

1 DANIEL F. GAINES, ESQ. SBN 251488
daniel@gaineslawfirm.com
2 ALEX P. KATOFISKY, ESQ. SBN 202754
alex@gaineslawfirm.com
3 EVAN S. GAINES ESQ. SBN 287668
evan@gainleslawfirm.com
4 **GAINES & GAINES, APLC**
4550 E. Thousand Oaks Blvd., Suite 100
5 Westlake Village, CA 91362
Telephone: (818) 703-8985
6 Facsimile: (818) 703-8984

7 Attorneys for Plaintiff Lee Allen Cowin
and Proposed Class Counsel
8

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF PLACER**
11

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

14 Plaintiff,

15 v.

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

18 Defendants.
19
20
21
22
23
24
25
26
27
28

CASE NO: S-CV-0049770

Assigned to the Hon. Trisha Hirashima, Dept. 40

CLASS ACTION

**DECLARATION OF DANIEL F. GAINES IN
SUPPORT OF UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

DATE: May 25, 2023

TIME: 8:30 a.m.

DEPT.: 3

Action Filed: January 19, 2023

1 I, DANIEL F. GAINES, hereby declare and state as follows:

2 1. I am an attorney duly admitted to the practice of law in the State of California. I am
3 a shareholder of Gaines & Gaines, APLC, counsel for Plaintiff Lee Allen Cowin ("Cowin" or
4 "Plaintiff") and proposed Class Counsel in this action. I have personal knowledge of the facts set
5 forth herein and if called as a witness to testify to them, I could and would do so competently.

6 **Education and Experience:**

7 2. I obtained my BS degree from the University California at Berkeley in 2003. I
8 majored in Business Administration at the Haas School of Business.

9 3. Thereafter, I attended the University of Virginia School of Law. At Virginia, I was
10 a member of the editorial board of the Virginia Tax Review. I was also the recipient of the Lacy
11 Armour Scholarship, awarded to recognize academic excellence. At Virginia, I focused my
12 studies on tax and real estate. I earned my JD and became a member of the California Bar in 2007.

13 4. Since becoming a member of the Bar, and until his recent retirement, I practiced law
14 with my father, Kenneth, at Gaines & Gaines, APLC. Our practice specializes in litigation, with
15 an emphasis in employment disputes like this one. Over 95% of my practice is devoted to complex
16 employment litigation similar to the instant action.

17 5. My firm has represented employees in complex employment matters such as this
18 one, with an emphasis in wage and hour issues. I have participated in and have been certified as
19 class counsel in dozens of class action matters since my admission to the Bar. A list of the cases
20 in which I have been appointed as class counsel is attached hereto as **Exhibit A**.

21 **Factual and Procedural Background:**

22 6. On July 25, 2022 and August 8, 2022, Plaintiff exhausted the pre-filing requirements
23 of the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698 *et seq.*
24 ("PAGA").

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

27 8. On January 12, 2023, the Parties participated in a full day mediation session with
28 Hon. David Brown (Ret.), a highly respected jurist and mediator with experience resolving

1 employment actions. The Parties were able to agree to the basic terms of this settlement agreement
2 with the assistance of Judge Brown.

3 9. On or about January 19, 2023, Plaintiff initiated the Action by filing a Complaint as
4 a class and representative action, pursuant to California Code of Civil Code section 382 and
5 PAGA, on behalf of himself and all other non-exempt California employees employed by
6 Defendant. The Action asserts class and representative action claims against Defendant for (1)
7 failure to pay all wages due (Labor Code §§ 510, 1194, and 1194.2); (2) failure to pay all gratuities
8 (Labor Code § 351); (3) failure to provide rest periods or compensation in lieu thereof (Labor
9 Code § 226.7); (4) failure to provide meal periods or compensation in lieu thereof (Labor Code §§
10 226.7, and 512); (5) failure to reimburse employee business expenses (Labor Code § 2802); (6)
11 knowing and intentional failure to comply with itemized employee wage statement provisions
12 (Labor Code §§ 226(a), (e), (h)); (7) failure to timely pay wages due at separation of employment
13 (Labor Code §§ 201-203); (8) violation of Business and Professions Code § 17200; and (9)
14 penalties pursuant to Labor Code § 2699(f) for violations of Labor Code §§ 201, 202, 204, 210,
15 226(a), 226.3, 226.7, 351, 510, 512, 558, 1194, and 2802 (the "Complaint").

16 10. Defendant denies any liability or wrongdoing of any kind associated with the claims
17 alleged in the Action, and further denies that the Action is appropriate for class treatment for any
18 purpose other than this settlement. Defendant contends that it has complied at all times with the
19 California Labor Code. It is Defendant's position that, if this case were to be litigated, class
20 certification would be inappropriate because Plaintiff is not an adequate class representative,
21 Plaintiff's claims are not typical of putative class members, and individual issues predominate
22 over class issues. The Action, the negotiation and execution of this Settlement Agreement, and
23 all acts performed or documents executed pursuant to or in furtherance of the Settlement
24 Agreement (i) shall not be used as an admission or evidence of wrongdoing on behalf of
25 Defendant; (ii) shall not be an admission or evidence of fault on behalf of Defendant in any action
26 before a civil, criminal, or administrative agency; and (iii) shall not be deemed to be, and may not
27 be used as, an admission or evidence of the appropriateness of these or similar claims for class
28 certification in the Action or with respect to any other proceeding.

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

3 **Investigation and Settlement Discussions**

4 12. My colleagues and I have conducted a thorough investigation into the facts and law
5 during the prosecution of this class action case, including the exchange of extensive informal
6 discovery and the review and verification of statistical data and other facts and information
7 provided by Defendant. My colleagues and I have investigated the applicable law as applied to
8 the facts discovered regarding the alleged claims of Plaintiff and potential defenses thereto, and
9 the damages claimed by Plaintiff.

