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

DAVID A. GREENE, individually and as
representative of the State of California on
behalf of all aggrieved employees,

Plaintiff,

v.

KHALID M. ASIMI and HAMID M. ASIMI,
individuals doing business as Alert Security
Services in Corona, California, and DOES 1 -
20, inclusive,

Defendants.

Case No. 30-2024-01377249-CU-OE-CXC

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S RENEWED *EX PARTE*
APPLICATION FOR AN ORDER
SHORTENING THE TIME FOR
HEARING ON PLAINTIFF'S
UNOPPOSED MOTION FOR AN ORDER
(1) APPROVING THE SETTLEMENT OF
PLAINTIFF'S INDIVIDUAL PAGA
CLAIMS AND DISMISSING THOSE
CLAIMS WITH PREJUDICE AND (2)
DISMISSING PLAINTIFF'S PAGA
CLAIMS ON BEHALF OF THE OTHER
AGGRIEVED EMPLOYEES WITHOUT
PREJUDICE**

The Plaintiff, David A. Greene, by and through his undersigned counsel, respectfully
submits this Memorandum of Points and Authorities in support of Plaintiff's Renewed *Ex Parte*
Application for an Order Shortening the Time for the Hearing on Plaintiff's Unopposed Motion for
an Order (1) Approving the Settlement of Plaintiff's Individual PAGA Claims and Dismissing
Those Claims With Prejudice and (2) Dismissing Plaintiff's PAGA Claims on Behalf of the Other
Aggrieved Employees Without Prejudice (hereinafter referred to as "Plaintiff's Renewed *Ex Parte*
Application").

1 **I. INTRODUCTION**

2 Plaintiff's Unopposed Motion for an Order (1) Approving the Settlement of Plaintiff's
3 Individual PAGA Claims and Dismissing Those Claims With Prejudice and (2) Dismissing
4 Plaintiff's PAGA Claims on Behalf of the Other Aggrieved Employees Without Prejudice
5 ("Plaintiff's Unopposed Motion") is currently set for hearing on October 3, 2024, at 2:00 p.m. in
6 Department CX104 of the Orange County Superior Court, Civil Complex Center (Reservation
7 Number 74304714). By this Renewed *Ex Parte* Application, Plaintiff respectfully requests that the
8 Court enter an Order: (1) shortening the time for the hearing on Plaintiff's Unopposed Motion and
9 advancing that hearing to the date and time of the hearing on this *Ex Parte* Application (June 12,
10 2024, at 1:30 p.m. in Department CX104 of the Orange County Superior Court, Civil Complex
11 Center); and (2) granting the relief requested in Plaintiff's Unopposed Motion. Notably, Plaintiff's
12 counsel is informed by Defendant's counsel that he has no objection to the relief requested in either
13 Plaintiff's initial *Ex Parte* Application (which is substantively identical to the relief requested in this
14 Renewed *Ex Parte* Application) or Plaintiff's Unopposed Motion (Declaration of Daniel V.
15 Santiago in Support of Plaintiff's Renewed *Ex Parte* Application ["Santiago Declaration"], ¶¶2-3.)

16 **II. THE PARTIES' SETTLEMENT AGREEMENT**

17 The parties have agreed to resolve all of the Plaintiff's claims against the Defendants in this
18 action. (Santiago Declaration, ¶5.) To that end, the parties have executed a Confidential Settlement
19 Agreement and Mutual Release of All Claims ("Settlement Agreement") reflecting the settlements
20 of Plaintiff's individual PAGA claims against the Defendants for \$2,000 and Plaintiff's non-PAGA
21 claims against the Defendant for \$23,000, for a Gross Settlement Amount of \$25,000. *Id.*

22 The Settlement Agreement requires the Gross Settlement Amount of \$25,000 to be
23 distributed as follows: (a) \$2,000 is to be paid by or on behalf of Defendants in connection with the
24 settlement of the Plaintiff's individual PAGA claims against the Defendants (more specifically, that
25 sum consists of \$1,500.00 to be paid to the Labor and Workforce Development Agency ["LWDA"]
26 and \$500.00 to be paid to the Plaintiff in connection with the settlement of Plaintiff's individual
27 PAGA claims against the Defendants); and (b) \$23,000 is to be paid by or on behalf of Defendants
28 in connection with the settlement of the Plaintiff's non-PAGA claims against the Defendants as

1 follows: a payroll check in the amount of \$3,000.00, less withholdings and deductions, for the
2 settlement of Plaintiff's individual unpaid wage claim to be reported on an IRS Form W-2; a
3 settlement payment of \$7,750.00 for the settlement of Plaintiff's individual non-PAGA claims other
4 than his individual unpaid wage claim to be reported on an IRS Form 1099; and \$12,250 to be paid
5 to Plaintiff's undersigned counsel (more specifically, that figure consists of the sum of Plaintiff's
6 counsel's costs and fees incurred in the prosecution of Plaintiff's individual claims in the amounts
7 of \$1,500 and \$10,750, respectively). (Santiago Declaration, ¶6.)

