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Attorney for Plaintiff
HEATHER GREEN

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE, CIVIL COMPLEX CENTER**

HEATHER GREEN, in her representative
capacity, on behalf of all aggrieved
employees,

Plaintiff,

vs.

NEUINTEL, LLC, A California Limited
Liability Company, dba PRICESPIDER;
and DOES 1 through 50, inclusive,

Defendants.

Case No. 30-2020-01172202-CU-OE-CXC

**AMENDED DECLARATION OF
KIMBERLY LIND IN SUPPORT OF
MOTION FOR COURT APPROVAL OF
THE SETTLEMENT OF THE
CALIFORNIA LABOR CODE SECTION
2699 *ET SEQ.*, PRIVATE ATTORNEYS
GENERAL ACT (PAGA), CLAIM**

DATE: July 1, 2022
TIME: 10:00AM
DEPT: CX105
JUDGE: Randall J. Sherman

I, C. E. Kimberly Lind, declare as follows:

1. I am an attorney duly licensed to practice before all state courts in California and in good standing with the California State Bar.

2. I am counsel to the Plaintiff Heather Green (the "Plaintiff") in this matter filed before the Orange County Superior Court, Civil Complex Center (the "Action") against

1 Defendant Neuintel, LLC, dba PriceSpider. (“Defendant”).

2 3. The matters set out herein are based upon my own personal knowledge as
3 developed through my representation of the Plaintiff, the investigation conducted by counsel for
4 the Plaintiff, and the extensive written discovery conducted in this Action. If called upon as a
5 witness, I would and could competently testify to those matters in this declaration based upon
6 my handling of the Action.

7 4. I submit this declaration in support of Plaintiff’s Motion for Court Approval of
8 the Settlement of the California Labor Code Section 2699 *et seq.*, Private Attorneys General Act
9 (PAGA), Claim (the “Settlement Approval Motion”) that the Plaintiff and Defendant
10 (collectively, the “Parties”) reached in this Action.

11 **The PAGA Notice**

12 5. On September 9, 2020, Plaintiff filed a notice with the California Labor and
13 Workforce Development Agency (the “LWDA”) under the California Labor Code Private
14 Attorneys General Act of 2004, California Labor Code § 2699 *et seq.* (the “PAGA”) of their
15 intent to pursue civil penalties against Defendant under the PAGA, which the LWDA assigned
16 Case No. LWDA-CM-787580-20 (the “PAGA Notice”). A true and correct copy of the PAGA
17 Notice filed by the Plaintiff with the LWDA is attached hereto as **Exhibit A**.

18 6. Specifically, the PAGA Notice alleged violations of the following provisions of
19 the Labor Code – Sections 201, 203, 204, 226(a), 226.7, 510, 512, 1174(d), and 2802 – by virtue
20 of the following alleged conduct attributable to the Defendant:

- 21 • Failing to provide aggrieved employees with meal and rest periods and failing to
- 22 pay meal and rest period premiums;
- 23 • Failing to pay overtime compensation to aggrieved employees;
- 24 • Failing to pay all wages due during the appropriate pay periods;
- 25 • Failing to pay aggrieved employees whose employment with Defendant ended
- 26 all wages due at the time of termination;
- 27 • Failing to provide aggrieved employees with accurate itemized wage statements;

- Failing to keep an accurate and complete record of hours worked; and
- Failing to reimburse aggrieved employees for all necessary expenses incurred thereby in the performance of their job duties for Defendant.

7. Defendant was properly served with the PAGA Notice by certified mail.

The Lawsuit/PAGA Action

8. On November 25, 2020, Plaintiff brought this action in the Orange County Superior Court, Civil Complex Division against Defendant asserting various wage and hour claims for civil penalties under the California Labor Code Private Attorneys General Act of 2004 on behalf of the LWDA and other “aggrieved employees” (the “PAGA Claim”). A copy of the civil complaint filed with the Orange County Superior Court, Civil Complex Division has been provided to the LWDA.

9. Plaintiff’s claim for PAGA penalties in the Action was premised on the following alleged violations:

(a) Defendant failed to keep an accurate record of hours worked by aggrieved employees, resulting in aggrieved employees not receiving all wages due during the appropriate pay periods, including overtime compensation;

(b) Defendant failed to provide aggrieved employees with meal and rest periods and failed to pay meal and rest period premiums;

(c) Defendant failed to pay overtime compensation to aggrieved employees at the correct rate of pay;

(d) Defendant failed to reimburse aggrieved employees for all necessary expenses incurred thereby in the performance of their job duties for Defendant;

(e) Defendant failed to provide aggrieved employees with an accurate itemized wage statement at the time of each payment of wages; and

(f) Defendant failed to pay all wages due to employees at the time their employment with Defendant ended.