10 **Class Counsel's Assessment of the Fairness of the Settlement and the Risks of Continued**

11 **Litigation:**

12 13. Based on our independent investigation and evaluation, my colleagues and I are of
13 the opinion that settlement for the consideration and on the terms set forth in this Settlement
14 Agreement is fair, reasonable, and adequate and is in the best interest of the Settlement Class in
15 light of all known facts and circumstances, including the risk of significant delay, the risk the
16 Settlement Class will not be certified by the Court, and the defenses asserted by Defendant. While
17 each Class Member should decide for themselves the fairness of the agreement, Defendant and its
18 counsel also agree their joint belief that this settlement is fair and in the best interest of the
19 Settlement Class.

20 14. The Parties agree that the settlement class described herein may be certified for
21 settlement purposes only and that any motion for approval seeking, *inter alia*, certification of the
22 Settlement Class is for purposes of the settlement only. If for any reason the settlement is not
23 approved, the certification will have no force or effect and will immediately be revoked. The
24 Parties further agree that certification for purposes of the settlement is in no way an admission that
25 class certification is proper under the more stringent standard applied for litigation and that
26 evidence of this limited stipulation for settlement purposes only will not be admissible for any
27 purpose in this or any other proceeding.

28 \\\

1 15. The parties jointly prepared the Settlement Agreement and Release of Claims
2 ("Settlement Agreement", "Settlement", or "Stip."). A true and correct copy of the Settlement is
3 attached hereto as **Exhibit B**.

4 16. Plaintiff has entered into a full and complete general release in favor of the
5 Defendant in exchange for a payment. His general release payment relates to claims not otherwise
6 resolved through the class action settlement, including allegations relating to claims for wrongful
7 termination.

8 17. Defendant allegedly failed to pay Class Members all minimum and overtime wages
9 earned, in violation of Labor Code §§ 510, 558, 1194, and 1194.2. Plaintiff contends that
10 Defendant required Class Members to perform work-related activities off-the-clock, but did not
11 compensate them for this time. An employer is obligated to pay the wages of an hourly employee
12 for all time that the employee is under the control of the employer, and this includes all the time
13 the employee is suffered or permitted to work, whether or not required to do so. When Class
14 Members performed work-related activities off-the-clock, they were allegedly under the control
15 of Defendant and required to be compensated for all hours worked. Defendant, however, failed to
16 do so, in violation of Labor Code §§ 510, 558, 1194, and 1194.2. Plaintiff calculates damages on
17 this claim at \$136,806, with PAGA civil penalty liability of \$126,400.

18 18. Plaintiff argues that Defendant failed to permit or authorize Class Members to take
19 timely 30-minute meal periods for shifts greater than 5 hours in length, in violation of Labor Code
20 §§ 226.7, 512, and 558 and IWC Wage Order 5-2001. Labor Code § 512 provides that employers
21 (like Defendant) may not employ an employee for a work period of more than 5 hours without
22 providing a 30-minute meal period starting no later than the end of the fifth hour. Plaintiff contends
23 that he and Class Members were routinely unable to take a proper meal period when they worked
24 shifts in excess of 5 hours in duration and a second meal period when they worked shifts in excess
25 of 10 hours in duration. Further, Plaintiff contends that Defendant maintains an illegal meal period
26 policy which omits any requirement for a second meal period for shifts greater than ten hours.
27 Plaintiff's expert has ascertained a meal period violation rate of 70% based on Defendant's time
28 records supplied through informal discovery. Based on the data provided, Defendant never meal

1 period premiums. Plaintiff calculates damages on this claim at \$211,517, with PAGA civil penalty
2 liability of \$88,500.

3 19. Plaintiff also contends that Class Members are owed premium wages for missed,
4 denied and unauthorized rest periods, as authorized by Labor Code § 226.7 and IWC Wage Order
5 5-2001. Plaintiff alleges that Class Members were denied, and therefore unable to take, 10-minute
6 on-the-clock rest periods for every four hours of work or major fraction thereof, but were not paid
7 premium wages of one hour's pay for each missed, denied and unauthorized rest period. When
8 Class Members were able to take a rest period, Plaintiff believes that Defendant maintained a
9 policy and practice requiring employees to remain on the company premises, which he argues
10 would violate the California Supreme Court's mandate. An employer may not place any
11 limitations on where employees may go or not go during their rest periods). Plaintiff calculates
12 damages on this claim at \$391,356, with PAGA civil penalty liability of \$120,900.

13 20. Plaintiff contends that Class Members were required to incur expenses in the
14 performance of their job duties for which they were not fully reimbursed, in violation of Labor
15 Code § 2802, because they were required to use their personal cell phones, vehicles, and maintain
16 a uniform with Defendant's logo, but were not fully reimbursed by Defendant for these expenses.
17 This practice violates Labor Code § 2802. Based on the evidence assessed by Plaintiff, he
18 calculates damages on this claim at \$116,181, with PAGA civil penalty liability of \$137,500.

