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Attorneys for Plaintiff, on Behalf of the State of California and Aggrieved Employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO

SANTOS CARRILLO, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

BLUSKY RESTORATION
CONTRACTORS LLC, a Delaware
Limited Liability Company; HAR-BRO,
LLC, a California Limited Liability
Company; HAR-BRO, INC., a California
Corporation; and DOES 3 through 20,
inclusive;

Defendants.

Case No.: CIVSB2105793

*[Assigned to Hon. Judge David Cohn, Dept S26,
for all purposes]*

**DECLARATION OF BRIAN J. MANKIN,
ESQ., IN SUPPORT OF MOTION TO
APPROVE SETTLEMENT PURSUANT TO
THE PRIVATE ATTORNEY GENERAL ACT
OF 2004**

Hearing

Date: June 29, 2022

Time: 10:00 a.m.

Dept.: S26

Complaint filed: February 11, 2021

1 I, Brian J. Mankin, state and declare:

2 1. I am an attorney licensed to practice before all of the courts of the State of California.
3 Within our firm, I am a partner and manage the employment practice. I represent the Plaintiff in this
4 action and I am thoroughly familiar with and have personal knowledge of all of the facts set forth herein.
5 I submit this declaration in support of Plaintiff's Motion to Approve Settlement Pursuant to the Private
6 Attorney General Act of 2004 (the "PAGA"). If called as a witness, I could and would competently
7 testify thereto.

8 **COUNSEL'S EXPERIENCE**

9 2. I have been a member, in good standing, of the State Bar of California since 2001. I am
10 admitted to practice in the United States District Courts for the Central and Southern District of
11 California and the Ninth Circuit Court of Appeal and have tried cases in various courts in California.

12 3. I have handled approximately 500 employee vs. employer litigation matters during my
13 21 years in practice. Over the last 15 years, my practice has almost entirely consisted of representing
14 employees, the majority of which has included class action and representative action wage and hour
15 matters. In total, I have handled over 200 class action and representative action wage/hour cases, and
16 have been appointed by the court as class counsel and have received final court approval and judgment
17 in close to half of those actions to date, and anticipate receiving final approval in many more of those in
18 the future.

19 4. As part of these settlements and judgments, I have recovered in excess of \$200 million
20 in damages for my clients and the class members (who often work as nurses, ambulance drivers,
21 technicians, warehouse workers, truck drivers, sales, professional occupations and countless other
22 trades). As of the end of 2018, my team and I held the record for the largest known PAGA-only case in
23 California's history as of that time - a \$12.5 million-dollar court approved settlement, which followed
24 extensive litigation, summary adjudication and writs to the CA Supreme Court against a Fortune 50
25 company (*Garcia v. Macy's*, San Bernardino Superior Court).

26 5. I have tried two major class and PAGA cases against Fortune 100 companies. In 2018,
27 I was lead counsel in a PAGA case that my firm tried to the bench in the Orange County Superior Court
28 and received a \$425,000 judgment. In 2019, I was co-counsel in a class action case against Walmart

1 that we tried to the jury in District Court, wherein the jury awarded Plaintiffs over \$6 million.

2 6. Over the last few years, I have been consecutively selected by my peers as a “Super
3 Lawyer” in Employment Litigation.

4 **PROCEDURAL BACKGROUND**

5 7. My firm began investigating this matter in the winter of 2020. Defendants’ primary
6 business involves restoration, renovation, and other services for properties damaged by water, fire,
7 storms, and other disasters. Defendants have approximately 13 locations in California and employed
8 approximately 170 people who are similarly situated to Plaintiff between February 11, 2020, through
9 February 5, 2022 (the “Aggrieved Employees”). After being retained by Plaintiff, we sent a letter to
10 Defendant requesting the production of his personnel and timekeeping records in order to further
11 evaluate his wage and hour claims.

12 8. At the same time, on January 8, 2021, my office submitted a claim for civil penalties
13 under the California Labor Code Private Attorneys General Act of 2004 (Lab. Code §§ 2698, et seq.) to
14 the California Labor Workforce and Development (“LWDA”), which is attached hereto as **Exhibit A**.
15 The LWDA did not respond or assume jurisdiction of the claims, thereby deferring the prosecution of
16 these violations to Plaintiff and his attorneys.

17 9. After the 65-day waiting period elapsed without the LWDA asserting jurisdiction,
18 Plaintiff filed this PAGA-only complaint on June 15, 2020.

19 10. This action primarily arises out of Plaintiff’s claims that he and other Aggrieved
20 Employees were not paid wages for all hours worked in a shift due to a failure to incorporate all wages
21 earned (including shift differentials and other non-discretionary bonuses) into the regular rate of pay,
22 resulting in an underpayment of minimum and overtime wages. Plaintiff also brought claims for failure
23 to provide proper meal periods or paid rest breaks, failure to provide accurate and complete wage
24 statements and failure to timely pay final wages. Defendant refutes these claims, arguing that Plaintiff
25 and the Aggrieved Employees were paid for all hours worked, were permitted to take all required breaks,
26 received compliant wage statements and received all pay due and owing at the time of termination.
27 Thus, the Parties fully dispute the merits of the claims and defenses.

28 ///

1 11. Defendant retained counsel and vowed to vehemently oppose the claims. Despite the
2 disputed nature of the claims, the Parties nevertheless agreed to table formal discovery and attempt an
3 early resolution. In preparation for the mediation, the Parties exchanged documents and information
4 that allowed both sides to calculate the potential damages and evaluate potential risk. During this
5 process, Plaintiff and his counsel analyzed, researched, and investigated the potential issues, including
6 matters related to the calculation of damages, trial, and appellate issues and risks. During this exchange
7 of information, pursuant to Plaintiff counsel's informal requests, Defendant produced extensive
8 documents and spreadsheets containing the timekeeping records, pay records and mileage records that
9 enabled Plaintiff and his expert to conduct a full analysis of the alleged unpaid wage, meal/rest break
10 violations and other claims.

11 12. The mediation took place on December 6, 2021, with Steve Serratore, a well-respected
12 wage-and-hour mediator. As noted, the Parties reached a settlement at mediation of the PAGA case as
13 well as Plaintiff's separate individual claims. Thereafter, the Parties memorialized the terms of the
14 settlement in a long-form Settlement Agreement, which is attached hereto as **Exhibit B**.

15 **THE SETTLEMENT IS FAIR, JUST AND REASONABLE**

16 13. The settlement requires Defendant to pay \$360,000 inclusive of payments for Plaintiff's
17 attorneys' fees (\$120,000) and litigation costs (\$12,561.62), and third party administrator
18 ("Administrator") costs (\$6,000).

19 14. After these payments, the remainder of approximately \$221,438.38 will form the PAGA
20 Award and, pursuant to Labor Code § 2699(i), 75 percent shall be paid to the LWDA (which shall be
21 used to assist in the enforcement of labor laws and education of employers and employees about their
22 rights and responsibilities under the Labor Code), and the remaining 25 percent being paid to the
23 Aggrieved Employees on a pro rata basis. The following chart reflects the estimated payments from the
24 Settlement Agreement:

25 ///

26 ///

27 ///

28 ///

	Amount
<i>Settlement Amount</i>	\$ 360,000.00
Attorneys' Fees	\$ 120,000.00
Actual Litigation Costs	\$ 12,561.62
Administrator Costs	\$ 6,000.00
<i>Net Settlement Amount (PAGA Award)</i>	\$ 221,438.38
75% to the LWDA	\$ 166,078.78
25% to Aggrieved Employees	\$ 55,359.60
Balance	\$0

15. As such, the LWDA will receive approximately \$166,078.78 (75 percent of the PAGA Penalties) and the 170 Aggrieved Employees will collectively receive approximately \$55,359.60 (25 percent), which will be paid on a pro-rata basis according to the number of pay periods worked during the PAGA Period. The average payment to the Aggrieved Employees is approximately \$325.64. According to Defendant's counsel, the Aggrieved Employees collectively worked 7,365 pay periods during the PAGA period. The portion of each PAGA Penalties share will be treated as non-wage income and reported by the Settlement Administrator on IRS Form 1099 to the respective Aggrieved Employee and applicable governmental authorities.

16. In exchange for these payments and benefits, the Aggrieved Employees will narrowly release the civil penalties claims alleged under Labor Code § 2699.

THE REQUESTED ATTORNEY'S FEES AND COSTS ARE FAIR AND REASONABLE

17. In accordance with the Settlement, the Parties agreed that my office would receive one-third of the settlement amount as attorneys' fees in recognition of the work performed by my office and the results we achieved for the State and Aggrieved Employees –which is basically equal to my firm's lodestar.