10. Plaintiff’ claims under California Labor Code Section 226(a) (relating to

1 itemized wage statement violations) and Labor Code Section 203 (relating to failure to pay
2 wages at the time of termination) are derivative of some of the above-noted claims.

3 **The Litigation**

4 11. Following the service of the Summons and the Complaint in this matter, Plaintiff
5 immediately propounded the following requests on January 7, 2020:

6 (a) Special Interrogatories, Set No. One (Request Nos. 1 through 33)
7 propounded by Plaintiff Heather Green;

8 (b) Requests for Production of Documents, Set No. One (Request Nos. 1
9 through 35) propounded by Plaintiff Heather Green;

10 12. Three months later, Defendant propounded its own set of Requests for Production
11 and a deposition notice seeking to conduct Plaintiff's deposition.

12 13. After Plaintiff received responses to her first set of Interrogatories/Requests, she
13 then propounded Special Interrogatories, Set No. Two (Request Nos. 34 through 46) on August
14 11, 2021 at which point parties agreed to informally exchange the remaining key
15 documents/information and mediate the matter.

16 14. Both formally in response to the discovery requests and informally pre-
17 mediation, Defendant produced extensive documents and information to Plaintiff, including the
18 following relevant information:

19 (a) Plaintiff's personnel records, time records, and itemized wage statements;

20 (b) Defendant's employee handbook which contained relevant wage and
21 hour, meal and rest break and timekeeping policies;

22 (c) Job descriptions of each position within the company pertaining to
23 California-based employees;

24 (d) Information regarding the total number of potential aggrieved employees
25 who worked during the PAGA period (as defined in the Settlement Agreement) and on each pay
26 period within the PAGA period.

15. Plaintiff's counsel analyzed the records to determine the potential exposure and interviewed witnesses, including two former employees of Defendant who are potential members of the group of aggrieved employees.

16. Plaintiff was also required to produce her own information in response to Defendant's Request for Production of Documents, Set No. One (Request Nos. 1 through 23) and deposition notice for the Plaintiff's testimony.

17. Based on the information received in discovery, Plaintiff's counsel was able to determine the total number of distinct individuals falling within the definition of "aggrieved employees" for the relevant statutory period and construct a PAGA penalties model that calculated the maximum amount of PAGA penalties that could be assessed against Defendant within the PAGA period. Defendant, however, disputed Plaintiff's claims and both the existence of and extent of liability as alleged by the Plaintiff.

18. There are approximately 14 employees who meet the definition of “aggrieved employee” per the PAGA Notice and Complaint, with only between 4 and 10 aggrieved employees working for Defendant during the PAGA time period. Plaintiff’s calculation of the *maximum* PAGA penalties that Plaintiff could obtain if we assumed that the (i) Plaintiff prevailed on *each* PAGA-related claim and (ii) *each* employee had experienced *all* violations within *each* pay period over the PAGA Period is \$257,700.00 and was calculated as follows:

(a) For the pay periods between September 9, 2019 and October 31, 2021, on average 7 employees worked on each pay period and a total of 350 wage statements were issued for these employees.

(b) The maximum PAGA Penalty recoverable for the alleged failure to pay overtime equals \$50 per pay period per employee, or $\$50 \times 350 = \$17,850.00$.

(c) The maximum PAGA Penalty recoverable for the alleged failure to provide meal periods equals \$50 per pay period per employee, or $50 \times 350 = \$17,850.00$.

(d) The maximum PAGA Penalty recoverable for the alleged failure to authorize and permit employees to take rest breaks equals \$50 per pay period per employee, or

$$\$50 \times 350 = \$17,850.00.$$

(e) The maximum PAGA Penalty recoverable for the alleged failure to timely pay wages at termination is \$100 per employee terminated in the PAGA period, of which we learned there are 8, or $\$100 \times 8 = \800 .

(f) The maximum PAGA Penalty recoverable for the alleged failure to pay California-compliant itemized wage statements equals \$250 per violation per employee, or \$250 X 350 = \$89,250.00.

(g) The maximum PAGA Penalty recoverable for the alleged failure to keep accurate payroll records is \$500 per employee employed in the PAGA period, or \$500 X 14 = \$7,000.00.

(h) The maximum PAGA Penalty recoverable for the alleged failure to reimburse business expenses is \$100 per pay period per employee, or $\$100 \times 7 \times 50 = \$35,700.00$.