19 21. Defendant also allegedly failed to issue Class Members accurately itemized wage
20 statements because, based on the allegations of unpaid wages, the wage statements issued by
21 Defendant failed to accurately state all gross wages earned, in violation of Labor Code § 226(a)(1),
22 total hours worked, in violation of Labor Code § 226(a)(2), net wages earned, in violation of Labor
23 Code § 226(a)(5), and all applicable hourly rates in effect during the pay period and the
24 corresponding number of hours worked at each hourly rate, in violation of Labor Code § 226(a)(9).
25 They also allegedly improperly set forth employees' entire social security numbers, in violation
26 of Labor Code §§ 226(a)(7) and 226.3. Plaintiff calculates statutory damages on this claim at
27 approximately \$125,000, with PAGA civil penalty liability of \$126,400.
28

1 22. Defendant also allegedly failed to pay Class Members all wages due upon separation
2 of employment, in violation of Labor Code §§ 201-203. As Defendant allegedly failed to pay
3 them all wages due during the course of their employment, as described above, these wages were
4 due and owing upon separation of employment yet went unpaid. Plaintiff calculates statutory
5 penalties on this claim at \$233,463, with PAGA civil penalty liability of \$4,500.

6 23. The discount negotiated for settlement here is a reasonable compromise, particularly
7 considering that the risk of obtaining class certification on all or any of Plaintiff's claims involves
8 a 50% or higher hurdle, especially with respect to the unpaid wages, meal period, rest period, and
9 expense reimbursement claims, to which Defendant maintains strong arguments to defeat class
10 certification (in addition to multiple defenses on the merits of the claims). Class certification is a
11 substantial risk in any class action case. Here, while Plaintiff maintains that the requirements of
12 class certification are met, Defendant proffers various arguments why class treatment is not
13 appropriate, including but not limited to that individualized inquires among class members
14 predominate over common ones. If Defendant was to defeat Plaintiff's class certification motion,
15 there would be no class wide relief whatsoever, and most Class Members would likely not file
16 individual claims.

17 24. Plaintiff also faced the risk of a loss on the merits on his claims. It is very possible
18 that the Court would agree with Defendant's position that its policies and practices complied with
19 the requirements of California law or could not be certified. In such a case, the value of the
20 majority of Plaintiff's claims would be zero.

21 25. Finally, Plaintiff faced the risk that he would not obtain a maximum damage/penalty
22 award on all (or any of) her claims. For example, Plaintiff seeks discretionary penalties pursuant
23 to the PAGA. Even if Plaintiff did prevail on these claims, it is possible that the Court would not
24 impose all penalties pursuant to its discretionary power to reduce them.

25 26. Defendant strongly contends that its policies and practices do not violate any laws.
26 It contends that it properly provided for all meal and rest periods and fully compensated its
27 employees for all time worked and all expenses incurred. It further contends that the wage
28 statements it provides to its employees are fully compliant with California law.

1 27. When the costs and risks of non-certification and loss on the merits are considered,
2 my colleagues and I are of the opinion that the settlement reached is clearly a favorable one.

3 28. The settlement for each Class Member is fair, reasonable and adequate, given the
4 inherent risk of litigation, the risk relative to class certification and the costs of pursuing such
5 litigation. The settlement shall finally resolve all claims of the Class Members as alleged in the
6 Action.

7 **Class Certification Requirements:**

8 29. To date, no class has been certified. The Stipulation of Settlement contains a
9 provision pursuant to which we stipulate to the Court's provisional certification of the
10 approximately 166-member Settlement Class, but do so for purposes of this settlement only.

11 30. In this case, the Class Members are identifiable from Defendant's employment and
12 payroll records. Further, the Settlement Class is sufficiently numerous to warrant certification.
13 According to Defendant's records, the Class comprises approximately 166 employees.

14 31. The Class Members' claims all stem from a common source: members of the
15 Settlement Class allege that Defendant violated the same Labor Code provisions in connection
16 with their employment. All members of the Class seek the same relief under the same California
17 laws (related to unpaid wages, unpaid meal and rest period premiums, inaccurate or incomplete
18 wage statements, failure to reimburse expenses, failure to pay all gratuities, failure to timely pay
19 wages due, and derivative claims). Under these circumstances, the commonality requirement is
20 satisfied for purposes of certifying the Settlement Class for settlement purposes.

21 32. In this case, named Plaintiff and proposed Class Representative Lee Allen Cowin is
22 a former non-exempt employee who worked for Defendant in the State of California during the
23 Class Period. He contends that Defendant failed to pay all wages due, failed to provide meal and
24 rest periods, failed to comply with itemized employee wage statement provisions, failed to pay
25 gratuities, failed to reimburse expenses, and failed to timely pay wages, in violation of Labor Code
26 §§ 201-204, 226(a), 226.7, 351, 510, 512, 1194, 1194.2, 2698, 2699, and 2802, among other Labor
27 Code provisions. He has the same claims as those that the members of the Settlement Class would
28 reasonably be expected to bring based on the course of conduct alleged herein.

33. Plaintiff has also demonstrated that he will aggressively and competently assert the interests of the proposed Settlement Class; he has taken an active role in this litigation and has no apparent conflicts with other class members.

Settlement of Claims Pursuant to Labor Code § 2699 et seq. (PAGA)

34. Concurrently with the filing of this Motion, my office is transmitting the Settlement Agreement (and these approval documents) to the LWDA, in compliance with Labor Code § 2699(1)(2).

I declare, under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed this 17th day of April, 2023 at Westlake Village, California.

