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FILED
SUPERIOR COURT
COUNTY OF SAN BERNARDINO
JUN 29 2022

BY CHRISTIAN HERNANDEZ
CLERK

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]

**[PROPOSED] ORDER APPROVING
SETTLEMENT PURSUANT TO THE
PRIVATE ATTORNEYS GENERAL ACT
AND JUDGMENT ENTERED THEREON**

Hearing

Date: June 29, 2022
Time: 10:00 a.m.
Dept.: S26

Complaint Filed: February 11, 2021

FILED BY FAX

1 The Motion to Approve the PAGA Representative Action Settlement Agreement and
2 Release of PAGA Claims (the "Settlement Agreement") between Plaintiff Santos Carrillo and
3 Defendants BluSky Restoration Contractors LLC, Har-Bro, LLC, and Har-Bro, Inc.,
4 ("Defendants") came before this Court for a hearing on June 29, 2022, in accordance with Labor
5 Code § 2699(1)(2) of the Private Attorneys General Act of 2004 ("PAGA").

6 Plaintiff's Complaint and LWDA Notice letter sought civil penalties for the "Released
7 Claims" on behalf of the State of California and all non-exempt employees employed by
8 Defendants in California at any time during the Statutory Period of February 11, 2020, through
9 February 5, 2022 (the "Aggrieved Employees") against the Released Parties. The Released
10 Claims are defined in the Settlement Agreement, as follows:

11 "Released Claims" means and refers to any and all rights and claims for
12 civil penalties that were asserted or could have been asserted, assessed
13 upon or collected from the Released Parties by or on behalf of Plaintiff,
14 the Aggrieved Employees and/or the State of California under the Private
15 Attorney General Act, Cal. Lab. Code §§ 2698 *et seq.*, or the California
16 Labor Code, based on the facts and/or violations alleged in the Complaint,
17 including but not limited to the penalties sought in Plaintiff's PAGA
18 causes of action for: (1) failure to pay minimum wages, (2) failure to pay
19 overtime wages, (3) failure to provide meal periods, (4) failure to provide
20 rest breaks, (5) failure to pay vested vacation wages, (6) failure to failure
21 to timely pay wages each period, (7) failure to timely pay final wages, (8)
22 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, 7, 11 and 12 of the applicable Wage Order, arising during
the Statutory Period.

23 The Court, having considered the Settlement, including the proposed PAGA Award,
24 embodied in the PAGA Representative Action Settlement Agreement and Release of PAGA
25 Claims ("Settlement Agreement") (attached hereto as Exhibit "A") between Plaintiff and
26 Defendants, having considered the papers filed in support of the application for court approval
27 and the arguments of counsel, and good cause appearing, HEREBY ORDERS THE
28 FOLLOWING:

1 1. In a settlement of a PAGA action brought by an aggrieved employee, the Court
2 “shall review and approve any settlement of any civil action filed pursuant to this part.” Cal.
3 Lab. Code § 2699(1)(2).

4 2. The Court finds that the instant Action presented a good faith dispute of the
5 Released Claims as defined in the Settlement Agreement, and the Court finds in favor of
6 Settlement Approval and the Settlement Approval Order is hereby entered resolving all claims
7 set forth in the Complaint and LWDA notice letter pursuant the terms of the Settlement
8 Agreement and dismissing the Complaint and this Action with Prejudice.

9 3. The Court approves the Settlement of the above-captioned action, as set forth in
10 the Settlement Agreement and each of the releases and other terms, as fair, just, reasonable, and
11 adequate. The Parties are directed to perform in accordance with the terms set forth in the
12 Settlement Agreement, including that Defendants are directed to make payments in accordance
13 with the Settlement Agreement, by and through the Settlement Administrator.

14 4. The Court further approves and appoints CPT Group to serve as the Settlement
15 Administrator.

