next day on which the U.S. Postal Service is open.

9           8.       The deadline for submission of Exclusion Forms shall be extended once by 30 days  
10 for those Class Members whose Class Notice and Exclusion Form are returned as "undeliverable."  
11 If the 30th day falls on a Sunday or federal holiday, this deadline will be extended to the next day  
12 on which the U.S. Postal Service is open.

13           9.       By signing this Agreement, Plaintiff is bound by the terms herein stated and further  
14 agrees not to submit a Request for Exclusion. Any such Request for Exclusion shall therefore be  
15 void and of no force or effect.

16           10.      The Parties agree to use their best efforts to carry out the terms of this Agreement.  
17 At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage Class  
18 Members to submit Requests for Exclusion, Objections, or appeal from or seek review of the  
19 Court's Preliminary or Final Approval Order and Judgement.

20           11.      The Settlement Administrator will search for additional addresses on returned mail  
21 and will re-mail the Class Notice and Exclusion Form to an updated address (if any) within 15 days  
22 of receipt of the returned mail. The 30-day extended time limit will run from the date of the second  
23 mailing for those Class Members. To the extent a Class Notice from the initial mailing is not  
24 returned within 30 days, it shall be deemed to have been sent to a valid address even if it is thereafter  
25 returned. It is the intent of the Parties that reasonable, but not extraordinary, efforts be used to  
26 locate Class Members. If the initial Class Notice and Request for Exclusion Form is returned, the  
27 Settlement Administrator will search using the social security number for a more current address.  
28 If no address is found within 10 days, no further action is required.

1           12.     The Settlement Administrator will notify the Parties of the total number of valid  
2 Request for Exclusion Forms within ten (10) calendar days after the deadline for receipt of the  
3 Request for Exclusion Forms (fifty-five (55) days following the initial mailing of the Class Notice  
4 and Request for Exclusion Forms to Class Members if no Class Notice and Exclusion Form is  
5 returned as “undeliverable”).

6           13.     In order to object to the settlement, a Class Member must mail his or her objection  
7 to the Settlement Administrator no later than forty-five (45) calendar days after the mailing of the  
8 Class Notice and Request for Exclusion Form to Class Members or thirty (30) days following the  
9 second mailing to Class Members whose Class Notice and Exclusion Form are returned as  
10 “undeliverable,” unless the Court requires a longer period, in which case the Court ordered  
11 objection period will apply. If the 45th day (or 30th, if extended) falls on a Sunday or federal  
12 holiday, the time to object to the settlement will be extended to the next day on which the U.S.  
13 Postal Service is open. Under no circumstances shall the objection deadline be extended for any  
14 reason.

15           14.     The Settlement Administrator shall provide to the Parties, at least twelve (12)  
16 calendar days prior to the final approval hearing, or as otherwise ordered by the Court, a declaration  
17 of due diligence and proof of mailing with regard to the mailing of the Class Notice and Request  
18 for Exclusion Forms. The Settlement Administrator will also provide to the Parties, at least twelve  
19 (12) calendar days prior to the final approval hearing, or as otherwise ordered by the Court, a report  
20 listing the amount of all payments to be made to each Class Member without names or personal  
21 identifying information.

22           15.     Defendant shall deposit the Maximum Settlement Amount with the Settlement  
23 Administrator no later than twenty-one (21) calendar days after the Effective Date.

24           16.     The Settlement Administrator shall disburse the Maximum Settlement Amount  
25 within fifteen (15) calendar days after its receipt thereof. Class Members must cash each of their  
26 Individual Payment Amount checks within one hundred eighty (180) calendar days after they are  
27 mailed by the Settlement Administrator. The value of any checks uncashed more than one hundred  
28

eighty (180) days after mailing shall be paid to the State of California Controller's Office Unclaimed Property Fund, to be held in the name of the respective Class Member.

**F. Duties of the Parties Prior to Court Approval.**

1. Promptly after execution of this Settlement Agreement, Plaintiff shall move the Court for preliminary approval of this settlement and entry of an order accomplishing the following:

- (a) scheduling a fairness hearing on the question of whether the proposed settlement should be finally approved as fair, reasonable and adequate as to the Class Members;
- (b) approving as to form and content the proposed Class Notice;
- (c) approving as to form and content the proposed Request for Exclusion Form;
- (d) preliminarily certifying the Settlement Class for purposes of settlement;
- (e) preliminarily approving the PAGA payment of \$3,750 to the LWDA;
- (f) preliminarily setting attorneys' fees and costs payable to Class Counsel;
- (g) preliminarily setting the enhancement payment to the Class Representative; and
- (h) preliminarily approving Phoenix Settlement Administration as the Settlement Administrator and its estimated fees and costs of \$5,000.