(i) The maximum PAGA Penalty recoverable for the alleged failure to timely pay wages during employment is \$100 per pay period per employee, or $\$100 \times 350 = \$35,700.00$.

19. Notwithstanding these different penalty calculations, Defendant contends that the violations of multiple provisions of the California Labor Code do not give rise to cumulative penalties under the PAGA.

20. Moreover, Defendant contends that an important feature of PAGA is that, when determining whether or not to assess a penalty, the court exercises the same discretion that the LWDA has and may reduce the penalties to be assessed against the employer pursuant to Labor Code section 2699(e)(1)-(2). As such, Defendant contends that the court is unlikely to assess cumulative penalties for the maximum number of possible, separate California Labor Code violations, because it would be unjust, arbitrary, oppressive, and/or confiscatory, especially where certain conduct may be regulated by multiple provisions of the California Labor Code that are interrelated and work in tandem.

21. Defendant also maintained and continues to maintain that it had legally-compliant employment policies and practices throughout the statutory PAGA Period, proven by their production of both the employee handbook and job descriptions of the potentially Aggrieved Employees. That handbook contained policies on meal and rest period and overtime policies, and classified the Aggrieved Employees at issue as exempt.

22. Defendant also contended that it would be able to show a lack of intent in the violations, such that the alleged California Labor Code violations would not be considered “willful”.

23. Defendant also contended that individualized issues vitiated the manageability of representative adjudication of PAGA penalties. Moreover, based on the two interviews conducted by counsel for Plaintiff, those employees did not experience the same wage and hour violations that Plaintiff did.

The Mediation

24. After engaging in the above-noted initial investigation and discovery, the Parties agreed to mediate this case before an experienced mediator who specializes in mediating complex employment litigation matters, JJ Johnston. Mediation took place on November 10, 2021, and at mediation, the Parties executed a Memorandum of Understanding to resolve the claims of the Plaintiff.

24. Following mediation, the Parties negotiated the attached long-form Settlement Agreement and General Release (the “Settlement Agreement”), signed by Defendant on December 23, 2021 and its counsel on December 29, 2021. A true and correct copy of the signed Settlement Agreement is attached hereto as **Exhibit B**. This Settlement Agreement was jointly prepared by counsel for Plaintiff and Defendant.

The Settlement Agreement

25. The Parties agreed to settle the PAGA claims for a gross amount of \$25,000, which totals almost 10% of the maximum PAGA civil penalty that could be assessed as noted above.

1 26. Through this motion, Plaintiff now respectfully moves the Court for an Order
2 granting final approval of the Gross Settlement Amount of the PAGA Claim (\$25,000.00),
3 which includes the following components:

- 4 (a) \$8,592.00 or 40% of the Gross Settlement Amount, in attorney's fees;
5 (b) \$3,520.00 in litigation/mediation costs;
6 (c) \$3,222.00, or 25% of the remainder of the Gross Settlement Amount, to
7 be paid to the aggrieved employees as PAGA civil penalties; and
8 (d) \$9,666.00, or 75% of the remainder of the Gross Settlement Amount to
9 be paid to the LWDA as PAGA civil penalties.

10 27. Through Plaintiff's Settlement Approval Motion, Plaintiff also respectfully move
11 the Court for an Order entering the Proposed Order and Judgment filed along with the Approval
12 Motion.

13 28. As explained in detail in the Approval Motion, Plaintiff contend that this sum is
14 fair and reasonable. Defendant does not oppose this Motion.

15 29. My firm and I are well-regarded, experienced, and capable of representing the
16 interests of the Plaintiff in this action with respect to the enumerated violations of the PAGA on
17 behalf of the LWDA, the Plaintiff, and the other Aggrieved Employees.

18 30. I was licensed by the State Bar of California in March of 2011, and I have been
19 practicing law for eleven years. Prior to that, I was a legal assistant, then paralegal, then law
20 clerk, spending almost two years of my law clerk career clerking for the litigation partner of
21 Sessions and Kimball, P.C. the largest Plaintiff's side employment law firm in Orange County.

22 31. I attended the part-time evening program at Whittier College School of Law,
23 electing to work throughout my time as a student, clerking for partners at various law firms
24 during the day. During school, I was also a member of the Law Journal of Child & Family
25 Advocacy, and research assistant to Professor and Assistant Dean, Martin Pritikin, helping
26 publish his article on recidivism in the Wisconsin Law Review. I graduated with a
27 Concentration in Business Law, a Certificate in International & Comparative Law, and honors
28 for my Law Journal contributions, in 2009. I thereafter enjoyed an appointed position as

1 Commissioner for the Environmental and Transportation Advisory Committee of Santa Ana
2 before becoming licensed to practice law in 2011.