Daniel F. Gaines
DANIEL F. GAINES

EXHIBIT A

Adams v. Newell Rubbermaid, USDC Central District of California (Los Angeles), Case No. EDCV 08-1499 JTM (CTx)

Adams v. Sam's West, Inc., San Bernardino County Superior Court, Case No. CIVDS1403987

Agredano v. GS Brothers, Inc., Los Angeles County Superior Court, Case No. BC445561

Allen v. Toms Sierra Company, Nevada County Superior Court, Case No. CU18-082823

Allen v. Valley Inventory Service, Inc., Solano County Superior Court, Case No. FCS034682

Alvarez v. Pilot Travel Centers, LLC, San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-4605

Alonzo v. Camblin Steel Service, Inc., Placer County Superior Court, Case No. SCV0034165

Amenhotep v. Google, Inc., Santa Clara County Superior Court, Case No. 17CV311528

Anaya v. Progressive Logistics Services, LLC, Riverside County Superior Court, Case No. RIC1308270

Andre v. Newell Rubbermaid, Inc., San Bernardino County Superior Court, Case No. CIVVS1200282

Anduha v. ABC Phones of North Carolina, Inc., Stanislaus County Superior Court, Case No. 2022729

Anslow v. Wellington Energy, Inc., USDC Northern District of California (San Francisco), Case No. CV11-1596-JCS

Aranda, et al. v. Universal Lumpers of California, Inc., San Joaquin County Superior Court, Case No. STK-UOE-2017-7826

Armendariz v. Integrated Pain Management Medical Group, Inc., Kern County Superior Court, Case No. BCV-19-100267-SDS

Barrow, et al. v. Desmond Foods, L.P., Sacramento County Superior Court, Case No. 34-2015-00187227

Batmanghelich v. Sirius XM Radio Inc., USDC Central District of California (Los Angeles), Case No. CV 09-9190 VBF (JCx)

Bosser v. Hooked on Solar, Yolo County Superior Court, Case No. CVCV-2016-876

Bourland v. Horizon Personnel Services, Inc., Sacramento County Superior Court, Case No. 34-2014-00161365-CU-OE-GDS

Bowen v. IMI Material Handling Logistics, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2016-0000192

Branson v. Mladen Buntich Construction, San Bernardino County Superior Court, Case No. CIVDS1609129

Brandt v. Sacramento Auto Insurance Center, Inc., San Joaquin County Superior Court, Case No. 39-2009-00202938-CU-OE-STK

Brown v. 22nd District Agricultural Association, United States District Court, Southern District of California, Case No. 15-cv-2578-DHB

Brown v. Sierra Central Credit Union, Sutter County Superior Court, Case No. CVCS18-0002161

Burgess v. Blue Cross and Blue Shield of South Carolina, San Joaquin County Superior Court, Case No. 39-2012-00277449-CU-BT-STK

Burgess v. Strategic Retail Solutions, LLC, Los Angeles County Superior Court, Case No. BC413791

Calhoun v. Celadon Trucking Services, Inc., USDC – Central District of California (Los Angeles), Case No. 5:16-cv-01351-PSG-FFM

Caporicci v. Owens & Minor Distribution, Inc., San Joaquin County Superior Court, Case No. 39-2013-00295662-CU-OE-STK

Carl v. Advanced Call Center Technologies, LLC, Sacramento County Superior Court, Case No. 34-2013-00148310

Carlisle, et al. v. Professional Technical Security Services, Inc., Case No. CGC18569791

Carrete v. Gamestop, Inc., Imperial County Superior Court, Case No. ECU08501

Carrillo v. Bimbo Bakeries, Inc., San Bernardino County Superior Court, Case No. CIVDS1606813

Caudillo v. Aegis Treatment Centers, LLC, Merced County Superior Court, Case No. 18CV-0744

Cerami v. Metlife, Inc., USDC – Central District of California (Orange County), Case No. 11-CV-00681-CJC (MLGx)

Charles v. Aaron's Inc., Los Angeles County Superior Court, Case No. BC431468

Charles v. Nursefinders, LLC, Imperial County Superior Court, Case No. ECU07422

Cheifer v. JetBlue Airways Corporation, Los Angeles County Superior Court, Case No. BC451887

Cheifer, et al. v. WHGM, Inc., Los Angeles County Superior Court, Case No. LC104900

Chong, et al. v. Crescent Northwoods Inn, Inc., Del Norte County Superior Court, Case No. CVUJ-2018-1133

Church v. GameStop, Inc., et. al., USDC Central District of California (Los Angeles), Case No. 11-CV-00132-VAP-RZ

Clothier v. Spar Marketing Services, Inc., Alameda County Superior Court, Case No: RG12-639317

Coleman v. Wireless Lifestyle, Inc., USDC – Western District of Missouri, Case No. 4:12-cv-00855-ODS

Colombo-Beyeler, et al. v. Viking River Cruises, Inc., San Bernardino County Superior Court, Case No. CIVDS1611608

Conlee v. Clark Pacific Corporation, Yolo County Superior Court, Case No. CV14-1409

Contreras v. Osmose Utilities Services, Inc., San Bernardino County Superior Court, Case No. CIVDS1513998

Contreras v. West American Service Corporation, Kings County Superior Court, Case No. 14C0280

Corona v. Yosemite Meat & Locker Service, Inc., Stanislaus County Superior Court, Case No. 2006828

Cortellessa v. Dotnext, Inc., Alameda County Superior Court, Case No. RG09429971

County v. Ingram Mirco, Inc., San Bernardino Superior Court, Case No. CIVRS 1304445

Covarrubias, et al. v. Petersendean Builder Group, Inc., Kern County Superior Court, Case No. BCV-16-101122

Cowen, et al. v. Evergreen Alliance Golf Limited, L.P., d/b/a Arcis Golf, San Bernardino County Superior Court, Case No. CIVDS1719283

Cruz-Garcia v. Lemonade Restaurant Group, LLC, Los Angeles County Superior Court, Case No. BC478205

Cunningham v. Performance Contracting, Inc., Contra Costa County Superior Court, Case No. C16-02157

Dabney v. Coneybeare, LLC, et al., Orange County Superior Court, Case No. 30-2018-00999989-CU-OE-CXC

Dabney, et al. v. Panera, LLC., San Bernardino County Superior Court, Case No. CIVDS1516030

Diaz, et al. v. Seaworld Entertainment, Inc., Imperial County Superior Court, Case No. ECU10046