8 The Settlement Agreement is subject to and expressly conditioned upon the Court's entry of
9 an Order: (1) approving the settlement of Plaintiff's individual PAGA claims and dismissing those
10 claims with prejudice; and (2) dismissing Plaintiff's PAGA claims on behalf of the other aggrieved
11 employees without prejudice. (Santiago Declaration, ¶7.)

12 **III. THE PROPOSED SETTLEMENT OF PLAINTIFF'S PAGA CLAIMS IS FAIR AND**
13 **REASONABLE.**

14 As explained in greater detail in the Declaration of Daniel V. Santiago in Support of
15 Plaintiff's Unopposed Motion previously filed and incorporated herein by reference, the proposed
16 settlement of Plaintiff's PAGA claims against the Defendant is fair and reasonable in light of a
17 number of factors including, among others: (a) Plaintiff's counsel has conducted sufficient
18 investigation of the facts underlying Plaintiff's claims that support his conclusion that the proposed
19 settlement of Plaintiff's PAGA claims is fair and reasonable; (b) any settlement, including the
20 proposed settlement in the Action, should take into consideration the time, inconvenience and
21 uncertainty of trial that are avoided by the settlement; (c) under Labor Code §2699(i), allegedly
22 aggrieved employees like Plaintiff are entitled to receive only 25% of any PAGA settlement with
23 the remaining 75% to be paid to the LWDA; and (d) the proposed settlement of Plaintiff's PAGA
24 claims for \$2,000 exceeds Plaintiff's counsel's evaluation of a fair and reasonable settlement of
25 those PAGA claims. (Santiago Declaration, ¶8.)

1 **IV. THE RELIEF REQUESTED IN PLAINTIFF’S RENEWED *EX PARTE***
2 **APPLICATION IS WARRANTED.**

3 Plaintiff’s Renewed *Ex Parte* Application is warranted in light of the following factors,
4 among others: (1) the parties are prepared to consummate their Settlement Agreement immediately
5 after the Court approves of the settlement of Plaintiff’s individual PAGA claims and dismisses
6 those claims with prejudice and dismisses Plaintiff’s PAGA claims on behalf of the other aggrieved
7 employees without prejudice; (2) there is no just reason to delay the consummation of the parties’
8 Settlement Agreement (particularly a 3+ month delay if Plaintiff’s Unopposed Motion were not
9 heard until October 3, 2024, the date on which it is currently set for hearing); and (3) as explained in
10 greater detail in paragraphs 4 through 19 of the Declaration of Plaintiff David A. Greene in support
11 of Plaintiff’s Renewed *Ex Parte* Application filed concurrently herewith under separate cover
12 (“Plaintiff’s Declaration”), Plaintiff respectfully submits that he would suffer irreparable harm
13 and/or immediate danger if his Unopposed Motion were not heard until October 3, 2024.

14 **V. PLAINTIFF WOULD SUFFER IRREPARABLE HARM AND/OR IMMEDIATE**
15 **DANGER IF HIS UNOPPOSED MOTION WERE NOT HEARD UNTIL OCTOBER**
16 **3, 2024.**

17 Under California law, an applicant for *ex parte* relief must make an affirmative factual
18 showing in a declaration containing competent testimony based on personal knowledge of
19 irreparable harm, immediate danger, or other statutory basis for granting relief *ex parte*. *Newsom v.*
20 *Superior Court* (2020) 51 Cal.App.5th 1093, 1097 (citing Cal. R. Ct. 3.1202(c)). A trial court
21 should deny an *ex parte* application absent the requisite showing. *Newsom*, 51 Cal. App. 5th at
22 1097.

23 Plaintiff respectfully submits that he would suffer irreparable harm and/or immediate danger
24 if his Unopposed Motion were not heard until October 3, 2024, as the extreme financial hardships
25 that his wife and he are enduring would be exacerbated if he were required to wait until that date, at
26 the earliest, to be paid his share of the settlement funds in this case (\$11,250). Plaintiff’s
27 Declaration contains the following competent testimony based on his personal knowledge
28 addressing in considerable detail the extreme financial hardships that he and his wife are enduring:

1 • Plaintiff is quite literally desperate to receive his share of the settlement funds in this
2 case to support his wife and himself. (Plaintiff’s Declaration, ¶4.)

3 • Plaintiff is 56 years old and has been married for 24 years. (Plaintiff’s Declaration,
4 ¶9.)

5 • Since the inception of the Covid pandemic in March 2020, Plaintiff and his wife
6 have been living paycheck-to-paycheck, struggling to make ends meet, continuously draining their
7 modest savings, and periodically borrowing from family members (which they can’t rely on doing
8 for too much longer). (Plaintiff’s Declaration, ¶10.)

9 • For the last two years (approximately), Plaintiff has been the sole provider for his
10 wife and himself. (Plaintiff’s Declaration, ¶11.) During that timeframe, Plaintiff’s wife has been
11 unable to work due to serious feminine/urological health difficulties that she has been – and
12 continues to be – undergoing. *Id.*

13 • As alleged in Plaintiff’s Complaint in this case, on January 26, 2024, Plaintiff
14 notified Defendant Khalid M. Asimi via WhatsApp message of his resignation, effective
15 immediately, in order for him to find new employment that provided more consistent hours and
16 overtime pay when earned (both of which would help him support my family). (Plaintiff’s
17 Declaration, ¶12.)