18. At my office, this case was primarily handled by Peter Carlson and me. Mr. Carlson is a 8-year attorney and Senior Associate in the firm who works exclusively with me on employment law matters. He bills at the hourly rate of \$575/hour. I have been in practice for 21 years, with most of those years handling complex litigation and for over the last 15 years, my practice has almost entirely consisted of representing employees with most of that time devoted to handling class action and wage and hour matters. My billing rate is \$775/hour.

19. The table below includes a summary of the hours worked, plus additional hours that I will bill in finalizing and filing the motion, preparing for and attending the approval hearing, and working with the administrator and defense counsel to finalize this matter. My firm's lodestar totals approximately \$116,455 through the conclusion of this matter, as follows:

Lodestar Summary

Attorney	Experience	Hourly Rate	Hours	Total
Brian Mankin	21	\$775	78 ¹	\$60,450
Peter Carlson	8	\$575	97.4	\$56,005
TOTAL				\$116,455

20. The hourly rates above are comparable to those of other attorneys with equal or similar experience, if not somewhat lower (i.e., the Laffrey Matrix at www.laffreymatrix.com indicates that the benchmark rate for a 8-10 year attorney to be \$676/hour and a 20+ year attorney at \$919/hour). Moreover, the Wolters Kluwer 2017 Real Rate Report (“Real Rate Report”) provides directly applicable information in this regard. The Real Rate Report is based on an enormous and statistically significant compilation of data: 25.8 million billing entries and 23.9 million hours billed by over 112,100 individual timekeepers from 4,620 law firms, totaling \$9.02 billion in fees billed. (See Wolters Kluwer’s ELM Solutions, Inc., 2017 Real Rate Report). The Real Rate Report then compiles and analyzes this data to provide the hourly rates for partners and associates in major metropolitan areas. For the southern California area, which is based on billing entries for 1,125 partners and 1,566 associates, the Real Rate Report states that: (a) the rates for partners in Los Angeles is between \$640 and \$869.75 per hour for the middle and upper quartiles, and (b) the rates for associates in Los Angeles is between \$478.74 and \$638.97 for the median and upper quartiles. And, perhaps most importantly, the information provided in the Real Rate Report is not based on self-reported numbers, surveys, sampling, or reviews or other publications – instead, the Real Rate Report is based on the actual hours and fees billed by law firms.

/ / /

¹ Includes an estimated 30 hours of additional work in preparation for and attending the hearing, as well as work that is anticipated to be performed after the hearing with counsel, administrator, employees, and the court.

21. In the course of prosecuting this action, Plaintiff's counsel has incurred expenses that were incidental and necessary to the effective representation of the Class. These expenses included but were not limited to: court filings, copying and management of documents, messenger services, postage, fax transmission expenses, transportation, and other incidental expenses directly related to this action. The Settlement Agreement authorized Plaintiff's Counsel to recover litigation costs not to exceed \$15,000. The costs through the approval hearing are \$12,561.62 (see **Exhibit C** attached hereto), which is the amount requested. Defendant does not oppose this request.

SUBMISSION TO THE LWDA

22. The Motion and declarations, including the Settlement Agreement, have concurrently been submitted to the LWDA through its online portal. (See **Exhibit D**).

EXHIBITS AND CONCLUSION

23. A true and correct copy of the LWDA letter is attached hereto as **Exhibit A**.

24. The PAGA Settlement Agreement and Release of PAGA Claims is attached hereto as **Exhibit B.**

25. An itemized statement of my firm's costs is attached hereto as **Exhibit C**.

26. The LWDA's confirmation of receipt of this Motion and Declaration is attached hereto as **Exhibit D**.

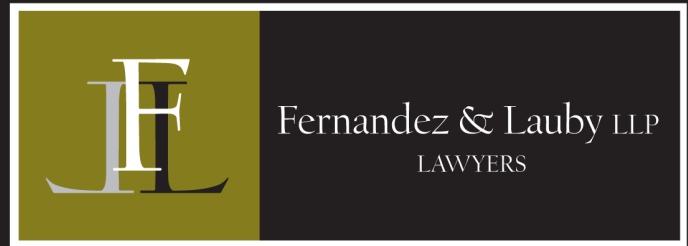
27. The Parties agreed upon Proposed Notice to be sent to the Class Members is attached hereto as **Exhibit E**.

28. For the foregoing reasons, it is respectfully requested that the Court approve the settlement.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on June 2, 2022, at Riverside, California.

By: Brian J. Mankin
Brian J. Mankin

EXHIBIT “A”



January 8, 2021

Sent Via Online Filing to the LWDA

California LWDA
Attn: PAGA Administrator
455 Golden Gate Ave., 9th Fl.
San Francisco, CA 94102

Sent Via U.S. Mail and Certified Mail

BluSky Restoration Contractors LLC
9110 E. Nichols Ave., #180
Centennial, CO 80112

**Re: PAGA Civil Penalty Claim
Santos Carrillo v. BluSky Restoration Contractors LLC**

To the Labor and Workforce Development Agency and BluSky Restoration Contractors LLC:

Pursuant to the Private Attorneys General Act of 2004 (“PAGA”), Labor Code §§ 2699, *et seq.*, this letter shall serve as notification of the PAGA civil penalty claim of aggrieved employee David Russell (“Claimant”), on behalf of the State of California and all Aggrieved Employees, against his former employer(s), Dignity Health and St. Francis Medical Center and/or any affiliated entities, for violations of Labor Code §§ 200, 201, 202, 203, 204, 208, 210, 218.6, 226, 226.3, 226.7, 227.3, 256, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 1198, and 1199, among possibly other sections inadvertently omitted, and/or sections of the applicable Industrial Welfare Commission Wage Order(s).

FACTUAL BACKGROUND

Claimant was employed by the Company from approximately 2019 through 2020. Claimant alleges that, at all relevant times, he and all other non-exempt employees employed by the Company in California (the “Aggrieved Employees”) were subjected to the same policies, working conditions, and corresponding wage and hour violations to Claimant was subjected during her employment.

For instance, at all relevant times, Claimant and the Aggrieved Employees were not provided proper minimum and overtime wages due to the Company’s failure to accurately record and compensate for all hours worked. Also, at all relevant times, Claimant was compensated on an hourly basis plus additional compensation in the form of shift differentials and/or nondiscretionary bonuses. However, on the occasions when Claimant worked in excess of 8 and/or 12 hours per day and/or 40 hours per week and received additional earned compensation during the pay period, the Company failed to properly include these amounts in the calculations for Claimant’s regular rate of pay. Therefore, the Company failed to pay proper overtime for the hours worked in excess of 8 and/or 12 per day and/or 40 per week.

Claimant was also not provided 30-minute off-duty meal periods, as mandated by California law, during employment with the Company. As a result of the Company’s policies and practices,

Claimant was subjected to meal period violations when Claimant was: (1) unable to take a meal period due to workload, (2) forced to take an on-duty meal period while under the control of the Company, (3) forced to take a meal period after the 5th hour of work, and (4) not provided a mandated second meal period on occasions for shifts in excess of 10 hours.

The Company also failed to provide Claimant with 10 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as mandated by California law. The Company did not schedule Claimant's rest breaks, Claimant was unable to leave the premises for breaks, and Claimant was often not authorized and/or permitted to take mandated rest breaks due to being overwhelmed by the hectic workload. Furthermore, on occasions when Claimant worked in excess of 10 hours in a shift, the Company failed to authorize and/or permit a third mandated rest break.

Moreover, at all relevant times, the Company utilized a policy and practice through which Claimant and the Aggrieved Employees accrued vacation and/or PTO hours (collectively, "vacation hours"). However, on the occasions when Claimant and the Aggrieved Employees had accrued but unused vacation hours upon separation of employment, Defendants failed to pay the departing employees all vacation hours and, further, failed to pay for these earned wages at the "final rate" as required by Labor Code § 227.3. As a result, Claimant and the Company did not receive compensation for all accrued but unused vacation hours – in violation of Labor Code § 227.3.

The Company also failed to comply with the mandates of Labor Code § 204 regarding the timing of the payment of wages to its employees each period, including meal and rest period premiums. Also, the Company failed to comply with the mandates of Labor Code §§ 201 – 203 regarding payment of final wages upon separation of employment. Finally, during his employment with the Company, Claimant received inaccurate and incomplete wage statements that failed to accurately state all necessary items required under Labor Code § 226(a).