3 32. I am a member of the California Employment Lawyers' Association (CELA)
4 and I have been a speaker at their annual employment law conference on the Diamonds in the
5 Rough panel. I am also a member of the Los Angeles County Bar Association, the California
6 Lawyer's Association, and the Orange County Women Lawyer's Association.

7 33. For the last six years, I have been nominated for and selected to the Super
8 Lawyers' "Rising Stars" list, an honor granted to only 2.5% of attorneys under 40 and/or
9 within their first ten years of practice.

10 34. I represent employees exclusively in employment litigation and provide advice
11 and counsel to employers. I am currently working on five actions that include PAGA claims –
12 including this action – as well as various pre-litigation matters where PAGA claims are alleged.
13 I have filed upwards of thirty (30) PAGA Notices in my career and have successfully
14 prosecuted/negotiated the settlement of many. I have also had a prior Motion for Approval of
15 Settlement in a PAGA Action granted in this Orange County Superior Court, Civil Complex
16 Division.

17 35. In reaching the settlement of the PAGA Claim in this Action, the Parties – both
18 prior to and during a mediation – advised their respective clients of the risks and expenses
19 associated with further litigation. The expenses for the Plaintiff were going to be especially
20 prohibitive, due to the basis of the PAGA claims derived from the allegation that the Aggrieved
21 Employees were misclassified as exempt and held a variety of very different job titles.

22 36. The parties and their attorneys agree that this settlement is reasonable and that
23 there were too many unknown variables which justified a settlement as opposed to protracted
24 and expensive litigation. Accordingly, we contend that the settlement is fair, adequate and
25 reasonable and should be approved.

26 37. In performing my due diligence regarding the PAGA Claim, I (i) evaluated the
27 Plaintiff's suitability as a PAGA representative through interviews and analysis of her
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1 employment history with Defendant and her payroll and personnel records, (ii) researched wage
2 and hour cases that involved similar claims, (iii) engaged in extensive written discovery and
3 reviewed hundreds of pages of documents produced by Defendant, (iv) interviewed other former
4 aggrieved employees of the Defendant who worked in the same department as the Plaintiff, (v)
5 obtained and analyzed Defendant's employee handbook and wage and hour policies, (vi)
6 obtained and analyzed Defendant's job descriptions, (vii) researched case law and settlements
7 of other PAGA claims, (viii) analyzed the value of the Plaintiff's individual PAGA penalties,
8 (ix) drafted a 23-page, single spaced mediation brief, (x) participated in a 10+ hour mediation,
9 (xi) negotiated the terms of the settlement, (xii) finalized the Settlement Agreement and General
10 Release, and (xiii) drafted this Approval Motion with amendments thereto.

11 38. As noted, after reduction by attorney's fees and costs, \$3,520.00, or 25% of the
12 remainder of the Gross Settlement Amount, will be paid to the aggrieved employees as PAGA
13 civil penalties, and \$8,592.00, or 75% of the remainder of the Gross Settlement Amount to be
14 paid to the LWDA as PAGA civil penalties. Of the 25% of the amount to be paid to the
15 aggrieved employees, each aggrieved employee will receive a pro rata share based on the
16 number of pay periods he/she worked for Defendant during the relevant time. Aggrieved
17 Employees will be issued an IRS Form 1099 for these PAGA civil penalties. The Aggrieved
18 Employees will also receive an accompanying letter with their checks explaining the settlement,
19 which is attached to the Settlement Agreement as Exhibit A.

20 39. This means that if the amount going to Aggrieved Employees was simply divided
21 by the number of Aggrieved Employees (instead of factoring in the number of weeks worked),
22 the per Aggrieved Employee average amount would be \$230.14. The estimated high and low
23 payments to be paid to the Aggrieved Employees based on their workweeks is \$490.98 and
24 \$75.18, respectively.

25 40. The Settlement Agreement, Amendment to Settlement Agreement and the Notice
26 of Settlement to be sent to each Aggrieved Employee (i.e., the Exhibit A to the Amendment to
27 the Settlement Agreement) makes it clear that the release only applies to PAGA Claims relating
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to the alleged violations that are the subject of the PAGA Action and does not include any claims for any alleged underlying violations of the Labor Code that do not arise under the PAGA or for any PAGA civil penalties for alleged Labor Code violations not pled in the Action.