The Parties shall submit this Settlement Agreement to the Court and the LWDA in support of Plaintiff's unopposed motion for preliminary approval of the settlement.

**G. Duties of the Parties in Connection with and Following Final Court Approval.**

1. In connection with the hearing on final approval of the settlement provided for in this Settlement Agreement, the Parties will submit a proposed final order no later than ten (10) calendar days prior to the scheduled date of the hearing on final approval (unless otherwise ordered by the Court):

- (a) approving the settlement, adjudging the terms thereof to be fair, reasonable and adequate, and directing consummation of its terms and provisions;

- (b) approving Class Counsel's application for an award of attorneys' fees and reimbursement of documented litigation costs and expenses, the enhancement payment to the Class Representative, the payment to the LWDA, and the costs of administering the settlement; and
- (c) Entering judgment in this Action in accordance with this Stipulation, pursuant to Cal. Rules of Court, Rule 3.769(h).

2. Class Counsel shall file an application for attorneys' fees and reimbursement of costs and expenses no later than ten (10) calendar days prior to the scheduled date of the hearing on final approval (unless otherwise ordered by the Court).

**H. Miscellaneous Provisions:**

**1. Opt-Out Threshold.**

In the event 10% or more of the class members opt-out of the settlement, Defendant may, at its option, void this Settlement. However, Defendant agrees to pay the cost of the Settlement Administrator incurred in administering the settlement up to that date if it chooses to exercise this opt-out option.

**2. Escalator Provision.**

Defendant has represented that as of December 30, 2022, there are no more than 11,478 workweeks during the Class Period. If the number of workweeks during the Class Period is more than 10% greater than this figure (i.e., if there are 1,148 or more workweeks worked by Settlement Class Members), Defendant has the option to either: (1) agree to increase the Maximum Settlement Amount on a proportional basis (i.e., if there was 11% increase in the number workweeks during the Class Period, Defendant would agree to increase the Gross Settlement Amount by 1%); or (2) in the alternative, in the event that this escalator provision is triggered, then Defendant has the option to elect to end the Class Period and PAGA Period so as to have an earlier end date at the Defendant's discretion in order to limit the covered workweeks during the Class Period to 12,626 in lieu of paying an increase to the Maximum Settlement Amount.

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1           **3.     Voiding the Agreement.**

2           A failure of the Court to approve any material condition of this Settlement Agreement which  
3 effects “a fundamental change of the Parties’ settlement,” or if the settlement is reversed or  
4 materially modified on appellate review, shall render the entire Stipulation of Settlement voidable  
5 and unenforceable as to all Parties herein at the option of any Party.

6           **4.     Parties’ Authority.**

7           The signatories hereto represent that they are fully authorized to enter into this Settlement  
8 Agreement and bind the Parties hereto to the terms and conditions hereof.

9           **5.     Mutual Full Cooperation.**

10          The Parties agree to fully cooperate with each other to accomplish the terms of this  
11 Stipulation of Settlement, including but not limited to, execution of such documents and such other  
12 action as may reasonably be necessary to implement the terms of this Settlement Agreement. The  
13 Parties to this Settlement Agreement shall use their best efforts, including all efforts contemplated  
14 by this Settlement Agreement and any other efforts that may become necessary by order of the  
15 Court, or otherwise, to effectuate this Settlement Agreement and the terms set forth herein. As  
16 soon as practicable after execution of this Settlement Agreement, Class Counsel shall, with the  
17 assistance and cooperation of Defendant and its counsel, take all necessary steps to secure the  
18 Court’s preliminary and final approval of the settlement.

19          **6.     No Prior Assignments.**

20          The Parties hereto represent, covenant, and warrant that they have not directly or indirectly,  
21 assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or  
22 entity any portion of any liability, claim, demand, action, cause of action or rights released and  
23 discharged by this Stipulation of Settlement.

24          **7.     No Admission.**

25          Nothing contained herein, nor the consummation of this Stipulation of Settlement, is to be  
26 construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part  
27 of Defendant or any of the other Released Parties. Each of the Parties hereto has entered into this  
28 Settlement Agreement with the intention of avoiding further disputes and litigation with the

1 attendant inconvenience and expenses. This Settlement Agreement is a settlement document and  
2 shall, pursuant to California Evidence Code section 1152 and/or Federal Rule of Evidence 408  
3 and/or any other similar law, be inadmissible in evidence in any proceeding, except an action or  
4 proceeding to approve the settlement, and/or interpret or enforce this Settlement Agreement.