As a result of these violations, and others described below, Claimant alleges that he and other Aggrieved Employees were denied specific rights to which they are/were entitled under California law and the rules promulgated by the IWC Wage Orders, including the following:

**PAGA ASSESSMENT FOR FAILURE TO
PAY ALL MINIMUM, REGULAR, AND OVERTIME WAGES**

(Labor Code §§ 204, 221-223, 510, 558, 1194, 1194.2, 1197, 1197.1, 1198; IWC Wage Order §§ 3, 4(B))

As discussed above, the Company failed to pay all required minimum, regular, and overtime wages to Claimant and the Aggrieved Employees due to the Company's failure to accurately record and compensate for all hours worked as well as the failure properly calculate the regular rate of pay for Claimant and other Aggrieved Employees. This resulted in earned, but unpaid, overtime wages due and owing to Claimant and the Aggrieved Employees. Therefore, Claimants and the Aggrieved Employees worked in excess of 8 and/or 12 hours per day, and/or forty hours per week without receiving proper payment of the requisite overtime and/or doubletime wages for all hours worked pursuant to Labor Code §§ 204 and 510 and/or the applicable IWC Wage Order. Claimants and the Aggrieved Employees were also not paid all earned wages to which they were entitled at the rates agreed upon by the Company, including, but not limited to shift differential pay.

Accordingly, Labor Code §§ 210, 558, 1197.1, and 2699, among possibly others, impose various penalties upon the Company for each employee and each pay period in which it failed to pay

all wages including, but not limited to, minimum, regular, and overtime wages in violation of the Labor Code and/or the IWC Wage Orders.

**PAGA ASSESSMENT FOR DENIAL OF MEAL PERIODS,
REST BREAKS, AND WAGE PREMIUMS**

(Labor Code §§ 226.7(b) & (c), 512, 558; Cal. Admin. Code, Title 8, § 11090)

Labor Code § 226.7(b) states that “[a]n employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission ...” Labor Code § 512(a) states in pertinent part: “[A]n employer may not employ an employee for a work period of more than 5 hours per day without providing the employee with an uninterrupted meal period of not less than 30 minutes [...] [a]n employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes.”

Section 12 of applicable IWC Wage Order states in pertinent part: “Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.”

Here, Claimant and other Aggrieved Employees were regularly not provided compliant mandatory meal periods and paid rest breaks due to the Company’s policies described above. Although the Company was required to pay Claimant and all Aggrieved Employees premium wages equal to an additional hour of pay at the employee’s regular rate of pay for each violation under Labor Code § 226.7(c), the Company did not pay the mandatory one-hour wage premiums. Labor Code § 558 imposes a penalty for each violation, plus an amount sufficient to recover the underpaid wages. Additionally, the civil assessment set forth in Labor Code § 2699 applies to these violations.

FAILURE TO PAY VESTED VACATION UPON SEPARATION OF EMPLOYMENT

(Labor Code § 227.3)

Pursuant to Labor Code § 227.3, an employer that has implemented a paid vacation, paid time off, or compensated time off policy must, upon an employee’s separation from employment, pay to the employee all vested but unused vacation and/or paid time off at her final rate of pay. However, as alleged herein, the Company only paid vested vacation upon separation at the base rate of pay, leading to a violation on each such occasion. As a result of these violations, penalties may be assessed pursuant to Labor Code § 2699.

**PAGA ASSESSMENT FOR FAILURE TO PAY ALL WAGES DUE AND OWING
EACH PAYROLL PERIOD WITHIN THE TIME REQUIRED BY LAW**

(Labor Code §§ 204, 204.1, 208, 256 and 2699)

Labor Code § 204(a) states that all wages earned by a person are due and payable twice during each calendar month, and further states that wages earned during the first through fifteenth days of the month must be paid no later than the twenty-sixth day of the month, and that wages earned between the sixteenth and last day of the month must be paid by the tenth day of the following month. Labor Code § 204(d) states “[t]he requirements of this section shall be deemed satisfied by

the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.”

As a result of the Company’s failure to pay Claimant and the Aggrieved Employees all compensation to which they were entitled, the Company had a pattern and practice of failing to pay all wages due and owing to Claimant and the Aggrieved Employees within the time mandated by Labor Code § 204. As a result of these violations, penalties may be assessed pursuant to Labor Code §§ 203, 210, 256, and/or 2699.

PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY FINAL WAGES
(Labor Code §§ 201, 202, 203, 256 and 2699)

Labor Code § 201(a) provides in pertinent part: “If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” Labor Code § 202(a) states in pertinent part “If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours’ previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.” Labor Code § 203(a) states “If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.”

The Company did not pay the Aggrieved Employees all wages that were due and owing within the required time following the end of their employment in accordance with Labor Code §§ 201-202. As a result, all such Aggrieved Employees are entitled to 30 days of wages as a “waiting time penalty.” (Labor Code §§ 203, 256.) Labor Code § 2699 also imposes a penalty.

PAGA ASSESSMENT FOR FAILURE TO PROVIDE ACCURATE,
ITEMIZED WAGE STATEMENTS
(Labor Code §§ 226, 226.3, and 1174)

Labor Code § 226(a) requires an employer to provide its employees with itemized wage statements accurately stating gross wages earned, total hours worked, all deductions, net wages earned, the inclusive dates of the pay period, the employee’s name and the last four digits of his or her Social Security number (or employee identification number), the name and address of the legal entity that is the employer, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

At all times pertinent hereto, the Company failed to provide accurate itemized wage statements to Claimants and all Aggrieved Employees due to violations including: failure to accurately state gross wages earned; failure to accurately state total hours worked; failure to accurately state all deductions; failure to accurately state net wages earned; failure to state the applicable hourly rates (including the accurate overtime rate of pay); and failure to accurately state the corresponding number of hours worked at each hourly rate. Accordingly, Claimants are entitled to damages under Labor Code § 226(e), including reasonable attorneys’ fees. Labor Code §§ 226.3 and 2699 also impose a civil penalty and/or assessment for these violations.

PAGA ASSESSMENT FOR VIOLATIONS OF LABOR CODE § 1199
(Labor Code § 1199)

An employer violates Labor Code § 1199 if said employer: (a) requires or causes an employee to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission; (b) pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission; or, (c) violates or refuses or neglects to comply with any provision of this chapter or any order or ruling of the commission. Labor Code § 2699.5 specifically enumerates Labor Code § 1199 as a section to which the civil penalties under the PAGA apply. Therefore, as a result of the Company's violations described herein, the Company is subject to the civil penalties in accordance with Labor Code § 2699.

ATTORNEYS' FEES, INTEREST, AND PENALTIES
(Labor Code §§ 2699(f)(2), 2699(g)(1), 2699.5)

Labor Code § 2699(g)(1), give employees the right to recover in a civil action the unpaid balance of the full amount of wages, including interest thereon, penalties and other damages, as applicable, reasonable attorneys' fees, and costs of suit. Additionally, Claimants seek the assessment of penalties, including civil penalties, under Labor Code §§ 203, 210, 225.5, 226.3, 1174.5, 1197.1, 2699, and/or § 20 of the IWC Wage Orders, among possibly other provisions inadvertently omitted herein. Furthermore, Claimants is entitled to bring a wage/hour claim on behalf of all current and former similarly situated employees of the Company. Thus, the Company is exposed to these same penalties for violations involving all Aggrieved Employees.

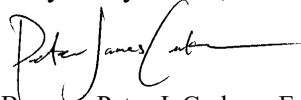
Additionally, Claimant seeks attorney's fees pursuant to C.C.P. § 1021.5. Please construe this correspondence as Claimants' notification of alleged wrongdoing and attempted resolution in accordance with C.C.P. § 1021.5 and *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553.

CONCLUSION

Based on the foregoing, the Company may be liable for penalties related to the foregoing claims and remedies. If Claimant becomes aware of any additional claims for Labor Code violations related to his employment and/or other employees of the Company, he reserves the right to add new claims by amending this claim letter.

Should you have any questions, please feel free to give me a call. In the meantime, I look forward to your response.

Very Truly Yours,



By: Peter J. Carlson, Esq.
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www.California-EmploymentLawyers.com

EXHIBIT “B”

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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN BERNARDINO

SANTOS CARRILLO, individually, on a
 representative basis, and on behalf of all
 others similarly situated;

Plaintiff,

vs.

BLUSKY RESTORATION
 CONTRACTORS LLC, a Delaware
 Limited Liability Company; HAR-BRO,
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 Corporation; and DOES 3 through 20,
 inclusive;

Defendants.