Diggs v. Western Waterproofing Company, Inc., San Francisco County Superior Court, Case No. CGC-14-539281

Dismuke v. Rhodes Retail Services, Inc., Sacramento County Superior Court, Case No. 34-2011-00105001

Dorsette v. TA Operating, LLC, USDC – Central District of California (Los Angeles), Case No. EDCV 09-1350 PA (RZx)

Duran v. The Image of California, Inc., Kern County Superior Court, Case No. S-1500-CV-284056 DRL

Edwards v. Trans World Entertainment Corp., San Diego County Superior Court, Case No. 37-2010-00095123-CU-OE CTL

Esakhani v. Central Valley Gaming, Stanislaus County Superior Court, Case No. 2020667

Escobar v. SMSSI of California, Inc., San Francisco Superior Court, JCCP No. 4776

Espinosa v. Taltech Construction, et al., Los Angeles County Superior Court, Case No. BC590176

Espinosa v. Bodycote Thermal Processing, Inc., Los Angeles County Superior Court, Case No. BC501617

Espinoza v. Pabco Building Products, LLC, Los Angeles County Superior Court, Case No. VC065660

Estrada v. Net Source Communications, Inc., Los Angeles County Superior Court, Case No. BC431169

Estrada v. OS Restaurant Services, LLC, Santa Clara County Superior Court, Case No. 16CV293249

Estupinan v. Global Development Strategies, Inc., Santa Clara County Superior Court, Case No. 110CV178898

Fadhl. v. Siemens Healthcare Diagnostics Inc., Sacramento County Superior Court, Case No. 34-2017-00209518

Fernandez v. The Regents of the University of California, Los Angeles County Superior Court, Case No. BC656256

Ferrer v. Dish Network Corporation, Los Angeles County Superior Court, Case No. BC441354

Findora v. Barry Callebaut USA LLC, Napa County Superior Court, Case No. 19CV000219

Flores v. Cintas Corporation, Los Angeles County Superior Court, Case No. BC400422

Friel v. Midwest Construction Services, Inc., San Joaquin County Superior Court, Case No. 39-2015-00329204-CU-OE-STK

Gagnon v. Banc of California, Contra Costa County Superior Court, Case No. C 15-00196

Galarza v. Bayou Well Services, LLC, Kern County Superior Court, Case No. S-1500-CV-279372 DRL

Galarza v. C & H Testing Service LLC, Kern County Superior Court, Case No. BCV-15-100008 SPC

Garcia v. Old Dominion Freight Line, Inc., San Bernardino County Superior Court, Case No. CIVDS1404636

Geer v. Applied Aerospace Structures Corp., San Joaquin County Superior Court, Case No. 39-2014-00313702-CU-OE-STK

Getz v. California Cinema Investments, Inc., Ventura County Superior Court, Case No. 56-2013-00437706-CU-MC-VTA

Gibbs v. M. Lehmann Enterprises, Orange County Superior Court, Case No. 30-2013-00678538-CU-OE-CXC

Gilles v. Schaefer Ambulance Service Inc., Imperial County Superior Court, Case No. ECU07970

Goldman, et al. v. Defender's, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-0009973

Gomez v. Low Desert Empire Pizza, Inc., San Bernardino County Superior Court, Case No. CIVVS900392

Gomez v. Pizza Hut of Southeast Kansas, Inc., San Bernardino County Superior Court, Case No. CIVVS900679

Gonzalez v. Harris Farms, Inc., USDC – Eastern District of California (Fresno), Case No. 1:14-cv-00038-LJO-SAB

Guerrero v. Main Electric Supply Company LLC, Ventura County Superior Court, Case No. 56-2019-00525427-CU-OE-VTA

Gutierrez v. Asset Management Specialists, Inc., Fresno County Superior Court, Case No. 12CECG03577

Gutierrez v. Linkus Enterprises, Inc., Madera County Superior Court, Case No. MCV065774

Gutierrez v. Shiekh, LLC, San Bernardino County Superior Court, Case Nos. CIVRS1206525, CIVRS1303408

Hairston v. Stanislaus Surgical Hospital, Stanislaus County Superior Court, Case No. CV-19-000651

Hindman v. Service Quick, Inc., San Bernardino County Superior Court, Case No. CIVDS1724229

Hogan v. iMobile of CA LLC, San Bernardino County Superior Court, Case No. CIVDS1409263

Hogan v. Wireless Evolution Inc., Riverside County Superior Court, Case No. MCC1300669

Hogan v. Wireless That's It! LLC, Riverside County Superior Court, Case No. RIC1201997

Holmes v. Bottling Group, LLC, Stanislaus County Superior Court, Case No. 2022584

Hooper, et al. v. URS Midwest, Inc., et al., San Bernardino Superior Court, Case No. CIVDS1607489

Humphrey v. Freedomroads, LLC, Shasta County Superior Court, Case No. 178228

Hurtado v. Rush Truck Centers of California, Inc., Los Angeles County Superior Court, Case No. BC427672

Hyde v. Dent Wizard International Corporation, Sacramento County Superior Court, Case No. 34-2015-00173882

Ibrihim v. Imperfect Foods, Inc., San Joaquin County Superior Court, Case No. STK-VI-UOE-2019-0000846

Id-deen v. Educational Services of America, Solano County Superior Court, Case No. FCS040803

Isherwood v. Mason Dixon Intermodal, Inc., San Joaquin County Superior Court, Case No. 39-2012-00279891-CU-OC-STK

Jahanbin v. Pacific Mercantile Bank, Orange County Superior Court, Case No. 30-2011-00480705CU-OE-CXC

Jenkins v. Sedgwick Claims Management Services, Inc., Los Angeles Superior Court, Case No. LC101648

