

## **SETTLEMENT AND RELEASE**

This Settlement and Release (hereinafter “Settlement” or “Agreement”) is made and entered into by and between Plaintiff Michael Beato (hereinafter “Plaintiff” or “Beato”) on behalf of himself, the State of California, and all allegedly aggrieved employees, on the one hand, and Defendants Elite Rooter, Inc.; Elite Rooter South Bay, Inc.; Elite Rooter Orange, Inc.; Elite Rooter Peninsula, Inc.; Elite Rooter San Jose, Inc. (collectively hereinafter the “Defendants” or “Elite Rooter”). Plaintiff and Defendants are collectively referred to herein as the “Parties.”

### **I NATURE OF ACTION**

1. On April 30, 2021, Plaintiff electronically submitted a new Private Attorneys General Act (“PAGA”) Claim Notice via the California Labor Workforce Development Agency (“LWDA”) online portal and notified Defendants, via certified return-receipt mail, of the alleged claims. On April 30, 2021, Plaintiff filed a Complaint in the Superior Court of California – County of Los Angeles (*Case No. 21STCV16493*) which was assigned to the Hon. Daniel J. Buckley (Dept. 1). Thereafter, after exhausting his administrative requirements under the PAGA, on September 2, 2021, Plaintiff filed his First Amended Complaint (“FAC”), adding five additional Defendants and a cause of action under the PAGA, for himself and all other allegedly “aggrieved employees” which was defined as “all plumbing technicians and/or similarly titled job positions performing plumbing activities at residential homes and businesses in California at any time since April 30, 2020.” On or about October 7, 2021, Defendants filed a Petition to Compel Arbitration based upon Plaintiff having signed an Arbitration Agreement which required Plaintiff to arbitrate his alleged claims on an individual basis. Thereafter, and prior to a hearing on Defendants pending Petition, the Parties agreed to engage in private mediation of this matter with Mr. Russ Wunderli, Esq. on February 16, 2022.

2. This Settlement relates only to the PAGA cause of action asserted by Plaintiff in the Lawsuit as it pertains to only the following five (5) Defendants: (1) Elite Rooter South Bay, Inc.; (2) Elite Rooter Orange, Inc.; (3) Elite Rooter Peninsula, Inc.; (4) Elite Rooter San Jose, Inc.; and (5) Elite Rooter, Inc. Plaintiff is dismissing the putative class action claims *without*

*prejudice* in this Lawsuit and dismissing Defendant Elite Rooter SDN, Inc. *without prejudice*, dismissing Defendant Elite Rooter Fresno, Inc. *without prejudice*, and dismissing Defendant Elite Rooter SFV, Inc. *without prejudice*. Defendants agree to provide Plaintiff with a Declaration, as determined necessary by Plaintiff's counsel, to seek dismissal of these three Defendant's from the Lawsuit.

3. The Parties wish to avoid the expense of further proceedings and any future prosecution of Plaintiff's PAGA cause of action, as alleged in the Lawsuit.

## **II REPRESENTATIONS AND DEFINITIONS**

4. "Lawsuit" refers to the civil action filed in the Superior Court of the State of California for the County of Los Angeles, entitled: *Michael Beato v. Elite Rooter, Inc.; Elite Rooter South Bay, Inc.; Elite Rooter Orange, Inc.; Elite Rooter Fresno, Inc.; Elite Rooter Peninsula, Inc.; Elite Rooter San Jose, Inc.; Elite Rooter SDN, Inc.; Elite Rooter SFV, Inc.* (Case No. 21STCV16493).

5. "PAGA Counsel" shall refer to Alexander I. Dychter of Dychter Law Offices, APC and Walter L. Haines of United Employees Law Group, PC.

6. Counsel for Defendants ("Defense Counsel") shall refer to Charles P. Hamamjian and Ian B. Wieland of Sagaser, Watkins & Wieland, PC.

7. "Covered Period" shall mean the period commencing on April 30, 2020 *through* March 16, 2022.

8. "Defendants" shall refer to: Elite Rooter South Bay, Inc.; Elite Rooter Orange, Inc.; Elite Rooter Peninsula, Inc.; Elite Rooter San Jose, Inc.; and, Elite Rooter, Inc.

9. "PAGA Plaintiff" shall refer to the Plaintiff, Mr. Michael Beato.

10. "PAGA Members" shall refer to "*all plumbing technicians and/or similarly titled job positions working for Defendants in the State of California at any time between April 30, 2020 through March 16, 2022*", which Defendants represent to include approximately 230 individuals.

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11. "Court" refers to the Superior Court of California – County of Los Angeles (Dept. 1), the Hon. Daniel J. Buckley, presiding.

12. "Covered Claims" means any and all claims, demands, rights, liabilities and/or causes of action for PAGA penalties asserted in the Lawsuit as they pertain to Defendants, or that could have been asserted based on the facts and allegations contained in the Lawsuit.

13. "Settlement" shall mean this Settlement and Release.