16 5. By this Order and Judgment and Dismissal with Prejudice, all of the Released
17 Claims, as defined in the Settlement Agreement, are dismissed with prejudice as to Plaintiff and
18 the Aggrieved Employees. The Parties are to bear their own costs, except as otherwise provided
19 in the Settlement Agreement.

20 6. In accordance with the Settlement Agreement, Defendants agreed to pay
21 \$360,000.00 (the “Settlement Amount”), inclusive of payments to the LWDA and Aggrieved
22 Employees, attorneys’ fees and litigation costs, as well as the Settlement Administrator costs. As
23 part of the Settlement, Plaintiff’s Counsel sought an award of Attorney’s Fees of \$120,000.00
24 and Attorney Costs and expenses of \$12,561.62, and Settlement Administration Costs of
25 \$6,000.00. Defendants do not oppose these requests. The Court finds that the Settlement
26 Amount is fair, reasonable and adequate, and approves each of these payments set from the
27 Settlement Amount, and directs Defendants to issue the payments to the Settlement
28 Administrator within 30 days of the Effective Date, and further directs the Settlement

1 Administrator to make the following payments from the Settlement Amount:

- 2 a. \$120,000 in Attorneys' Fees to Lauby Mankin Lauby LLP;
- 3 b. \$12,561.62 in Attorney Costs to Lauby Mankin Lauby LLP;
- 4 c. \$6,000 to CPT Group for administration costs; and

5 7. After deducting the foregoing payments for attorneys' fees and litigation costs, the
6 remainder of approximately \$221,438.38 shall form the PAGA Award. The PAGA Award will
7 then be allocated pursuant to Labor Code § 2699(i), and shall be divided with 75 percent
8 (\$166,078.79) being paid to the LWDA, and the remaining 25 percent (\$55,359.59) paid to the
9 Aggrieved Employees on a pro rata basis, as set forth in the Settlement Agreement. The Court
10 approves these payments and directs the Settlement Administrator to issue checks to the LWDA
11 and Aggrieved Employees, as set forth Settlement Agreement. The Court approves the proposed
12 notice to Aggrieved Employees and orders that the Settlement Administrator shall mail the
13 Notice of PAGA Settlement and Payment to the Aggrieved Employees with the settlement check
14 (attached hereto as Exhibit "B").

15 8. The Court approves the handling of unclaimed funds set forth in the Settlement,
16 specifically that any unclaimed funds in the Settlement Administrator's account as a result of a
17 failure to timely cash a settlement check by an Aggrieved Employee shall be issued to the
18 California State Controller's Office in the name of the Aggrieved Employee.

19 9. This order and the resulting judgment are entitled to the preclusive effect on
20 Plaintiff, the State of California and Aggrieved Employees, pursuant to *Arias v. Superior Court*,
21 46 Cal.4th 969 (2009).

22 10. The Action is Ordered dismissed with prejudice as to Plaintiff and the underlying
23 PAGA claim for relief, as set forth in in the Complaint and LWDA notice letter for the Statutory
24 Period.

25 11. The Settlement is not an admission by Defendants or any of the other Released
26 Parties, nor is this Judgment a finding of the validity of any claims in the Action or of any
27 wrongdoing by Defendants or any of the other Released Parties. Neither this Settlement
28 Approval Order, the Settlement, or the Judgment nor any document referred to herein, nor any

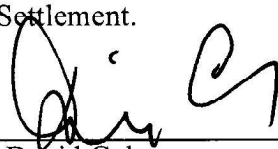
1 action taken to carry out the Settlement are, may be construed as, or may be used as an admission
2 by or against Defendants or any of the other Released Parties of any fault, wrongdoing or liability
3 whatsoever. The entering into or carrying out of the Settlement, and any negotiations or
4 proceedings related thereto, shall not in any event be construed as, or deemed to be evidence of,
5 an admission or concession with regard to the denials or defenses by Defendants or any of the
6 other Released Parties and shall not be offered in evidence against Defendants or any of the
7 Released Parties in any action or proceeding in any court, administrative agency or other tribunal
8 for any purpose whatsoever other than to enforce the provisions of this Final Order, the
9 Settlement, the Judgment, or any related agreement or release. Notwithstanding these
10 restrictions, any of the Released Parties may file in the Action or in any other proceeding this this
11 Settlement Approval Order, the Settlement, the Judgment, or any other papers and records on file
12 in the Action as evidence of the Settlement and to support a defense of res judicata, collateral
13 estoppel, release, waiver or other theory of claim preclusion, issue preclusion or similar defense
14 as to any of the Aggrieved Employees' Released Claims.