41. On the same day as the filing of this Approval Motion, Plaintiff submitted the signed Settlement Agreement to the LWDA as required by California Labor Code Section 2699(1)(2). I further submitted the Notice of Ruling and Revised Motion / Declaration the same date I filed this Revised Motion / Declaration to the Court.

42. The amount of attorneys' fees and costs requested in this case is reasonable based on the work performed by counsel for Plaintiff, the benefit conferred to the State and the Aggrieved Employees, the costs incurred by counsel, and the resources brought to bear in this case.

43. Having undertaken this litigation on a contingent fee basis, counsel for Plaintiff understood from the outset that they were embarking on a complex and potentially expensive and lengthy litigation, which would, if the case went to trial, require the investment of hundreds of hours of attorney and staff time and thousands of dollars in costs, with no guarantee of ever being compensated for the investment of time and no guarantee of ever being reimbursed for the costs to be incurred in prosecuting the case. In undertaking that responsibility, counsel had to assure sufficient resources were dedicated to the successful prosecution of this litigation.

44. The table below indicates the attorneys who performed work on this case through the present. The schedule includes the name of each attorney who worked on the case, hourly billing rates, and the number of hours expended to date. The lodestar calculation is based on the attorney's billing rate, which are reasonable and in line with prevailing market rates based on the education, training, experience and qualifications of counsel:

ATTORNEYS	HOURS	HOURLY RATE	FEE
C. E. Kimberly Lind, Esq.	138.8	\$400.00	\$55,520
Drew L. Alexis, Esq.	6.1	\$450.00	\$2,745
Adriana C. Quintero	7.2	\$325.00	\$2,340

1	TOTAL		N/A	\$60,605
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2 45. A true and correct copy of the billing and cost records for the firm of KO Legal
3 are attached hereto as **Exhibit 1**. Adriana Quintero was my associate attorney in her sixth and
4 seventh year of practice at the time she was working for my firm.

5 46. I work with Drew L. Alexis several matters and know his current billing rate to
6 be \$450.00/hr. He contributed 6.1 hours to this case helping me sort through the PAGA
7 calculations in preparation for mediation, and to present on the PAGA calculations during the
8 mediation. Mr. Alexis has been practicing law for twenty-seven years and is undervaluing his
9 time.

10 47. The parties' PAGA settlement provides for the recovery of *less* in attorneys' fees
11 than incurred. Stated another way, only a small fraction of the fees expended (approximately
12 14%) is being recovered as attorneys' fees in connection with the PAGA Claim so as to
13 maximize the amounts going to the LWDA and the aggrieved employees as PAGA penalties.

14 48. Counsel for Plaintiff have also incurred costs exceeding \$3,520.00 to date,
15 including the mediation fee to facilitate resolution of the matter.

16 49. These expenses include such items as postage, filing fees, mediation fees, remote
17 court call appearance fees, and other compensable expense items. These expenses were
18 incidental and necessary to the effective representation of the Plaintiff on behalf of herself, the
19 LWDA and the other Aggrieved Employees. Attached hereto as **Exhibit C** is a true and correct
20 updated copy of a Summary of Costs incurred. These expenses are reasonable and related to the
21 successful prosecution of this Action.

22 50. Based on my experience and investigation in this matter, I believe that the
23 Settlement Agreement and amounts apportioned to the settlement of the PAGA Claim are fair,
24 reasonable and adequate and in the best interest of the aggrieved employees. I further submit
25 that the proposed settlement of the PAGA Claim for such a small number of aggrieved
26 employees is within the accepted range of recovery for this type of litigation given the strengths
27 and weaknesses of this action, the inherent costs and risks of further litigation, and the costs and
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1 risks of prevailing at trial.

2 51. This is true because there is a dearth of law and guidance regarding assessment
3 of penalties under PAGA and no clearly established methodology for the valuation and/or
4 assessment of PAGA penalties.

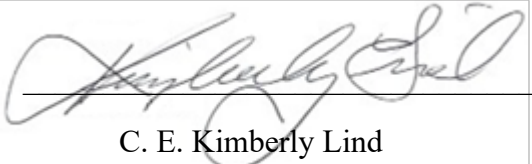
5 52. This amended declaration was prepared to address the concerns of the court.

6 53. A true and correct copy of the Amendment to Settlement Agreement is attached
7 hereto as **Exhibit 2**.

8 54. A true and correct copy of the data chart showing high and low PAGA penalties
9 to the Aggrieved Employees is attached hereto as **Exhibit 3**.

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11 I declare under penalty of perjury under the laws of the State of California that the
12 foregoing is true and correct. Executed on this 17th day of June, 2022 in Long Beach, California.

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C. E. Kimberly Lind