Case No.: CIVSB2105793

*[Assigned to Hon. Judge David Cohn, Dept
 S26, for all purposes]*

**PAGA REPRESENTATIVE ACTION
 SETTLEMENT AGREEMENT AND
 RELEASE OF PAGA CLAIMS**

Complaint Filed: 2/11/21

PAGA REPRESENTATIVE ACTION SETTLEMENT AGREEMENT AND RELEASE OF PAGA CLAIMS

This Private Attorneys General Act of 2004 (“PAGA”) Representative Action Settlement Agreement and Release of PAGA Claims is made and entered into by and between Plaintiff Santos Carrillo and Defendants BluSky Restoration Contractors LLC, Har-Bro, LLC, and Har-Bro, Inc., subject to the terms and conditions hereof and the approval of the Superior Court of the State of California for the County of San Bernardino. Plaintiff enters into this Settlement Agreement on behalf of himself, the State of California and all current and former employees employed by Defendants in California at any time between February 11, 2020, through February 5, 2022.

A. Definitions

1. **“Action”** means the case entitled *Carrillo v. BluSky Restoration Contractors LLC, et al*, pending in the Superior Court of the State of California for the County of San Bernardino, Case No. CIVSB2105793.

2. **“PAGA Agreement” or “PAGA Settlement Agreement”** shall mean this PAGA Representative Action Settlement Agreement and Release of PAGA Claims, including any attached Exhibits.

3. **“Aggrieved Employee” or “Aggrieved Employees”** shall mean Plaintiff Carrillo, and all current and former non-exempt employees employed by Defendants in California at any time during the Statutory Period. Defendant estimates that there are 170 Aggrieved Employees in the Statutory Period, at the time of mediation on December 6, 2021.

4. **“Aggrieved Employee List”** shall be on one spreadsheet and include each Aggrieved Employees’ full name; most recent mailing address on file with Defendants; Social Security Number; and number of pay periods worked during the Statutory Period. The Aggrieved Employee List will remain confidential and not be shared with Plaintiff’s counsel.

5. **“Attorneys’ Costs”** means an award of costs to be paid to Plaintiff’s Counsel for the costs they have incurred in prosecuting the Action, subject to Court approval. Such costs shall not exceed Fifteen Thousand Dollars (\$15,000). Any costs not approved by the Court will be reallocated to the PAGA Award, with Seventy-Five Percent (75%) to be paid to the LWDA and Twenty-Five Percent (25%) to the Aggrieved Employees.

6. **“Attorneys’ Fees”** means an award of attorneys’ fees to be paid to Plaintiff’s Counsel for the services they have rendered and will render to the Aggrieved Employees in the Action, subject to Court approval. Such attorneys’ fees shall not exceed one-third of the Settlement Amount (\$120,000). Any attorneys’ fees not approved by the Court will be reallocated to the PAGA Award, with Seventy-Five Percent (75%) to be paid to the LWDA and Twenty-Five Percent (25%) to the Aggrieved Employees.

7. **“Complaint”** means and refers to the operative complaint filed in the Action, which seeks an assessment of PAGA penalties for: (1) failure to pay minimum wages, (2) failure to pay overtime wages, (3) failure to provide meal periods, (4) failure to provide rest breaks, (5) failure to pay vested vacation wages, (6) failure to timely pay wages each period, (7) failure to timely pay final wages, and (8) failure to provide accurate itemized wage statements.

8. **“Defense Counsel” or “Defendants’ Counsel”** means Fisher & Phillips LLP.

9. **“Effective Date”** means the date the Court enters the Final Order.

10. **“Eligible Pay Period”** means any pay period worked by an Aggrieved Employee in California during the Statutory Period.

11. **“Final Order”** means the order that will be entered by the Court to approve the Settlement, which should be substantially in the form as agreed to by the Parties.

12. **“Individual Settlement Payment”** means the portion of the PAGA Award allocated to each Aggrieved Employee.

13. **“LWDA”** means the California Labor Workforce Development Agency.

14. **“LWDA Settlement Proceeds”** means the seventy-five percent (75%) of the PAGA Award that shall be paid to the LWDA.

15. **“Notice”** means the form of notice that will be sent to each Aggrieved Employee accompanying their Individual Settlement Payments, which should be substantially in the form attached hereto as **Exhibit A**.

16. **“PAGA Award”** means the Settlement Amount remaining to distribute to the LWDA and Aggrieved Employees after the following amounts are subtracted from the Settlement Amount: (a) Attorney’s Fees, (b) Attorney’s Costs, and (c) Settlement Administration Costs.

1 17. **“Parties”** means Plaintiff, the Aggrieved Employees, and Defendants, collectively.

2 18. **“Plaintiff’s Counsel”** means Brian Mankin and Peter Carlson of Lauby Mankin Lauby
3 LLP.

4 19. **“Released Claims”** means and refers to any and all rights and claims for civil penalties
5 that were asserted or could have been asserted, assessed upon or collected from the Released Parties
6 by or on behalf of Plaintiff, the Aggrieved Employees and/or the State of California under the Private
7 Attorney General Act, Cal. Lab. Code §§ 2698 *et seq.*, or the California Labor Code, based on the
8 facts and/or violations alleged in the Complaint, including but not limited to the penalties sought in
9 Plaintiff’s PAGA causes of action for: (1) failure to pay minimum wages, (2) failure to pay overtime
10 wages, (3) failure to provide meal periods, (4) failure to provide rest breaks, (5) failure to pay vested
11 vacation wages, (6) failure to timely pay wages each period, (7) failure to timely pay final wages, (8)
12 failure to provide accurate itemized wage statements, and all other PAGA claims alleged or that could
13 have been alleged based upon on the facts, claims, or legal theories in the LWDA letter or the
14 Complaint, which include claims for alleged violations of California Labor Code §§ 200, 201, 202,
15 203, 204, 208, 210, 218.6, 221, 222, 223, 226, 226.3, 226.7, 227.3, 256, 510, 512, 558, 1194, 1194.2,
16 1197, 1197.1, 1198, 1199, and Sections 3, 4, 9, 11 and 12 of the applicable Wage Order, arising during
17 the Statutory Period.

18 20. **“Released Parties”** means Defendants and their former, present and future owners, parents,
19 affiliates, and subsidiaries, and all of their current, former and future officers, directors, members, managers,
20 partners, shareholders, employees, joint ventures, successors, assigns, accountants, insurers, or legal
21 representatives.

22 21. **“Settlement”** means the terms and conditions set forth in this PAGA Settlement
23 Agreement.

24 22. **“Settlement Administration Costs”** means the amount from the Settlement Amount,
25 which shall be allocated to the Settlement Administrator for services rendered in administering the
26 Settlement, not to exceed Six Thousand Dollars (\$6,000.00), subject to Court approval. Any
27 Settlement Administration Costs not approved by the Court will be reallocated to the PAGA Award,
28 with Seventy-Five Percent (75%) to be paid to the LWDA and Twenty-Five Percent (25%) to the

1 Aggrieved Employees.

2 23. **“Settlement Administrator”** means CPT Group, the third-party entity selected by the
3 Parties who will administrator the Settlement, subject to approval by the Court, in accordance with
4 this PAGA Settlement Agreement.

5 24. **“Settlement Amount”** means the maximum amount that Defendants will be required
6 to pay if the Court approves this Settlement and the Effective Date occurs, which is Three Hundred
7 Sixty Thousand Dollars (\$360,000). The Settlement Amount will be used to pay: (a) the PAGA Award
8 to the LWDA and the Aggrieved Employees; (b) the award of Attorneys’ Fees; (c) the award of
9 Attorneys’ Costs to Plaintiff’s Counsel; and (d) Settlement Administration Costs.

10 25. **“Statutory Period” or “PAGA Release Period”** means any time during the period of
11 February 11, 2020, through February 5, 2022.

12 **B. Procedural Posture**

13 26. On January 8, 2021, Plaintiff gave written notice to the Labor and Workforce
14 Development Agency (“LWDA”) and Defendant of alleged violations of California Labor Code §§
15 200, 201, 202, 203, 204, 208, 210, 218.6, 226, 226.3, 226.7, 227.3, 256, 510, 512, 558, 1194, 1194.2,
16 1197, 1197.1, 1198, and 1199 and/or applicable sections of the California Industrial Welfare
17 Commission Wage Orders for wage and hour penalty claims. While the LWDA exhaustion period
18 was running, on February 11, 2021, Plaintiff filed a class action complaint in the Court. Ultimately,
19 the LWDA declined to assert jurisdiction over the PAGA Claims, so Plaintiff filed a first amended
20 complaint on May 28, 2021 that added the PAGA Claims to the Action. Simultaneously, Plaintiff also
21 added Har-Bro, Inc. and Har-Bro, LLC, as Defendants. Thereafter, Defendants presented Plaintiff
22 with information showing that the putative class members entered into arbitration agreements, so on
23 December 6, 2021, the Parties mediated the PAGA Action and Released Claims, as well as Plaintiff’s
24 separate individual (non-PAGA) claims with Steve Serratore. The matter resolved globally pursuant
25 to a mediator’s proposal, including a settlement of this PAGA Action and Plaintiff’s individual (non-
26 PAGA) claims against Defendants.