5 **8. Notices.**

6 Unless otherwise specifically provided herein, all notices, demands or other  
7 communications given hereunder shall be in writing and shall be deemed to have been duly given  
8 as of the third business day after mailing by United States registered or certified mail, return receipt  
9 requested, addressed:

10 **To Plaintiff and the Settlement Class:**

11 Daniel F. Gaines, Esq.  
12 Alex P. Katofsky, Esq.  
13 GAINES & GAINES, APLC  
4550 E. Thousand Oaks Blvd., Suite 100  
Westlake Village, CA 91362

14 **To Defendant:**

15 Jennifer Duggan, Esq.  
16 Ryan Larocca, Esq.  
DUGGAN MCHUGH LAW CORPORATION  
641 Fulton Ave Suite 100  
17 Sacramento, CA 95825

18 **9. Construction.**

19 The Parties hereto agree that the terms and conditions of this Settlement Agreement are the  
20 result of lengthy, intensive arms' length negotiations between the Parties and that this Settlement  
21 Agreement shall not be construed in favor of or against any Party by reason of the extent to which  
22 any Party or his or its counsel participated in the drafting of this Settlement Agreement.

23 **10. Captions and Interpretations.**

24 Paragraph titles or captions contained herein are inserted as a matter of convenience and for  
25 reference, and in no way define, limit, extend, or describe the scope of this Settlement Agreement  
26 or any provision hereof. Each term of this Settlement Agreement is contractual and not merely a  
27 recital.  
28

1           **11.     Modification.**

2           This Settlement Agreement may not be changed, altered, or modified, except in writing and  
3 signed by the Parties hereto, and approved by the Court. This Settlement Agreement may not be  
4 discharged except by performance in accordance with its terms or by a writing signed by each of  
5 the Parties hereto on their attorneys.

6           **12.     Integration Clause.**

7           This Settlement Agreement contains the entire agreement between the Parties relating to  
8 the settlement and transactions contemplated hereby, and all prior or contemporaneous agreements,  
9 understandings, representations, and statements, whether oral or written and whether by a Party or  
10 such Party's legal counsel, are merged herein. No rights hereunder may be waived except in  
11 writing.

12          **13.     Binding on Assigns.**

13          This Settlement Agreement shall be binding upon and inure to the benefit of the Parties  
14 hereto and their respective heirs, trustees, executors, administrators, successors and assigns.

15          **14.     Governing Law.**

16          All terms of this Settlement Agreement and its exhibits shall be governed by and interpreted  
17 according to the laws of the State of California, without giving effect to any conflict of law  
18 principles or choice of law principles.

19          **15.     Signatures of All Class Members Unnecessary to be Binding.**

20          It is agreed that, because the members of the Settlement Class are numerous, it is impossible  
21 or impractical to have each Class Member execute this Settlement Agreement. The Class Notice,  
22 attached hereto as Exhibit 1, will advise all Class Members of the binding nature of the release  
23 provided herein and such shall have the same force and effect as if this Settlement Agreement was  
24 executed by each Class Member.

25          **16.     Counterparts.**

26          This Settlement Agreement may be executed in counterparts, and when each Party has  
27 signed and delivered at least one such counterpart, each counterpart shall be deemed an original,  
28 and when taken together with other signed counterparts, shall constitute one fully-signed Settlement

1 Agreement, which shall be binding upon and effective as to all Parties.

2 **17. Confidentiality**

3 Until Plaintiff files his motion for preliminary approval of the class action settlement, the  
4 Parties and their Counsel agree to maintain confidentiality as to the Settlement, including the  
5 amount and terms of the Settlement, except as to spouses, tax or financial advisors, attorneys, taxing  
6 agencies, or as otherwise required by law.

7 **18. No Publicity**

8 Plaintiff and his Counsel will not contact the media about the settlement or respond to any  
9 inquiries by the media regarding the Settlement, other than to state that the matter was amicably  
10 settled, and the Court did not find Defendant liable. Plaintiff and his Counsel also will not post any  
11 information about the settlement on social media or their firms' websites.

12 Dated: <sup>04 / 08 / 2023</sup>  
April , 2023

By:

*Lee Allen Cowin*

LEE ALLEN COWIN  
Plaintiff and Class Representative

15 Dated: April , 2023

NEKI, INC.