18 • Subsequent to the termination of Plaintiff’s employment by the Defendants in early
19 2024, Plaintiff has been unable to find substantive, full-time employment (despite his ongoing
20 efforts to find such employment). (Plaintiff’s Declaration, ¶13.) Plaintiff’s current part-time
21 employment consists of earning \$17 per hour and working 18 hours per week as a gate attendant /
22 courtesy officer at the Seabrook Apartment Community in Dana Point, California. *Id.* Such part-
23 time employment is not sufficient to pay all of Plaintiff’s and his wife’s monthly living expenses, let
24 alone additional expenses of the kind described below. *Id.*

25 • The financial hardships that Plaintiff and his wife are enduring are evidenced, in part,
26 by several Southern California Edison bills in the total amount of \$700+ that are currently overdue.
27 (Plaintiff’s Declaration, ¶14.) Given the Covid pandemic, Southern California Edison offered a
28 program under which the deadline for paying those bills was deferred. *Id.* Unfortunately, that

1 program has ended, and those bills are now overdue. *Id.* Plaintiff and his wife are unable to pay
2 those bills without being paid Plaintiff's share of the settlement funds beforehand. *Id.*

3 • The financial hardships that Plaintiff and his wife are enduring are exacerbated by
4 the expenses relating to the fumigation of their home in early July 2024. (Plaintiff's Declaration,
5 ¶15.) For the last 8+ years, Plaintiff and his wife have rented a condominium within the St. Tropez
6 Community in Aliso Viejo, California, and they have lived there as their sole residence. *Id.* Next
7 month, from July 7 through 11, 2024, they have to empty out approximately 90% of their home due
8 to upcoming tenting-termite fumigation of our condominium building by T&P Solutions in Ontario,
9 California. *Id.* Plaintiff estimates that the expenses associated with finding temporary housing for
10 his wife and himself (e.g., a hotel), temporary housing for their pets (e.g., a boarding facility),
11 temporary storage of their household items (e.g., renting a truck and securing a storage facility), and
12 other miscellaneous expenses relating to the fumigation of their home exceed \$3,500. *Id.* Those
13 expenses are beyond overwhelming for them. *Id.*

14 • The financial hardships that Plaintiff and his wife are enduring are evidenced, in part,
15 by their inability to travel to Michigan in August to attend the wedding of Plaintiff's wife's niece
16 without Plaintiff's being paid his share of the settlement funds beforehand. (Plaintiff's Declaration,
17 ¶16.)

18 • The financial hardships that Plaintiff and his wife are enduring are evidenced, in part,
19 by their difficulty paying for basic motor vehicle maintenance-related expenses. (Plaintiff's
20 Declaration, ¶17.) More specifically, they've elected not to do basic maintenance for their 2013
21 motor vehicle (they share one motor vehicle) recommended by a mechanic in Laguna Niguel
22 because, at this time, they simply cannot afford the estimated costs of such maintenance of \$1,200.
23 *Id.*

24 • The anxiety and stress associated with the financial hardships that Plaintiff and his
25 wife are enduring are truly overwhelming to them. (Plaintiff's Declaration, ¶18.)

26 • Plaintiff respectfully submits that the extreme financial hardships that his wife and
27 he are enduring would be exacerbated if he were required to wait until October 3, 2024 for the
28 Court to hear Plaintiff's Unopposed Motion and, assuming the Court grants the relief requested

1 therein, to be paid his share of the settlement funds in this case (\$11,250) within 7 days thereafter
2 per the terms of the parties' Settlement Agreement. (Plaintiff's Declaration, ¶19.)

3 **VI. NOTICE TO THE LWDA**

4 Plaintiff's counsel submitted copies of Plaintiff's Renewed *Ex Parte* Application and all
5 related papers to the LWDA (via online filing with the LWDA) immediately before filing those
6 papers in the Orange County Superior Court. (Santiago Declaration, ¶10.) A true and correct copy
7 of the email Plaintiff's counsel received from the DIR PAGA Unit on behalf of the LWDA
8 confirming his submission of Plaintiff's Renewed *Ex Parte* Application and all related papers to the
9 LWDA is attached to the Santiago Declaration as Exhibit 1. *Id.*

10 Plaintiff's counsel does not anticipate receiving any objection or other communication from
11 the LWDA regarding the relief requested in Plaintiff's Renewed *Ex Parte* Application. (Santiago
12 Declaration, ¶11.) Plaintiff's counsel will advise the Court whether he has received any objection
13 or other communication from the LWDA during the hearing on Plaintiff's Renewed *Ex Parte*
14 Application. *Id.*

15 Dated: June 10, 2024

LAW OFFICES OF DANIEL V. SANTIAGO, P.C.

16 By:



17 Daniel V. Santiago, Esq.

18 Attorney for Plaintiff, David A. Greene
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