27 27. As of the mediation, the Action included claims pled on behalf of a putative class of
28 Defendants’ employees. However, in light of Defendants contention that all such employees have

1 signed valid and enforceable arbitration agreements, the Parties agreed to settle the Action on a PAGA-
2 only basis. To effectuate this PAGA Settlement, the Parties will enter into stipulation dismissing the
3 putative class claims without prejudice and, further, Plaintiff shall file an amended complaint that only
4 includes claims arising under the PAGA.

5 28. The PAGA Action asserts representative PAGA Claims for civil penalties, including
6 an award of reasonable attorney's fees and costs, pursuant to PAGA, based on alleged predicate
7 violations of California Labor Code Sections including, but not limited to, 200, 201, 202, 203, 204,
8 208, 210, 218.6, 226, 226.3, 226.7, 227.3, 256, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 1198, 1199
9 and 2699 *et seq.*, and Sections 3, 4, 7, 11 and 12 of the applicable Wage Order.

10 29. The Parties agree that neither the Parties' Settlement, this PAGA Agreement, nor the
11 acts to be performed or judgment to be entered pursuant to the terms of the Settlement and PAGA
12 Agreement, shall be construed as an admission by Defendants of any wrongdoing or violation of any
13 statute or law or liability on the claims or allegations in the Action.

14 30. Defendants deny all of the allegations in the Action, including all PAGA Claims, and
15 deny that they have committed any misconduct, statutory or regulatory violation, wrongdoing, or any
16 other actionable conduct of any kind and further deny that this PAGA Action is appropriate for PAGA
17 representative treatment for any purpose other than settling this Action. Defendants have denied and
18 continue to deny each and every material factual allegation and alleged claims asserted against them
19 in the PAGA Action.

20 31. The Parties have conducted a thorough investigation into the facts of the PAGA Action.
21 This included conducting extensive informal discovery, and exchanging information and documents
22 relating to the Released Claims. Based on the foregoing data and on their own independent
23 investigation and evaluation, Plaintiff's Counsel is of the opinion that the Settlement with Defendants
24 for the consideration and on the terms set forth in this PAGA Settlement Agreement is fair, reasonable,
25 and adequate and is in the best interest of the LWDA and Aggrieved Employees in light of all known
26 facts and circumstances, including the risk of significant delay, uncertainty associated with litigation,
27 various defenses asserted by Defendants, and numerous potential appellate issues. Defendants and
28 Defendants' Counsel also agree that the Settlement is fair and in the best interest of the LWDA and

1 Aggrieved Employees. The Parties' desire is to completely dispose of the Action by this PAGA
2 Settlement Agreement and the separate Individual Settlement Agreement (as defined below). The
3 Parties further acknowledge that they are each represented by competent counsel and that they have
4 had an opportunity to consult with their counsel regarding the fairness and reasonableness of this
5 Settlement.

6 32. Under California Law, the State may assess and collect civil penalties from employers
7 for violations of certain provisions of the Labor Code. (See Cal. Lab. Code §§ 2699 *et seq.*) Under
8 PAGA, however, if an "aggrieved employee" "give[s] written notice by certified mail to the [State]
9 and the employer of the specific provision of the [Labor Code] alleged to have been violated," and the
10 State thereafter decides not to investigate, as was the case here, or does investigate and determines that
11 a citation against the employer should not issue, the employee may, "as an alternative" to enforcement
12 by the State, act as a proxy or agent of the state's labor law enforcement agencies and bring a civil
13 action under PAGA to recover civil penalties "on behalf of himself or herself and other current or
14 former employees." *Id.* "[C]ivil penalties recovered by aggrieved employees shall be distributed as
15 follows: 75 percent to the state and 25 percent to the aggrieved employees." *Id.*

16 33. California Labor Code § 2699(l)(2) provides that "The superior court shall review and
17 approve any settlement of any civil action filed pursuant to this part."

18 34. In consideration of the promises and agreements contained herein, the Parties agree and
19 covenant as follows.

20 **C. Terms of Settlement.**

21 35. Subject to the Court's approval of the Settlement pursuant to Labor Code § 2699(l)(2),
22 which counsel and the Parties agree to recommend in good faith to the Court, the Parties agree to the
23 following binding settlement and disposal of the entire Action in exchange for Defendants' agreement
24 to pay the Settlement Amount of \$360,000, which is inclusive of the following three components: (a)
25 Attorneys' Fees and Costs; (b) Settlement Administration Costs, and (c) the PAGA Award. All of
26 these components are included in the Settlement Amount, and will be paid by Defendants, which shall
27 be administered by the Settlement Administrator. The Settlement Amount will be allocated as follows:

28 ///

- 1 a. **Attorneys' Fees and Costs.** The Parties agree that, subject to the Court's review and
2 approval, Plaintiff's Counsel will be paid up to one-third of the Settlement Amount as
3 attorneys' fees (\$120,000), plus actual litigation costs not to exceed \$15,000 from the
4 Settlement Amount. Any portion of the Attorneys' Fees or Attorney's Costs not
5 awarded to Plaintiff's Counsel will be reallocated to the PAGA Award. Defendants
6 agree not to oppose any request by Plaintiff's counsel for attorneys' fees under the
7 common fund doctrine and/or lodestar multiplier method. The Settlement
8 Administrator will report these payments on an IRS Form 1099 issued to Plaintiff's
9 Counsel.
- 10 b. **Settlement Administration Costs.** The costs associated with settlement
11 administration (e.g. NOCA searches, preparing and mailing payments/notices to
12 LWDA and Aggrieved Employees, tax documentation, etc.) shall be paid from the
13 Settlement Amount and shall not exceed \$6,000. Any Settlement Administration Costs
14 not awarded by the Court will be reallocated to the PAGA Award.
- 15 c. **PAGA Award.** After deducting the amounts specified in items (a) and (b) from the
16 Settlement Amount, the balance remaining will form the PAGA Award that will be
17 paid to the Aggrieved Employees and the LWDA in full satisfaction of all claims for
18 PAGA civil penalties under the California Labor Code, Wage Orders, regulations,
19 and/or other provisions of law alleged to have been violated in the Complaint and/or
20 LWDA notice letter with respect to Aggrieved Employees. Pursuant to PAGA,
21 Seventy-Five Percent (75%) of the PAGA Award will be paid to the LWDA. The
22 remaining Twenty-Five Percent (25%) will be paid to all Aggrieved Employees on a
23 pro-rata basis according to the following formula.
- 24 i. The Settlement Administrator will calculate the total number of Eligible
25 Pay Periods worked by all Aggrieved Employees during the Statutory
26 Period, and the resulting figure will be referred to as the "Divisor."
- 27 ii. Each Aggrieved Employee's *pro rata* share of the Aggrieved
28 Employees Settlement Proceeds will be determined by dividing the

1 Eligible Pay Periods that each Aggrieved Employee worked by the
2 Divisor and then multiplying the product by the Aggrieved Employees
3 Settlement Proceeds. The product of the foregoing formula shall be
4 referred to as the Aggrieved Employee's "Individual Share."

5 d. **Taxes and Reporting.** Each Aggrieved Employee's Individual Share shall be treated
6 as penalties (i.e., non-wage income) for all purposes and reported by the Settlement
7 Administrator on IRS Form 1099 to the respective Aggrieved Employee and applicable
8 governmental authorities. No portion of the Aggrieved Employees Settlement
9 Proceeds is or shall be construed as wages. Nothing in this PAGA Settlement
10 Agreement is intended to constitute legal advice regarding federal, state and/or local
11 tax obligations or legal requirements for attribution of settlement proceeds. The
12 Aggrieved Employees will be solely responsible for correctly characterizing any
13 compensation received under the Settlement on his/her personal income tax returns for
14 tax purposes, and paying all appropriate taxes due for any and all amounts paid to them
15 under the Settlement. Plaintiff, Defendants, Plaintiff's Counsel, and Defendants'
16 Counsel make no representations or warranties with respect to tax consequences of any
17 payment under this PAGA Settlement Agreement, do not intend anything contained in
18 this PAGA Settlement Agreement to constitute advice regarding taxes or taxability, nor
19 shall anything in this PAGA Settlement Agreement be relied upon as such. To the
20 extent that this PAGA Settlement Agreement or any of its attachments is interpreted to
21 contain or constitute advice regarding any U.S. or Federal tax issue, such advice is not
22 intended or written to be used, and cannot be used, by any person for the purpose of
23 avoiding penalties under the Internal Revenue Code. Defendants, Defendants'
24 Counsel, Plaintiff and Plaintiff's Counsel are not responsible for any employee tax
25 obligations arising out of the Aggrieved Employee's Individual Share.