Job v. California Security Services, Yuba County Superior Court, Case No. 14-0000820

Johnson v. The Goodyear Tire & Rubber Company, USDC Northern District of California (San Francisco), Case No. 3:13-cv-01069-MMC

Jolin v. Bay Cities Recovery, Inc., El Dorado County Superior Court, Case No. PC20100458

Jordan v. Sutter Memorial Hospital, Stanislaus County Superior Court, Case No. 2023344

Keebaugh v. Mike Thompson Recreational Vehicles, San Bernardino County Superior Court, Case No. CIV-DS-1500718

Kelly v. Robin's Enviro Vac, Inc., Kern County Superior Court, Case No. S-1500-CV-282277
DRL

King v. Levy Premium Foodservice Limited Partnership, Alameda County Superior Court, Case No. HG15786353

Kunsman v. Punch Bowl Sacramento, LLC, et al., Sacramento County Superior Court, Case No. 34-2018-00243175

LaFear v. Encore Education Corporation, San Bernardino County Superior Court, Case No. CIVDS1802251

Lanzarin v. AWI Management Corporation, Solano County Superior Court, Case No. FCS041809

Lee, et al. v. Foster Dairy Farms, Stanislaus County Superior Court, Case Nos. 2006542, 2015679

Lemus, et al. v. Eastridge Workforce Technology, Inc., San Bernardino County Superior Court, Case No. CIV-DS-1611470

Lewis v. American Casino & Entertainment Properties LLC, San Bernardino County Superior Court, Case No. CIVDS1719094

Lemus v. On Assignment Staffing Services, San Bernardino County Superior Court, Case No. CIV-DS-1600497

Leon v. Piercey West Inc., Los Angeles County Superior Court, Case No. BC656874

Lopez v. Creative Communication Technologies, Inc., Imperial County Superior Court, Case No. ECU07851

Lopez v. Go Green Auto Spa Franchise, Inc., et al., Los Angeles County Superior Court, Case No. BC 562212

Lopez v. Truck Accessories Group, LLC, Yolo County Superior Court, Case No. CV13798

Ludlow v. Prince Telecom, LLC, Stanislaus County Superior Court, Case No. 684239

Luna v. Express Locations, LLC, Imperial County Superior Court, Case No. ECU09779

Macias v. American Tire Distributors, Inc., Kern County Superior Court, Case No. BCV-18-101586

Maldonado v. Hardwood Flooring Liquidators, Inc., Los Angeles County Superior Court, Case No. BC642170

Mansfield v. Cambridge Real Estate Services, Inc., Butte County Superior Court, Case No. 160175

Martinez v. DPI Specialty Foods West, San Joaquin County Superior Court, Case No. 39-2015-00327311-CU-OE-STK

Martinez v. Styles For Less, Inc., San Bernardino County Superior Court, Case No. CIVVS1203057

Mayne v. John Muir Behavioral Health, Contra Costa County Superior Court, Case No. C17-00998

Maze v. Bulldog Freightway, Inc., Imperial County Superior Court, Case No. ECU08716

McCormick v. G & O Body Shop, Inc., El Dorado Superior Court, Case No. PC20130291

McCrary v. Campbell Soup Supply Company, San Joaquin County Superior Court, Case No. 39-2013-00297698-CU-OE-STK

McDaniel v. Vancary, Inc., Tulare County Superior Court, Case No. 268036

Melgar Farela v. Guardian Compliance, Inc., Los Angeles County Superior Court, Case No. BC481865

Mendiola v. Tyco Electronics Corporation, Riverside County Superior Court, Case No. RIC1400721

Mettler v. Les Schwab Tire Centers of California, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-476

Miller v. California Subshine, Inc., Los Angeles County Superior Court, Case No. BC637754

Miller v. Southwest Airlines Co., USDC – Northern District of California (San Francisco), Case No. 3:12-cv-05978-CRB

Mitchell v. Crossmark, Inc., USDC – Central District of California (Los Angeles), Case No. CV 11-2818-JAK (FMOx)

Moghrabi v. Vitaligent, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-1650

Molina v. Berkshire Hathaway Energy Company, et al., Imperial County Superior Court, Case No. ECU000522

Moore v. Horizon Solar Power, Inc., San Bernardino County Superior Court, Case No. CIVDS1410001

Murray v. Select Media Services, LLC, Los Angeles County Superior Court, Case No. BC424506

Myles v. Central Transport LLC, San Bernardino County Superior Court, Case No. CIVDS1401434

Navarro v. Mariana Packing Co., Inc., Solano County Superior Court, Case No. FCS045935

Nehrlich, et al. v. RPM Mortgage, Inc., Orange County Superior Court, Case No. 30-2013-00666783-CU-OE-CXC

Overton v. Hat World, Inc., USDC – Eastern District of California (Sacramento), Case No. 2:11-CV-01645-LKK-KJN

Perez v. Alcatel-Lucent USA Inc., Imperial County Superior Court, Case No. ECU07977

Perez v. Major Gloves and Safety, Inc., San Bernardino County Superior Court, Case No. CIVDS1710445

Perry v. Cardinal Health 200, LLC, Solano County Superior Court, Case No. FCS035303

Phraxayavong-Briones v. RSM, Inc., Sacramento County Superior Court, Case No. 34-2012-00117524

Pugh v. Wi Spa, LLC, Imperial County Superior Court, Case No. ECU07932

Quist v. Knight Transportation, Inc., San Bernardino Superior Court, Case No. CIVDS 1615414

Quitco v. Aviation Fuel Systems Repair, Inc., San Bernardino Superior Court, Case No. CIVRS1302311