15 **JUDGMENT**

16 12. Pursuant to California Labor Code section 2698, *et seq.*, the Court hereby enters
17 judgment of the Action, with prejudice, for the reasons set forth above, and upon the terms set
18 forth in the Settlement Agreement. Without in any way affecting the finality of this Settlement
19 Approval Order granting final judgment, this Court hereby retains exclusive and continuing
20 jurisdiction over the Action as to all matters relating to: (a) the implementation, enforcement,
21 construction and interpretation of the terms of the Settlement and this Order of Judgment and
22 Dismissal; (b) Settlement administration matters; and (c) such post-judgment matters as may be
23 appropriate under Court rules or as set forth in the Settlement.

24
25 Dated: _____

6/29/27

26
27
28


Hon. David Cohn

EXHIBIT "A"

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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,
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]*

**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.

1 6. **“Attorneys’ Fees”** means an award of attorneys’ fees to be paid to Plaintiff’s Counsel
2 for the services they have rendered and will render to the Aggrieved Employees in the Action, subject
3 to Court approval. Such attorneys’ fees shall not exceed one-third of the Settlement Amount
4 (\$120,000). Any attorneys’ fees not approved by the Court will be reallocated to the PAGA Award,
5 with Seventy-Five Percent (75%) to be paid to the LWDA and Twenty-Five Percent (25%) to the
6 Aggrieved Employees.

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

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

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

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

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

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

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

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

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

26 16. **“PAGA Award”** means the Settlement Amount remaining to distribute to the LWDA
27 and Aggrieved Employees after the following amounts are subtracted from the Settlement Amount:
28 (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(1)(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(1)(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(1)(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 though 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.

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

4 **F. Separate Release and Individual Settlement by Plaintiff.**

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

15 **G. Additional Settlement Terms and Conditions**

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

22 49. Denial of Liability. The Parties expressly recognize that the making of this Settlement
23 Agreement does not in any way constitute an admission or concession of liability, culpability,
24 negligence or wrongdoing on the part of Defendants or any of the other Released Parties. The Parties
25 hereto have entered into this Settlement with the intention of avoiding further disputes and litigation
26 with the attendant risk, inconvenience and expenses. Nothing in this Settlement, nor any action taken
27 in implementation thereof, nor any statements, discussions or communications, nor any materials
28 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.

28 ///

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 of 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.

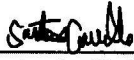
20 65. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms and
21 conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will not be
22 construed more strictly against one Party merely by virtue of the fact that it may have been prepared
23 by counsel 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:

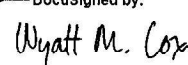
Dated: March 9, 2022


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

Plaintiff Santos Carrillo

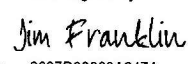
Defendant BluSky Restoration Contractors, LLC

Dated: March 13, 2022

DocuSigned by:
 Wyatt M. Cox
By: 6637D80863A247A...
Its: VP Legal and Compliance

Defendant Har-Bro, LLC

Dated: March 13, 2022

DocuSigned by:
 Jim Franklin
By: 6637D80863A247A...
Its: CEO

Defendant Har-Bro, Inc.

Dated: March 13, 2022

DocuSigned by:
 Jim Franklin
By: 6637D80863A247A...
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 "B"

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 _____, 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.