26 e. The Parties agree that the Settlement is fair and reasonable and will so represent to the
27 Court. The Parties agree that should the Court deny approval of the Settlement based
28 on the allocation of the Settlement Amount or the PAGA Award, the Parties agree to

1 re-negotiate the allocation of funds in good faith in an effort to obtain approval of the
2 Settlement.

3 **D. Settlement Approval and Implemental Procedures.**

4 36. The Parties will file a stipulation and proposed order dismissing the putative class
5 claims and permitting Plaintiff to file a second amended complaint that alleges the PAGA Claims only.
6 Thereafter, Plaintiff's Counsel shall prepare a motion for approval of the Settlement pursuant to
7 California Labor Code § 2699(l)(2) ("Motion"), advocating that the Settlement is fair, adequate, and
8 reasonable, and Plaintiff's Counsel shall send a draft of the Motion to Defendants' Counsel allowing
9 sufficient time for review and revisions prior to filing. Plaintiff will then move the Court for approval
10 of the PAGA Settlement Agreement, including the allocation of the PAGA Award, Plaintiff's
11 Counsel's Attorneys' Fees and Costs, and Settlement Administration Costs, which Defendants will
12 not oppose. Plaintiff's Counsel will serve the Motion on Defendants' Counsel via email and submit it
13 to the LWDA through the online filing system. Pursuant to California Labor Code section 2698, *et*
14 *seq.*, Plaintiff's Counsel shall undertake all required submissions and disclosures to the LWDA and
15 the Court to obtain approval of the Settlement. The Parties further agree to jointly request that the
16 Court enter the Final Order, including a judgment of dismissal in the form agreed to by the Parties.

17 37. The Parties have agreed to the appointment of the Settlement Administrator to perform
18 the duties of a settlement administrator, including mailing the Notice, using standard devices to obtain
19 forwarding addresses, resolving any disputes regarding the calculation or application of the formula
20 for determining the Individual Shares, drafting and mailing the settlement checks to Aggrieved
21 Employees, issuing 1099 forms, and performing such other tasks as set forth herein or as the Parties
22 mutually agree or that the Court orders. Any disputes relating to administration of the Settlement by
23 the Settlement Administrator shall be referred to the Court, if necessary, which will have continuing
24 jurisdiction over the terms and conditions of this PAGA Settlement Agreement, until all payments and
25 obligations contemplated by this PAGA Settlement Agreement have been fully carried out. Prior to
26 presenting any issue to the Court, counsel for the Parties will confer in good faith to resolve the dispute
27 without the necessity of Court intervention. The Settlement Administrator shall also be responsible
28 for issuing to Plaintiff, Aggrieved Employees, and Plaintiff's Counsel any 1099, or other tax forms as

1 may be required by law for all amounts paid pursuant to this PAGA Agreement. The Settlement
2 Administrator shall also be responsible for setting up all necessary tax accounts and forwarding all
3 payments to the appropriate government authorities.

4 38. Upon the Court's entry of the Final Order, the Settlement Administrator will perform
5 all settlement administration duties, including (i) performing a National Change of Address ("NCOA")
6 search on all Aggrieved Employees to update the addresses of the Aggrieved Employees, (ii) issuing
7 the Notice and payments to the Aggrieved Employees, (iii) issuing any required IRS forms, and (iv)
8 issuing payment to the LWDA and Plaintiff's Counsel. Within ten (10) calendar days after the
9 Effective Date, the Settlement Administrator shall send counsel for Defendants electronic wiring
10 instructions to fund the Settlement Amount.

11 39. Within twenty (20) calendar days after the Effective Date, Defendants will send to the
12 Settlement Administrator the Aggrieved Employees List. This information shall be treated as and
13 remain confidential and shall be used solely by the Settlement Administrator to manage the notice and
14 payment process described herein, shall not be disclosed to anyone other than the Settlement
15 Administrator, except to applicable taxing authorities, or pursuant to express written authorization of
16 Defendants, the individual in question, or by order of the Court.

17 40. Within 30 calendar days of the Effective Date, Defendants shall wire the Settlement
18 Amount (\$360,000) to the Settlement Administrator.

19 41. Within ten (10) days of receiving the wire transfer from Defendants, the Settlement
20 Administrator shall mail the respective settlement checks to the Aggrieved Employees, Plaintiff's
21 Counsel and LWDA, and pay itself the share of Settlement Administration Costs awarded by the
22 Court. The settlement checks mailed to the Aggrieved Employees will be accompanied with the
23 Notice letter explaining the payment and deadline to cash the check. The Notice to LWDA shall
24 comply with any legal requirements and in compliance with the Final Order.

25 42. Aggrieved Employees shall have 180 calendar days after mailing to cash their
26 settlement checks. If any Aggrieved Employee's check is not cashed within that period, the check
27 will be voided and a stop-payment will be issued. The release nevertheless will be binding upon all
28 Aggrieved Employees who do not cash their checks within the 180 day period. In the event that any

1 settlement check is returned to the Settlement Administrator within 180 days of mailing, the Settlement
2 Administrator will, within five (5) business days of receipt of the returned settlement check, perform
3 a skip trace to locate the individual, and notify Defendants' Counsel and Plaintiff's Counsel of the
4 results. If a new address is located by these means, the Administrator will have ten (10) business days
5 to issue the check. Any funds in the Settlement Administrator's account as a result of a failure to
6 timely cash a settlement check shall be paid to the California State Controller in the name of the
7 Aggrieved Employee who did not cash the check from which the Aggrieved Employee may claim the
8 funds. Neither Defendants, Defense Counsel, Plaintiff's Counsel nor Plaintiff will have any liability
9 for lost or stolen settlement checks, forged signatures on settlement checks, unauthorized negotiation
10 of settlement checks or failure to timely cash a settlement check within the 180-day period.

11 43. Upon the Court's entry of the Final Order, Plaintiff and the Aggrieved Employees will:
12 (i) be bound by the terms and conditions of this PAGA Agreement, and the releases set forth herein;
13 (ii) be deemed to have waived all objections and oppositions to the fairness, reasonableness, and
14 adequacy of the Settlement and the Court's Final Order; and (iii) be entitled to receive their respective
15 Individual Share of the Net Settlement Amount, as set forth herein.

16 44. The Settlement Administrator will provide the Parties with a declaration confirming
17 that distribution of payments has been completed in accordance with the PAGA Settlement Agreement
18 and the Court's Final Order, within ten (10) business days of distributing all payments under the
19 Settlement. Plaintiff's Counsel will file the declaration with the Court and any required papers (i.e.,
20 amended Final Order and/or Judgment) or as otherwise ordered by the Court. This PAGA Settlement
21 Agreement is expressly conditioned upon the Court entering the Final Order, thereby disposing of the
22 Action in its entirety. The Final Order and entry of judgment of dismissal will not release or bar any
23 claims other than the Released Claims as to Plaintiff, Aggrieved Employees, and State of California.

24 **E. Release by State of California and Aggrieved Employees**

25 45. On the date that the Court issues a Final Order, Plaintiff, standing in the shoes of the
26 Labor Commissioner/LWDA, and on behalf of the State of California and all Aggrieved Employees,
27 will forever completely release and discharge the Released Parties from any and all of the Released
28 Claims. The time period governing the Released Claims shall be the Statutory Period.

46. It is the intent of the Parties that the Final Order entered by the Court shall have full equitable and collateral estoppel and *res judicata* effect and be final and binding upon Aggrieved Employees regarding the Aggrieved Employees' Released Claims.