Rambeau v. C.C.M. Corporation, et al., Sacramento County Court, Case No. 34-2018-00244842

Rankins v. Roman Empire Living Skills, Inc., Los Angeles County Superior Court, Case No. BC713399

Rees v. Advantel, Incorporated, Santa Clara County Superior Court, Case No. 16-CV-292219

Renfrow v. Janra Enterprises, Inc., Sacramento County Superior Court, Case No. 3402010-00080471

Reynolds v. Diamond Pet Food Processors of Ripon, San Joaquin County Superior Court, Case No. 39-2014-00310818

Richard v. A-Para Transit Corp., Alameda County Superior Court, Case No. HG17870373

Richardson v. TEC Equipment, Inc., et al., Los Angeles County Superior Court, Case No. VC065536

Robles v. North County Health Project Incorporated, San Diego Superior Court, Case No. 37-2014-00001751-CU-OE-NC

Rodas v. Monetary Management of California, Inc., USDC – Eastern District of California (Sacramento), Case No. 2:14 cv 01389 TLN AC

Rodriguez v. 20/20 Plumbing & Heating, Inc., San Bernardino County Superior Court, Case No. CIVDS1705362

Rodriguez v. Commerce Distribution Company, Los Angeles County Superior Court, Case No. BC656259

Rodriguez v. Valley Oak, San Joaquin County Superior Court, Case No. STK-CV-UOE-2016-7980

Roden v. Service Champions, San Bernardino County Superior Court, Case No. CIVDS1613183

Russell v. Bradshaw International, Imperial County Superior Court, Case No. ECU00853

Rutledge, et al. v. Healthport Technologies, LLC, Alameda County Superior Court, Case No. RG16835813

Sabala v. Econtactlive, Inc., Stanislaus County Superior Court, Case No. 684981

Sabatier v. Picture Perfect Installation, Inc., Riverside County Superior Court, Case No. RIC10004953

Salameh v. Sonomaidence OPCO, LLC, Sonoma County Superior Court, Case No. SVC264228

Salazar v. Tag-3 Medical Investment Group, LLC, Los Angeles County Superior Court, Case No. BC527698

Salbeck v. Ingredion Incorporated, San Joaquin County Superior Court, Case No. STK-UOE-2017-0012622

Sampson v. Healthnet of California Inc., Sacramento County Superior Court, Case No. 34-2015-00183785-CU-OE-GDS

Sanchez v. Don Roberto Jewelers, Inc., Imperial County Superior Court, Case No. ECU06819

Sanders v. Lionakis, Sacramento County Superior Court, Case No. 34-2017-00223601

Santana v. United Staffing Associates, LLC, Tulare County Superior Court, Case No. 249338

Schrader v. Adidas Promotional Retail Operations, Inc., Los Angeles County Superior Court, Case No. BC414168

Sebrell v. Pomeroy IT Solutions, San Bernardino County Superior Court, Case No. CIVDS1721560

Seymour v. Quest Service Group, LLC, Sacramento County Superior Court, Case No. 34-2017-00206917

Silva v. Trical, San Benito County Superior Court, Case No. CU-16-00218

Simler v. Polly's Inc., Riverside County Superior Court, Case No. RIC 1117862

Sipin, Scott v. Salesforce.com, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2019-0004629

Skuro v. BMW of North America, LLC, USDC Central District of California (Los Angeles), Case No.: CV 10-8672-GW (FFMx)

Smith v. Steelcase, Inc., San Bernardino County Superior Court, Case No. CIVDS1725850

Sohal v. Foster Poultry Farms, Stanislaus County Superior Court, Case No. 2026605

Solomon v. City of Los Angeles, Los Angeles County Superior Court, Case No. BC570345

Solano v. Vozzcom, Inc., Imperial County Superior Court, Case No. ECU09519

Smith, et al. v. Sente Development, Inc., Sacramento County Superior Court, Case No. 34-2016-00196614

Solorzano v. FDS Manufacturing Corporation, Los Angeles County Superior Court, Case No. BC542532

Solowitz v. BakeMark USA LLC, Los Angeles County Superior Court, Case No. BC467838

Spampinato v. Wind & Sea Restaurants, Inc., San Bernardino County Superior Court, Case No. CIVVS1205154

Spitzer, et al. v. FRHI Hotels & Resorts (Canada) Inc., San Bernardino County Superior Court, Case No. C IVDS1712220

Stephens v. C.S., Inc., Riverside County Superior Court, Case No. PSC1301224

Stevenson v. Harvest Management Sub LLC, Ventura County Superior Court, Case No. 56-2011-00397420-CU-OE-SIM

Thompson v. Continental Labor Resources, Inc. d/b/a Continental Labor & Staffing Resources, Kern County Superior Court, Case No. S-1500-CV-278751-DRL

Thompson v. Sidhu Truck Line, Inc., Kern County Superior Court, Case No. BCV-15-101308-DRL

Tigas v. Ajilon Communications, Los Angeles County Superior Court, Case No. BC409737

Torres v. Coastal Employment Inc., Los Angeles County Superior Court, Case No. BC529207

Tran v. CSP Fiber Services, San Bernardino County Superior Court, Case No. CIVDS172758

Tripp v. California Guest Services, Inc., Plumas County Superior Court, Case No. CV16-00036

Valdez v. Diamond Landscaping, Inc., Los Angeles County Superior Court, Case No. BC497097

Valencia v. American Team Managers, Inc., Orange County Superior Court, Case No. 30-2016-00857365-CU-CR-CXC

Van Son v. Rush Truck Centers of California, Inc., Los Angeles County Superior Court, Case No. BC494747

Vasquez v. Schurman Fine Papers, San Joaquin County Superior Court, Case No. STK-CV-LMC-2015-10035