14. "Effective Date" shall mean the first court date after both of the following have occurred: (i) approval of this Settlement is granted by the Court, and (ii) judgment approving this Settlement becomes Final.

15. "Final" shall mean the latest of: (i) if there are no objections to the Settlement, the date approval of the Settlement is granted by the Los Angeles County Superior Court or other court assuming jurisdiction of this matter, and the Action is dismissed with prejudice; (ii) if there are objections to the Settlement and if there is an appeal of the Court's approval order, the date the approval order is affirmed on appeal, the date of dismissal of such appeal, or the expiration of the time to file a petition for review to the California Supreme Court; (iii) if there are objections to the Settlement and if a petition for review is filed, the date of denial of the petition for review, or the date the approval order is affirmed pursuant to such petition; or (iv) if there are objections to the Settlement and if no appeal is filed, the day following the expiration date for filing or noticing any appeal of the approval order.

16. Defendants deny any liability or wrongdoing of any kind associated with the claims alleged in the Lawsuit, including but not limited to the Covered Claims. Defendants contend, among other things, that they have complied at all times with the California Labor Code, the related California Industrial Welfare Commission ("IWC") Wage Orders, and all other state and federal wage and hour laws and that the Lawsuit is without merit. Defendants have denied and continue to deny each and every material factual allegation and alleged claim asserted against them in the Lawsuit.

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17. Neither the existence of this Settlement nor anything contained in this Settlement shall be construed or deemed as an admission of liability, culpability, negligence or wrongdoing on the part of Defendants. Nothing herein shall constitute an admission by Defendants that the Lawsuit was properly brought against Defendants. Settlement of the Lawsuit, the negotiation and execution of this Settlement, and all acts performed or documents executed pursuant to or in furtherance of this Settlement or the settlement of the Lawsuit: (a) are not, shall not be deemed to be, and may not be used as, an admission or evidence of any wrongdoing or liability on the part of Defendants or of the truth of any of the factual allegations in the operative Complaint in the Lawsuit; (b) are not, shall not be deemed to be, and may not be used as, an admission or evidence of any fault or omissions on the part of Defendants in any civil, criminal, or administrative proceeding in any court, administrative agency or other tribunal.

18. The Parties recognize that, absent this Settlement, the issues presented in the Lawsuit are likely to be resolved only with extensive and costly pretrial and trial proceedings, and that further litigation will cause inconvenience, distraction, disruption, delay and expense disproportionate to the potential benefits of litigation. The Parties have taken into account the risk and uncertainty of the outcome inherent in any litigation.

19. Plaintiff and PAGA Counsel have diligently pursued an investigation of the claims against Defendants.

20. Based on their own independent investigations and evaluations, Plaintiff and PAGA Counsel are of the opinion that the resolution for the consideration and on the terms set forth in this Settlement is fair, reasonable and adequate and is in the best interests of all Parties.

21. The purpose of this Settlement is to settle and compromise all Covered Claims by Plaintiff that Plaintiff, on behalf of himself, the State of California, the California LWDA and all other allegedly aggrieved *plumbing technicians and/or similarly titled job positions working in the State of California at any time between April 30, 2020 through March 16, 2022*, have against Defendants and the Releasees (as defined in Section IV, below).

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### III TERMS OF SETTLEMENT

22. In consideration of the mutual covenants, promises and representations set forth in this Settlement, Plaintiff and Defendants agree to fully and finally settle and compromise the Covered Claims, subject to the terms and conditions set forth in this Settlement.

23. The Amount of Settlement. As consideration for the settlement described herein and the release contained in this Settlement, the Parties have agreed that a total of \$260,000.00 (the "Gross PAGA Amount") shall be paid by Defendants for all penalties under California Labor Code § 2698 *et seq.*, the Private Attorneys General Act of 2004 ("PAGA"). Under no circumstances will Defendants be required to pay more than the Gross PAGA Payment, subject to the provisions of Paragraph 24 below.

24. Defendants represent that there are approximately 5,300 pay periods during the Covered Period. In the event the number of pay periods worked increases by more than 15%, or 795 pay periods worked, then the Gross PAGA Amount shall be increased proportionally by the pay periods in excess of 6,095 multiplied by the per period value.

25. Pursuant to Labor Code § 2699(g)(1), the Parties agree that Plaintiff's counsel is entitled to seek an award of attorney's fees not to exceed \$91,000.00 (35% of the Gross PAGA Amount) and costs not to exceed \$12,000.00, subject to approval by the Court, which will both be paid from the Gross PAGA Amount.

26. The Parties agree that Plaintiff Michael Beato may seek a service award in an amount not to exceed \$5,000.00, subject his execution of a "General Release" with Civil Code Sect. 1542 waiver, and subject to approval by the Court, which will be paid from the Gross PAGA Amount.

27. The Parties agree to utilize Atticus Administration, LLC ("Atticus") for settlement administration purposes, subject to approval by the Court, the costs of which will be paid from the Gross PAGA Amount.

28. The balance of the Gross PAGA Amount that remains after deduction of the amounts awarded for (i) attorney's fees, (ii) costs, (iii) service award, and (iv) settlement administration shall be the "Net PAGA Amount."