F. Separate Release and Individual Settlement by Plaintiff.

47. In addition to this PAGA Agreement, Plaintiff has entered into separate Confidential Settlement Agreement and General Release of Individual Claims (the "Individual Settlement Agreement") with Defendants for all of his separate individual (non-PAGA) claims arising out of his employment with Defendants, in exchange for a full release of those claims. The Parties acknowledge and agree that the Individual Settlement Agreement and the covenants, promises and released claims contained therein shall not serve to modify or limit Plaintiff's right to continue with this Action and seek the Court's approval of this PAGA Settlement; however, Plaintiff shall have no right to be the representative of a class action lawsuit against Defendants. The Parties further agree that if for any reason the Effective Date does not occur with regard to this PAGA Settlement Agreement and/or the Final Order is not entered, then the Individual Settlement Agreement shall be null and void.

G. Additional Settlement Terms and Conditions

48. Acknowledgement that the Settlement is Fair and Reasonable. The Parties believe this Settlement Agreement is a fair, adequate, and reasonable settlement of the Action and have arrived at this Settlement after extensive trial preparation and arm's-length negotiations by experienced counsel. The Parties further acknowledge that they are each represented by competent counsel and that they have had an opportunity to consult with their counsel regarding the fairness and reasonableness of this Settlement.

49. Denial of Liability. The Parties expressly recognize that the making of this Settlement Agreement does not in any way constitute an admission or concession of liability, culpability, negligence or wrongdoing on the part of Defendants or any of the other Released Parties. The Parties hereto have entered into this Settlement with the intention of avoiding further disputes and litigation with the attendant risk, inconvenience and expenses. Nothing in this Settlement, nor any action taken in implementation thereof, nor any statements, discussions or communications, nor any materials prepared, exchanged, issued or used during the course of this Action, is intended by the Parties to, nor

1 will any of the foregoing constitute, be introduced, be used or be admissible in any way in any other
2 judicial, arbitral, administrative, investigative or other forum or proceeding, as evidence of any
3 violation of any federal, state, or local law, statute, ordinance, regulation, rule or executive order, or
4 any obligation or duty at law or in equity. Notwithstanding the foregoing, this Settlement Agreement
5 may be used in any court proceeding that has as its purpose the interpretation, implementation, or
6 enforcement of the Settlement or any orders or judgments of the Court entered into in connection
7 therewith.

8 50. No Credit Toward Benefit Plans. Payments to Aggrieved Employees as referenced
9 herein will not be utilized to calculate any additional benefits under any benefit plans to which any
10 Aggrieved Employee may be eligible, including, but not limited to profit-sharing plans, bonus plans,
11 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and any other benefit
12 plan. Rather, it is the Parties' intention that this Settlement Agreement will not affect any rights,
13 contributions, or amounts to which any Aggrieved Employee may be entitled under any benefit plans.

14 51. No Tax Advice: Plaintiff's Counsel and Defense Counsel do not intend this Settlement
15 Agreement to constitute legal or tax advice regarding any federal, state or local tax issue. To the extent
16 that this Settlement Agreement, or any of its Exhibits, are interpreted to contain or constitute advice
17 regarding any federal, state or local tax issue, such advice is not intended or written to be used, and
18 cannot be used, by any person for the purpose of avoiding any tax liability or penalties.

19 52. No Prior Assignments. The Parties and their counsel represent, covenant, and warrant
20 that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign,
21 transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause
22 of action or right herein released and discharged.

23 53. Nullification of Settlement Agreement. In the event that: (i) the Court does not approve
24 the Settlement as provided herein or as may be amended by the Parties by mutual agreement, in the
25 event that the Court does not approve it; or (ii) the Settlement does not become final for any other
26 reason, then this Settlement Agreement, and any documents generated to bring it into effect, will be
27 null and void, and the Parties will be returned to their original respective positions.

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1 54. Judgment/Dismissal and Continued Jurisdiction. After entry of the Final Order, the
2 Court will have continuing jurisdiction solely for purposes of addressing: (i) the interpretation and
3 enforcement of the terms of the Settlement, (ii) settlement administration matters, and (iii) such post-
4 approval matters as may be appropriate under court rules or as set forth in this Settlement.

5 55. Entire Agreement. This Settlement Agreement, including the Exhibit attached hereto,
6 constitutes the entirety of the Parties' settlement terms of the claims released herein. All prior or
7 contemporaneous agreements, understandings, representations and statements, whether oral or written
8 and whether by a Party or such Party's legal counsel, including the Memorandum of Understanding
9 between the Parties, are merged herein.

10 56. Amendment or Modification. This Settlement Agreement may be amended or
11 modified only by a written instrument, signed by either the Parties or their successors-in-interest or
12 counsel for all Parties.

13 57. Authorization to Enter Into Settlement Agreement. Counsel for all Parties warrant and
14 represent they are expressly authorized by the Parties whom they represent to negotiate this Settlement
15 Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant
16 to this Settlement Agreement to effectuate its terms and to execute any other documents required to
17 effectuate the terms of this Settlement Agreement. The Parties and their counsel will cooperate with
18 each other and use their best efforts to effect the implementation of the Settlement. If the Parties are
19 unable to reach agreement on the form or content of any document needed to implement the
20 Settlement, or on any supplemental provisions that may become necessary to effectuate the terms of
21 this Settlement, the Parties may seek the assistance of the Court to resolve such disagreement.

22 58. Binding on Successors and Assigns. This Settlement Agreement will be binding upon,
23 and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

24 59. California Law Governs. All terms of this Settlement Agreement and the Exhibit
25 attached hereto will be governed by and interpreted according to the laws of the State of California,
26 regardless of its conflict of laws.

27 60. Execution and Counterparts. This Settlement Agreement is subject only to the
28 execution of all Parties. However, the Settlement Agreement may be executed in one or more

1 counterparts. All executed counterparts and each of them, including facsimile and scanned copies of
2 the signature page, will be deemed to be one and the same instrument.

3 61. Invalidity of Any Provision. Before declaring any provision of this Settlement
4 Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest extent
5 possible consistent with applicable precedents so as to define all provisions of this Settlement
6 Agreement valid and enforceable, and consistent with the intent of this Settlement Agreement based
7 on the language and terms used herein.

8 62. Captions. The captions and section and paragraph numbers in this Settlement
9 Agreement are inserted for the reader's convenience, and in no way define, limit, construe or describe
10 the scope or intent of the provisions of this Settlement Agreement.

11 63. Waiver. No waiver of any condition or covenant contained in this Settlement
12 Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to
13 imply or constitute a further waiver by such Party of the same or any other condition, covenant, right
14 or remedy.

15 64. Enforcement Action. In the event that one or more of the Parties institutes any legal
16 action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement
17 or to declare rights and/or obligations under this Settlement, the successful Party or Parties will be
18 entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs,
19 including expert witness fees incurred in connection with any enforcement actions.

20 65. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms and
21 conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will not be
22 construed more strictly against one Party merely by virtue of the fact that it may have been prepared
23 by counsel for one of the Parties, it being recognized that, because of the arm's-length negotiations
24 between the Parties, all Parties have contributed to the preparation of this Settlement Agreement.

25 66. Representation By Counsel. The Parties acknowledge that they have been represented
26 by counsel throughout all negotiations that preceded the execution of this Settlement Agreement, and
27 that this Settlement Agreement has been executed with the consent and advice of counsel, and
28 reviewed in full.

67. Binding Agreement. The Parties warrant that they understand and have full authority to enter into this Settlement, and further intend that this Settlement Agreement will be fully enforceable and binding on all Parties, and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that otherwise might apply under federal or state law.

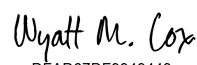
AGREED AND UNDERSTOOD:

Dated: March 9, 2022


Santos Carrillo (Mar 9, 2022 14:48 PST)
Plaintiff Santos Carrillo

Defendant BluSky Restoration Contractors, LLC

Dated: March 13, 2022

DocuSigned by:
 Wyatt M. Cox
By: 6637D000003A247A...
Its: VP Legal and Compliance

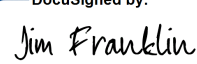
Defendant Har-Bro, LLC

Dated: March 13, 2022

DocuSigned by:
 Jim Franklin
By: 6637D000003A247A...
Its: CEO

Defendant Har-Bro, Inc.