16 By:

17 Its: \_\_\_\_\_  
18

19 **APPROVED AS TO FORM AND CONTENT:**

20 Dated: April 14, 2023

GAINES & GAINES, APLC

21 By: \_\_\_\_\_

*[Signature]*  
Daniel F. Gaines, Esq.  
Alex P. Katofsky, Esq.  
Counsel for Plaintiff and Class  
Representative

24 Dated: April , 2023

DUGGAN MCHUGH LAW CORPORATION

26 By: \_\_\_\_\_

Jennifer Duggan, Esq.  
Ryan Larocca, Esq.  
Counsel for Defendant

Agreement, which shall be binding upon and effective as to all Parties.

**17. Confidentiality**

Until Plaintiff files his motion for preliminary approval of the class action settlement, the Parties and their Counsel agree to maintain confidentiality as to the Settlement, including the amount and terms of the Settlement, except as to spouses, tax or financial advisors, attorneys, taxing agencies, or as otherwise required by law.

**18. No Publicity**

Plaintiff and his Counsel will not contact the media about the settlement or respond to any inquiries by the media regarding the Settlement, other than to state that the matter was amicably settled, and the Court did not find Defendant liable. Plaintiff and his Counsel also will not post any information about the settlement on social media or their firms' websites.

Dated: April \_\_\_\_\_, 2023

By:

LEE ALLEN COWIN  
Plaintiff and Class Representative

Dated: April \_\_\_\_\_, 2023

NEKI, INC.

04 / 07 / 2023

By: *Mohsen Sharafi*

Its: CEO

**APPROVED AS TO FORM AND CONTENT:**

Dated: April \_\_\_\_\_, 2023

GAINES & GAINES, APLC

By:

Daniel F. Gaines, Esq.  
Alex P. Katofsky, Esq.  
Counsel for Plaintiff and Class  
Representative

Dated: April 7, 2023

DUGGAN MCHUGH LAW CORPORATION

By:

*Jennifer Duggan*  
Jennifer Duggan, Esq.  
Ryan Larocca, Esq.  
Counsel for Defendant

# EXHIBIT 1

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF PLACER**

LEE ALLEN COWIN, individually on behalf of  
himself, and on behalf of all similarly situated  
individuals,

Plaintiff,

v.

NEKI, INC., a California corporation, d/b/a  
PIZZA GUYS, and DOES 1 through 10,  
inclusive,

Defendants.

CASE NO: S-CV-0049770

*Assigned to the Hon. Trisha Hirashima, Dept. 40*

**NOTICE OF PENDENCY OF PROPOSED  
CLASS ACTION SETTLEMENT AND  
FINAL HEARING**

**YOU MAY BE ENTITLED TO RECEIVE MONEY FROM A SETTLEMENT  
PLEASE READ THIS NOTICE CAREFULLY. YOUR RIGHTS MAY BE AFFECTED.**

*A California court authorized this notice. This is not a solicitation from a lawyer.*

- YOU ARE NOTIFIED THAT: A proposed class action settlement has been reached between Plaintiff Lee Allen Cowen (“Plaintiff”) and Defendant Neki, Inc. d/b/a Pizza Guys (“Defendant”) (Plaintiff and Defendant are collectively referred to as the “Parties”) in the case entitled Cowen v. Neki, Inc. d/b/a Pizza Guys, Placer County Superior Court, Case No. S-CV-0049770, which may affect your legal rights. On [Preliminary Approval Date], the Court granted preliminary approval of the settlement and scheduled a hearing on [date] at [time] (“Final Approval Hearing”) to determine whether or not the Court should grant final approval of the Settlement.
- The settlement resolves a wage and hour class action and Private Attorneys General Act of 2004 (“PAGA”) lawsuit against Defendant, alleging that Defendant failed to pay all wages due; pay all gratuities due; provide compliant meal and rest periods or premium compensation in lieu thereof; reimburse all business expenses; timely issue final wages upon separation of employment; and issue accurate and complete itemized wage statements. The settlement also alleges violation of the Business and Professions Code and seeks to recover penalties pursuant to PAGA. The Settlement avoids costs and risks of continuing the lawsuit; pays money to employees; and releases Defendant from liability from the claims asserted in this lawsuit.
- Defendant denies liability and believes all appropriate wages were paid and that it otherwise complied with any Labor Code obligations. The Parties disagree on how much money could have been awarded if employees won at trial.
- The Court has not made a ruling on the merits of the case or decided in favor of the Plaintiff or Defendant. Instead, both sides agreed to a settlement, which is memorialized in the Joint Stipulation of Class Action Settlement and Release (“Settlement” or “Settlement Agreement”).
- The settlement will provide \$117,500 to resolve the claims to all individuals who worked for NEKI, Inc. d/b/a Pizza Guys (“Defendant”) as non-exempt, hourly employees in California at any time from October 12, 2018 through April 15, 2023. The Lawyers for the employees will ask the Court to award them up to \$41,125 as attorneys’ fees and \$10,000 as expenses from the total

settlement amount for investigating the facts, litigating the case, and negotiating the settlement. This will be paid from the settlement amount.