Velasquez v. Modesto Ventures, LLC, Sacramento County Superior Court, Case No. 32-2012-00126159

Victoria v. Bali Limousines Inc., San Mateo County Superior Court, Case No. CIV507774

Victorian v. Vision X, Inc., Los Angeles County Superior Court, Case No. BC400333

Wade v. Frito Lay, Kern County Superior Court, Case No. BCV-17-102014

Walls v. E. & J. Gallo, Stanislaus County Superior Court, Case No. 2015874

Warner v. Waterdrops Express Car Wash, LLC, Tulare County Superior Court, Case No. 265708

Waybright v. EAH, Inc., Stanislaus County Superior Court, Case No. 2011677

Weiss v. C.A.R. Enterprises, Inc., Riverside County Superior Court, Case No. RIC1113165

White v. Sally Beauty Supply, LLC, Imperial County Superior Court, Case No. ECU08177

Williams v. Dennis Dillon RV, LLC, San Bernardino County Superior Court, Case No. CIVDS 16006879

Williams v. Closet World, Inc., Los Angeles County Superior Court, Case No. BC400178

Williams v. Progress Rail Services Corporation, Kern County Superior Court, Case No. S-1500-CV-280236 DRL

Wing v. Three Group, Inc., Los Angeles County Superior Court, Case No. BC643883

Wilson v. ALSCO, Inc., Imperial County Superior Court, Case No. ECU07406

Wilson v. Michael C. Stead, Inc., Contra Costa Superior Court, Case No. C1400135

Winningham v. Storer Transportation Service, San Joaquin County Superior Court, Case No. 39-2015-00324708-CU-STK

Woody v. WBN Home Design, San Bernardino County Superior Court, Case No. CIVDS1613367

Woods, et al. v. F&B Innovations, LLC, San Bernardino County Superior Court, Case No. CIVDS1717765

Woodyard v. Bellus ALC Acquisition, LLC, USDC – Central District of California (Los Angeles), Case No. 2:13-cv-05285 SJO AGRx

Wright v. Social Vocational Services, Inc., Kern County Superior Court, Case No. BCV-15-101264

Ybarra v. New Legend, Inc., Sutter County Superior Court, Case No. CVCS-16-2097

Zaragoza v. Center Automotive, Inc., Los Angeles Superior Court, Case No. BC505194

EXHIBIT B

DANIEL F. GAINES, ESQ. SBN 251488
daniel@gaineslawfirm.com
ALEX P. KATOFISKY, ESQ. SBN 202754
alex@gaineslawfirm.com
EVAN S. GAINES ESQ. SBN 287668
evan@gainleslawfirm.com
GAINES & GAINES, APLC
4550 E. Thousand Oaks Blvd., Suite 100
Westlake Village, CA 91362
Telephone: (818) 703-8985
Facsimile: (818) 703-8984

Attorneys for Plaintiff Lee Allen Cowin

JENNIFER DUGGAN, ESQ. SBN 183833
jennifer@dugganmchugh.com
RYAN LAROCCA, ESQ. SBN 343635
ryan@dugganmchugh.com
DUGGAN MCHUGH LAW CORPORATION
641 Fulton Ave Suite 100
Sacramento, CA 95825
Telephone: (916) 550-5309
Facsimile: (916) 404-5900

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

1 **SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS**

2 This Settlement Agreement and Release of Claims (“Settlement Agreement”) is made and
3 entered into by and between Plaintiff Lee Allen Cowin (“Cowin” or “Plaintiff” or “Class
4 Representative”), individually and on behalf of all others similarly situated, and Defendant NEKI,
5 Inc. (“Defendant”), subject to the terms and conditions herein and the Court’s approval.

6 **A. Definitions.**

7 1. Plaintiff and the Settlement Class (as defined below) and Defendant are collectively
8 referred to herein as “the Parties.”

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

12 3. The “Action” means the case entitled *Lee Allen Cowin, et al., Plaintiffs, v. NEKI,*
13 *Inc., And Does 1 Through 10, Inclusive, Defendants,*” Case No. S-CV-0049770, pending before
14 the Superior Court of the State of California for the County of Placer.

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

18 5. The “Aggrieved Employees” shall be defined as “all non-exempt, hourly
19 employees who have, or continue to, work for Defendant in California from July 25, 2021 to April
20 15, 2023” (the “PAGA Period”).

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

24 7. The “Effective Date” is defined as the date the Court files a signed order granting
25 final approval of the settlement and entering judgment thereon (the “Effective Date.”) If objections
26 to the settlement are filed, the Effective Date of the settlement is the latter of the sixtieth (60th)
27 calendar day after notice of the final approval order is filed unless an appeal is filed, in which case
28 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.
28

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.

///

///

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.

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

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: ^{04/08/2023}
April , 2023

By:



LEE ALLEN COWIN
Plaintiff and Class Representative

Dated: April , 2023

NEKI, INC.

By:

Its: _____

APPROVED AS TO FORM AND CONTENT:

Dated: April 14, 2023

GAINES & GAINES, APLC

By: _____



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

Dated: April , 2023

DUGGAN MCHUGH LAW CORPORATION

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.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
Do Nothing	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.
Exclude Yourself	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.
Objecting	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.
Go to a Hearing	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]

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

Document History

 SENT	04 / 07 / 2023 17:45:27 UTC	Sent for signature to Lee Allen Cowin  from office@gaineslawfirm.com 
 VIEWED	04 / 08 / 2023 14:54:32 UTC	Viewed by Lee Allen Cowin  
 SIGNED	04 / 08 / 2023 14:55:41 UTC	Signed by Lee Allen Cowin  
 COMPLETED	04 / 08 / 2023 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

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