Dated: March 13, 2022

DocuSigned by:
 Jim Franklin
By: 6637D000003A247A...
Its: CEO

APPROVED AS TO FORM:

Dated: March 9, 2022


Brian Mankin
LAUBY, MANKIN & LAUBY LLP
Attorneys for Plaintiff Santos Carrillo

Dated: March 10, 2022

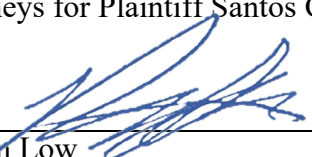

Nathan Low
FISHER & PHILLIPS LLP
Attorneys for Defendants

EXHIBIT “C”

Selection Criteria

Clie.Selection Include: Carrillo v. BluSky Restoration
Slip.Transaction Type Expense
Slip.Classification Open

Rate Info - identifies rate source and level

Slip ID Dates and Time Posting Status Description		Timekeeper Activity Client Phase/Task	Units DNB Time Est. Time Variance	Rate Rate Info Bill Status	Slip Value
583884 1/13/2021 WIP LWDA Order Number: ORD -000093389 to submit PAGA letter Case Number: LWDA-CM-818522-21	EXP	SJA Court fees Carrillo v. BluSky Resto	1	75.00 Do Not Bill	75.00
584211 1/29/2021 WIP 48 copies @ \$0.06 for LWDA letter and letters to employer 20 copies @ \$0..06 for Amended LWDA letter	EXP	SJA Copying Carrillo v. BluSky Resto	68	0.06 Do Not Bill	4.08
584212 1/29/2021 WIP Postage for the month of January 2021	EXP	SJA Postage Carrillo v. BluSky Resto	1	16.25 Do Not Bill	16.25
584168 2/12/2021 WIP Clerk of the court - San Bernardino Superior Court - Check #1000 to file Complaint	EXP	SJA Court fees Carrillo v. BluSky Resto	1	1435.00 Do Not Bill	1435.00
584193 2/15/2021 WIP Bosco Inv 5347074 File and Conform: - Summons - Complaint - Civil Case Cover Sheet - Certificate of Assignment *Advance Fees* Court: San Bernardino County Superior Court - Central District	EXP	SJA Attorney Servic Carrillo v. BluSky Resto	1	29.95 Do Not Bill	29.95

4/15/2022
4:08 PM

Lauby, Mankin & Lauby LLP
Slip Listing

Page 2

Slip ID		Timekeeper	Units	Rate	Slip Value
Dates and Time		Activity	DNB Time	Rate Info	
Posting Status		Client	Est. Time	Bill Status	
Description		Phase/Task	Variance		
584213	EXP	SJA	232	0.06	13.92
2/26/2021		Copying			
WIP		Carrillo v. BluSky Resto		Do Not Bill	
64 copies @ \$0.06 for Complaint					
84 copies @ \$0.06 for 2nd Amended LWDA letter					
84 copies @ \$0.06 for 3rd Amended LWDA letter					
584214	EXP	SJA	2	23.61	47.22
2/26/2021		Postage			
WIP		Carrillo v. BluSky Resto		Do Not Bill	
Postage for the month of February 2021					
584990	EXP	SJA	1	40.70	40.70
5/31/2021		Attorney Servic			
WIP		Carrillo v. BluSky Resto		Do Not Bill	
Bosco Inv 5729185 File and Conform:					
Amendment to Complaint					
Amended Summons					
Amended Civil Case Cover Sheet					
First Amended Complaint					
Court: San Bernardino County Superior Court -					
Central District					
585115	EXP	SJA	1	9000.00	9000.00
6/29/2021		Mediation Fees			
WIP		Carrillo v. BluSky Resto		Do Not Bill	
Serratore Law Inv dated 6-2-21 for Mediation 12-6-21					
586099	EXP	MAA	1	1387.50	1387.50
12/14/2021		Experts			
WIP		Carrillo v. BluSky Resto		Do Not Bill	
Berger Consulting Group Inv #5315					
586344	EXP	MAA	1	94.00	94.00
1/11/2022		Court fees			
WIP		Carrillo v. BluSky Resto		Do Not Bill	
Court Call ID #11424136 for 1-10-22 Case					
management conference					
586604	EXP	TLG	1	300.00	300.00
2/14/2022		Attorney Servic			
WIP		Carrillo v. BluSky Resto		Do Not Bill	
Estimated fee for Bosco to file MFA asnd					
supporting documents					
586605	EXP	TLG	1	118.00	118.00
2/14/2022		Attorney Servic			
WIP		Carrillo v. BluSky Resto		Do Not Bill	

4/15/2022
4:08 PM

Lauby, Mankin & Lauby LLP
Slip Listing

Page 3

Slip ID		Timekeeper	Units	Rate	Slip Value
Dates and Time		Activity	DNB Time	Rate Info	
Posting Status		Client	Est. Time	Bill Status	
Description		Phase/Task	Variance		
Estimated cost for Courtcall for MFA and related hearings					
586766	EXP	TLG	1	94.00	94.00
4/12/2022		Attorney Servic			
WIP		Carrillo v. BluSky Resto		Do Not Bill	
Courtcall ID#11488510 for 4-11-22 CMC					
Grand Total					
		Billable	0.00		0.00
		Unbillable	0.00		12655.62
		Total	0.00		12655.62

EXHIBIT “D”

EXHIBIT "E"

Settlement Administrator
(Address)
(Phone)

DATE OF MAILING

[Aggrieved Employee]
[Address]
[Address]

Re: Carrillo v. BluSky Restoration Contractors LLC, et al.
San Bernardino County Superior Court Case No. CIVSB2105793

Notice of PAGA Settlement and Payment

Dear [Aggrieved Employee]:

You are receiving this notice and check as a result of a recent lawsuit brought on a representative basis under the Private Attorneys General Act, Labor Code § 2698 et seq. (“PAGA”) (“the Action”), Santos Carrillo v. BluSky Restoration Contractors LLC, et al. in San Bernardino County Superior Court, Case Number CIVSB2105793 that has been settled. The plaintiff in the lawsuit is Santos Carrillo (“Plaintiff”) and the defendants are BluSky Restoration Contractors LLC, Har-Bro, LLC, and Har-Bro, Inc. (“Defendants”).

This notice is not intended to be, and should not be construed as, an expression of any opinion by the Court with respect to the truth of the allegations raised in the Action or the merits of the claims or defenses asserted. In fact, the Court has made no determination as to whether the claims alleged by Plaintiff have any merit. Instead, both parties agreed to resolve the Action with no decision or admission of who is right or wrong. By agreeing to resolve the lawsuit, the parties avoid the risks and costs associated with trial. Defendants are not admitting to any allegations or wrongdoing in this case, and in fact expressly deny that any of their practices at issue in this lawsuit were or are unlawful.

Plaintiff and the State of California are releasing Released Claims against Defendants. The “Released Claims” are all claims, rights, demands, liabilities and causes of action for civil penalties under the PAGA that arose during at any time from February 11, 2020 through February 5, 2022 (the “Statutory Period”), that were alleged in the Action, including but not limited to the following claims: (1) failure to pay minimum wages, (2) failure to pay overtime wages, (3) failure to provide meal periods, (4) failure to provide rest breaks, (5) failure to pay vested vacation wages, (6) failure to timely pay wages each period, (7) failure to timely pay final wages, (8) failure to provide accurate itemized wage statements, and all other PAGA claims alleged or that could have been alleged based upon on the facts, claims, or legal theories in the LWDA letter or the Complaint, which include claims for alleged violations of California Labor Code §§ 200, 201, 202, 203, 204, 208, 210, 218.6, 221, 222, 223, 226, 226.3, 226.7, 227.3, 256, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and Sections 3, 4, 9, 11 and 12 of the applicable Wage Order. The release will only apply to claims under PAGA that arose during the Statutory Period.

The Court approved the settlement on [REDACTED], 2022. Under California law, any settlement of a PAGA case results in 75 percent of the awarded penalty being paid to the State of California and 25 percent of the penalty being paid to the affected employees who worked during the Statutory Period. The settlement releases only claims for civil penalties alleged in the complaint under PAGA (Labor Code section 2699) for the period of February 11, 2020, and February 5, 2022. Your share of the PAGA settlement is the enclosed settlement check. You have 180 days to cash the settlement check.

Please Note: One hundred percent (100%) of your Individual PAGA Payment under this Settlement will be considered penalties and will be reported on an IRS Form 1099. You should rely on your own tax advisors as to the tax consequences of your Individual PAGA Payment. Neither Counsel for Plaintiff, Counsel for Defendants, nor the Settlement Administrator may legally provide you with advice regarding the tax implications of the receipt of this settlement payment. Nothing within this notice or any other communication shall constitute or be construed or relied upon as tax advice. Enclosed are the appropriate tax forms pertaining to your payment.

Settlement Administrator
(Address)
(Phone)

For more information, you may inspect the Court's files and the Settlement Agreement and Release of PAGA Claims at the Clerk's Office, San Bernardino County Superior Court, located at 247 West Third Street, San Bernardino CA 92415, during regular court hours. You may also contact the Settlement Administrator using the contact information listed above for more information.