| <b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:</b> |                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
|----------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Do Nothing</b>                                        | You do not need to take any action if you wish to receive your settlement payment. If the settlement is approved by the Court, you will automatically be mailed a settlement check at the address on file with the Settlement Administrator. If your address has changed, you must notify the Settlement Administrator of your new address. In exchange for the settlement payment, you will release claims against the Defendant, as detailed below.  |
| <b>Exclude Yourself</b>                                  | To exclude yourself, you must send a written Request for Exclusion to the Settlement Administrator by the applicable deadline, as detailed below. If you request exclusion, you may receive no money from the Settlement, although you still qualify to be paid a share of the PAGA Settlement. This is the only option that allows you to ever be part of any other lawsuit against NEKI, Inc. about the legal claims that were brought in this case. |
| <b>Objecting</b>                                         | Write to the Settlement Administrator about why you don't like the settlement by the applicable deadline, as detailed below, and/or appear at the Final Approval Hearing to make an oral objection.                                                                                                                                                                                                                                                    |
| <b>Go to a Hearing</b>                                   | Ask to speak in Court about the fairness of the settlement, as detailed below.                                                                                                                                                                                                                                                                                                                                                                         |

### **WHY DID YOU RECEIVE THIS NOTICE?**

This notice explains a proposed settlement of a class action lawsuit, and informs you of your legal rights under that proposed settlement. You are receiving this notice because you may be a member of the Class on whose behalf this class action lawsuit has been brought.

### **WHAT IS THIS LAWSUIT ABOUT?**

On January 19, 2023, Plaintiff Lee Allen Cowin ("Plaintiff"), a former employee of NEKI, Inc., d/b/a Pizza Guys, filed this lawsuit in the Placer County Superior Court. The lawsuit alleges violations of the California Labor Code and California Business and Professions Code. The lawsuit seeks to certify a class of all current and former non-exempt California employees of Defendant at any time between October 12, 2018 through April 15, 2023 ("Class Period"). Specifically, the lawsuit alleges that members of the Class were not provided all wages due; gratuities due; expense reimbursements due; compliant meal and rest periods or premium compensation in lieu thereof; were not timely issued final wages upon separation of employment; and were not issued accurate and complete itemized wage statements. The Settlement seeks recovery of wages, damages, interest, statutory and civil penalties, restitution, attorneys' fees and costs. Defendant denies all of the allegations in the lawsuit. Defendant denies that it owes Class Members any remedies and believes that it paid Class Members fairly. The Court has not made a ruling on the merits of the case.

The lawyers for the parties are:

Plaintiff's Attorneys

Daniel F. Gaines, Esq.  
Alex P. Katofsky, Esq.  
Gaines & Gaines, APLC  
4550 E. Thousand Oaks Blvd., Suite 100  
Westlake Village, CA 91362  
Phone: (866) 550-0855

Defendant's Attorneys

Jennifer Duggan, Esq.  
Ryan Larocca, Esq.  
DUGGAN MCHUGH LAW CORPORATION  
641 Fulton Ave Suite 100  
Sacramento, CA 95825  
Phone: (916) 550-5309

**SUMMARY OF THE SETTLEMENT**

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

The Court did not decide in favor of Plaintiff or Defendant. Plaintiff believes he would have prevailed on his claims at a trial. Defendant does not believe that Plaintiff would have won anything from a trial. There has been no trial. Instead, both sides agreed to a settlement, which is memorialized in the Settlement Agreement and Release of Claims ("Settlement" or "Settlement Agreement"), in order to avoid the further costs, risks, and uncertainty of a trial. Plaintiff and Plaintiff's Attorneys believe the settlement is fair, reasonable, adequate, and in the best interests of all Class Members.

**B. Who is in the Settlement Class? Who is an Aggrieved Employee**

The Settlement encompasses a class composed of all non-exempt, hourly employees who have, or continue to, work for Defendant in California from October 12, 2018 through April 15, 2023. Aggrieved Employees are those Class Members employed between July 25, 2021 and April 15, 2023.

**C. What does the Settlement provide?**

**1. Maximum Settlement Amount.**

The Settlement provides that Defendant will pay \$117,500 (the "Maximum Settlement Amount") to settle the lawsuit.

**2. Net Settlement Proceeds.**

The "Net Settlement Proceeds" is the portion of the Maximum Settlement Amount that will be available for distribution to Aggrieved Employees and Class Members who do not submit timely and valid requests for exclusion in exchange for the release of their class claims. The Net Settlement Proceeds amount is the Maximum Settlement Amount less the following amounts that will be requested at the Final Approval Hearing and are subject to comment or objection by Participating Class Members. The Court will fix these amounts at the Final Approval Hearing.

(a) **Class Counsel's Attorneys' Fees** in an amount set by the Court, not to exceed \$41,125;

(b) **Class Counsel's Documented Litigation Costs/Expenses** in an amount set by the Court, not to exceed \$10,000;

(c) **Enhancement Payment to the Class Representative** in an amount set by the Court, not to exceed \$5,000 for his service in the lawsuit;

(d) **Settlement Administration Costs** which are currently estimated to not exceed \$5,000, for administering the settlement; and

(e) **PAGA Payment** in the total amount of \$5,000 for the settlement of claims arising under the California Private Attorneys General Act (“PAGA”). 75% or \$3,750, shall be paid to the California Labor and Workforce Development Agency (“LWDA”). The remaining 25% or \$1,250, shall be included in the Net Settlement Proceeds for payment to Aggrieved Employees.

3. **Individual Payment Amount.**

Your share of the Net Settlement Proceeds will be determined by the formula detailed in section E below.

**D. What Are You Giving Up To Get A Payment Or Stay In The Class?**

Upon the Effective Date, and subject to Defendant’s full payment of the Maximum Settlement Amount, Plaintiff and all Class Members who do not opt out of the settlement will release any and all claims contained in the Complaint, and any additional wage and hour claims that could have been brought based on the facts alleged in the operative Complaint against Defendant, during employment in a non-exempt, hourly position in California during the Class Period. Aggrieved Employees will release any and all claims for civil penalties that were brought under the Private Attorneys General Act, Labor Code §§ 2698 *et seq.*, contained in Plaintiff’s Complaint and any additional wage and hour claims under PAGA that could have been brought based on the facts alleged in the Complaint during employment in a non-exempt position in California during the PAGA Period. The “Released Parties” shall include Defendant, as well as Defendant’s present and former owners, officers, shareholders, directors, agents, employees, attorneys, and insurers.

**E. How Is My Share Of The Settlement Calculated?**

Each participating Class Member (those who do not opt out of the Settlement) shall receive an “Individual Payment Amount,” which is distributable to each Class Member who participates in the Settlement (i.e., who does not submit a valid request for exclusion form) and each Aggrieved Employee even if they opt out of the class settlement.

The class portion of the Individual Payment Amounts will be determined by dividing the Net Settlement Proceeds, less the \$1,250 PAGA allocation, by the total number of weeks worked by the entire Settlement Class during the Class Period, net of opt outs, resulting in the class workweek value; and then multiplying the class workweek value by the number of weeks worked by each participating Class Member during the Class Period. As to the Aggrieved Employees, the PAGA portion of the Individual Payment Amounts will be determined by dividing the PAGA settlement amount (\$1,250) by the total number of weeks worked by all Aggrieved Employees during the PAGA Period, resulting in the PAGA workweek value; and then multiplying the PAGA workweek value by the number of weeks worked by each Aggrieved Employee during the PAGA Period.

For tax purposes, each Individual Payment Amount will be apportioned (a) 33-1/3% as wages (reported on an IRS Form W-2 and subject to applicable withholdings); (b) 66-2/3% as penalties and interest (reported on an IRS Form 1099). The PAGA portion of each Individual Payment Amount will be apportioned 100% as penalties (reported on an IRS Form 1099, if required). All Individual Payment Amounts paid to Class Members will be subject to any applicable wage garnishments, liens, or other legally mandated treatment as required by law.

According to the records of Defendant, you worked [ ] weeks while employed as a non-exempt employee in California from October 12, 2018 through April 15, 2023. Based on these weeks worked, you are entitled to an Individual Payment Amount of approximately \$[ ]. Additionally, Defendant's records indicate that you worked [ ] weeks while employed as a non-exempt employee in California from July 25, 2021 through April 15, 2023. Based on these weeks worked, you are entitled to a PAGA payment share of approximately \$[ ]. This amount is subject to change based on the final ruling of the Court.

Please be advised that the individual data above is presumed to be correct unless you submit documentation proving otherwise. If you disagree with the data, please submit an explanation and evidence in support of your position to the Settlement Administrator no later than [ ], 2023. In the event of a dispute, the Settlement Administrator will resolve the challenge with input from the Defendant and will make a final and binding determination without a hearing or right of appeal by you.

**F. When Will I Be Paid?**

After the Courts grants approval of the settlement, you will receive your Individual Payment Amount within 30 days of the date the Court signed the order.

**THE SETTLEMENT HEARING**

The Court will conduct a final fairness hearing regarding the proposed settlement (the "Final Settlement Hearing") on [ ], at 8:30 a.m., in the Courtroom of Judge Trisha Hirashima of the Placer County Superior Court, Department 40, located at 10820 Justice Center Drive, Roseville, 95678. The Court will determine: (i) whether the lawsuit should finally be certified as a class action for settlement purposes; (ii) whether the settlement should be given the Court's final approval as fair, reasonable, adequate and in the best interests of the Settlement Class Members; (iii) whether the Settlement Class Members should be bound by the terms of the settlement; (iv) the amount of the attorneys' fees and costs to be awarded to Plaintiff's Attorneys; and (v) the amount that should be awarded to Plaintiff as an enhancement payment. At the Final Settlement Hearing, the Court will hear all properly filed objections, as well as arguments for and against the proposed settlement. You have a right to attend this hearing, but you are not required to do so. You also have the right to hire an attorney to represent you, or to enter an appearance and represent yourself.

**WHAT ARE YOUR OPTIONS?**

• **OPTION 1 – DO NOTHING AND PARTICIPATE IN THE SETTLEMENT**

**IF YOU TAKE NO ACTION IN RESPONSE TO THIS NOTICE, YOU WILL AUTOMATICALLY RECEIVE YOUR SHARE OF THE SETTLEMENT IF IT IS APPROVED BY THE COURT. YOU ARE NEVER REQUIRED TO GO TO COURT OR PAY ANYTHING TO THE LAWYERS IN THIS CASE.** If you move, you must update your address with the Settlement Administrator. If you disagree with pre-printed data indicated in section E above, you must submit an explanation and/or documentation to the Settlement Administrator to justify your position, postmarked no later than [ ]. The Settlement Administrator's address is [Settlement Administrator address].

- **OPTION 2 – OBJECT TO THE SETTLEMENT**

If you wish to remain a Settlement Class Member, but you object to the proposed settlement (or any of its terms) and wish the Court to consider your objection at the Final Settlement Hearing, you may object to the proposed settlement in writing. You may also appear at the Final Approval Hearing, either in person or through an attorney at your own expense. All written objections, supporting papers, and/or notices of intent to appear at the Final Approval Hearing must clearly identify the case name and number and be mailed to the Settlement Administrator at [Settlement Administrator address]. Written objections must be postmarked no later than \_\_\_\_\_.

- **OPTION 3 – EXCLUDE YOURSELF FROM THE SETTLEMENT**

You have a right to exclude yourself (“opt out”) from the Settlement Class, but if you choose to do so, you will not receive any benefits from the proposed settlement, although you will be bound by the PAGA Settlement. You will not be bound by a class judgment in this case and you will have the right to file your own lawsuit against the Defendant and pursue your own claims in a separate suit. You can opt out of the Class by completely filling out and mailing the enclosed Request for Exclusion Form to the Settlement Administrator at the above-stated address, such that it is postmarked no later than \_\_\_\_\_.

**ARE THERE MORE DETAILS ABOUT THE SETTLEMENT?**

The above is a summary of the basic terms of the settlement. For the precise terms and conditions of the settlement, you should review the detailed “Settlement Agreement and Release of Claims” which is on file with the Clerk of the Court. The pleadings and other records in the Lawsuit may be examined at any time during regular business hours at the Office of the Clerk of the Placer County Superior Court, located at 10820 Justice Center Drive, Roseville, 95678.

**IF YOU NEED MORE INFORMATION OR HAVE ANY QUESTIONS**, you may contact the Settlement Administrator at [address], [telephone number].

**PLEASE DO NOT TELEPHONE THE COURT FOR INFORMATION ABOUT THIS SETTLEMENT OR THE CLAIMS PROCESS.**

**BY ORDER OF THE SUPERIOR COURT OF  
THE STATE OF CALIFORNIA**

# EXHIBIT 2

**REQUEST FOR EXCLUSION**

**ONLY COMPLETE THIS REQUEST FOR EXCLUSION FORM IF YOU WANT TO OPT OUT OF (NOT PARTICIPATE IN) THE CLASS ACTION SETTLEMENT** OF THE ACTION KNOWN AS *Lee Allen Cowin v. NEKI, Inc., and Does 1 Through 10, Inclusive*, Defendants, Placer County Superior Court, Case No. S-CV-0049770. **IF YOU OPT OUT OF THE CLASS ACTION SETTLEMENT, YOU WILL NOT RECEIVE ANY PAYMENT FROM THE CLASS ACTION SETTLEMENT AMOUNT.**

I confirm that I was employed by Defendant NEKI, Inc. as a non-exempt, hourly employee from October 12, 2018 through April 15, 2023.

**I do not wish to receive any payment under the terms of the proposed class action settlement or to otherwise participate in the proposed settlement. I understand that I cannot opt-out or exclude myself from the PAGA settlement.**

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Residence Street Address: \_\_\_\_\_

City, State and Zip Code: \_\_\_\_\_

IN ORDER TO BE VALID, THIS REQUEST FOR EXCLUSION FORM MUST BE COMPLETED, SIGNED, MAILED BY FIRST CLASS MAIL, AND POSTMARKED ON OR BEFORE **[45 days after mailing of Notice]**. Send this signed request for exclusion form to the Settlement Administrator:

NEKI, Inc. Claims Administrator  
c/o \_\_\_\_\_ [claims admin]  
\_\_\_\_\_  
\_\_\_\_\_

|                                |                                                                                          |
|--------------------------------|------------------------------------------------------------------------------------------|
| <b>Title</b>                   | 2nd Settlement Agreement                                                                 |
| <b>File name</b>               | Cowin v NEKI - Se...AL w Exhibits.pdf                                                    |
| <b>Document ID</b>             | 73b5a5e4a348ad0445ebdd4de08980c55921378d                                                 |
| <b>Audit trail date format</b> | MM / DD / YYYY                                                                           |
| <b>Status</b>                  |  Signed |

**Document History**

|                                                                                                         |                                       |                                                                                                 |
|---------------------------------------------------------------------------------------------------------|---------------------------------------|-------------------------------------------------------------------------------------------------|
| <br><b>SENT</b>        | <b>04 / 07 / 2023</b><br>17:45:27 UTC | Sent for signature to Lee Allen Cowin [REDACTED]<br>from office@gaineslawfirm.com<br>[REDACTED] |
| <br><b>VIEWED</b>      | <b>04 / 08 / 2023</b><br>14:54:32 UTC | Viewed by Lee Allen Cowin [REDACTED]<br>[REDACTED]                                              |
| <br><b>SIGNED</b>    | <b>04 / 08 / 2023</b><br>14:55:41 UTC | Signed by Lee Allen Cowin [REDACTED]<br>[REDACTED]                                              |
| <br><b>COMPLETED</b> | <b>04 / 08 / 2023</b><br>14:55:41 UTC | The document has been completed.                                                                |

|                         |                                                           |
|-------------------------|-----------------------------------------------------------|
| Title                   | 2023.04.07 Cowin v NEKI - Settlement Agreement FINAL w... |
| File name               | 2023.04.07%20Cowi...0w%20Exhibits.pdf                     |
| Document ID             | c89ab3a74fe40e537bac8e22657a9bdca37cac00                  |
| Audit trail date format | MM / DD / YYYY                                            |
| Status                  | ✱ Signed                                                  |

This document was requested from app.clio.com

Document History

|                                                                                                  |                                |                                                             |
|--------------------------------------------------------------------------------------------------|--------------------------------|-------------------------------------------------------------|
| <br>SENT        | 04 / 08 / 2023<br>01:08:08 UTC | Sent for signature to Pizza Guys [REDACTED] from [REDACTED] |
| <br>VIEWED      | 04 / 08 / 2023<br>03:22:16 UTC | Viewed by Pizza Guys [REDACTED]                             |
| <br>SIGNED    | 04 / 08 / 2023<br>03:28:45 UTC | Signed by Pizza Guys [REDACTED]                             |
| <br>COMPLETED | 04 / 08 / 2023<br>03:28:45 UTC | The document has been completed.                            |