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29. 75% of the Net PAGA Amount shall be paid directly to the LWDA by the court-approved settlement administration company.

30. 25% of the Net PAGA Amount shall be paid directly to the approximately 230 PAGA Members by the court-approved settlement administration company, including Plaintiff's share, based upon the formula as set forth below. The payments to the PAGA Members shall be accompanied by a written notice letter, in a form agreed upon by Counsel for Plaintiff and Defendants and approved by the Court, providing a brief description of the resolution and the reasons the funds are being distributed and the basis for the calculated settlement payment. Such mailing to PAGA Members shall be conclusive evidence of payment and shall satisfy any and all due process requirements.

- a. To the extent necessary and required by the Court, the Parties have agreed to retain the service of Atticus, for purposes of calculating and mailing funds to the PAGA Members for their respective PAGA penalties based upon the following formula:

The payments to PAGA Settlement Members will be based on the number of pay periods for each PAGA Settlement Member during the PAGA Period. The value of a pay period will be calculated by dividing the portion of the PAGA Fund paid to PAGA Settlement Members by the total number of pay periods for all PAGA Settlement Members during the PAGA Period. The resulting value will then be multiplied by the number of pay periods for each PAGA Settlement Member to calculate the individual PAGA payment ("Individual Payment"). Defendant's records shall be determinative for purposes of calculating the number of pay periods and any payments to PAGA Settlement Members.

- b. Within ten (10) business days after the Effective Date, Defendants shall provide Atticus with an Excel Spreadsheet that contains the following information (herein, the "PAGA Members' Information"):
  - i. the full name of each of individual;
  - ii. their last known home mailing addresses;

- iii. their social security numbers; and
- iv. the number of times each PAGA Member was paid during the Covered Period.

Atticus shall use the PAGA Members' Information solely for the purpose of giving the PAGA Members notice of the right to a share of the funds. PAGA Members' Information shall be kept confidential by Atticus and will not be disclosed to anyone other than as required to report to applicable taxing authorities or as required to carry out the reasonable efforts to identify PAGA Members' Information, pursuant to Defendants express written authorization, or by order of the Court. In the event that Atticus mails a check to a PAGA Member that remains uncashed after 180 days, the aggregated unclaimed funds shall be sent directly by Atticus to the designated *cy pres* of the "American Cancer Society." In the event the Court does not approve of the "American Cancer Society" as the designated *cy pres*, the parties agree that any uncashed checks will be void and escheat to the State of California Controller's Office – Unclaimed Property Fund in the names of the PAGA Settlement Members who did not cash such checks.

31. Tax Treatment of Settlement Amounts. Form IRS 1099s shall be issued by Atticus to Plaintiff and the PAGA Members for the settlement payments, as deemed necessary by Atticus and the applicable IRS regulations. Nothing in this Settlement is intended to constitute legal advice regarding federal, state and/or local tax obligations. To the extent that this Settlement or any of its attachments is interpreted to contain or constitute advice regarding any Federal or California tax issue, such advice is not intended or written to be used, and cannot be used, by any person for the purpose of avoiding penalties under the Internal Revenue Code. Each individual who receives a payment from this Settlement will be responsible for payment of any taxes owing on said amount if so required. Neither Defendants, Defendants counsel nor PAGA Counsel are responsible for any tax obligations regarding the allocation of the settlement payments.

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32. Defendants' monetary obligation under this Agreement is limited to the Gross PAGA Amount, unless the number of pay periods worked during the Covered Period exceeds 6,095. Notwithstanding the above, in the event that this Agreement is canceled, rescinded, terminated, voided, or nullified, in whole or in part, however that may occur, or the Settlement is barred by operation of law, or invalidated, or ordered not to be carried out by a court of competent jurisdiction, Defendants will cease to have any obligation to pay any portion of the Gross PAGA Amount to anyone under the terms of this Agreement.

#### IV RELEASE

33. Release by Plaintiff. Upon the Effective Date of this Settlement, Plaintiff, the LWDA, and all PAGA Members shall, for the Covered Period, fully release and forever discharge Defendants and their respective past, present, and future officers, directors, owners, employees, shareholders, agents, trustees, representatives, attorneys, insurers, parent companies, subsidiaries, divisions, affiliates, related entities, predecessors, successors, assigns, including and any individual or entity that could be jointly liable with, or vicariously liable, for Defendants (the foregoing are collectively referred to herein as the "Releasees") from the Covered Claims and from any and all claims, causes of action, damages, wages, benefits, expenses, penalties, interest, debts, liabilities, demands, obligations, attorneys' fees, costs, and any other form of relief or remedy in law, equity, or whatever kind or nature that were asserted in the Lawsuit or could have been asserted in the Lawsuit based on the allegations in the operative Complaint, pursuant to Labor Code section 2699, *et seq.*

34. Release of Plaintiff Beato's Individual Underlying Claims Only. Upon full payment by Defendants of the Gross PAGA Amount to the Settlement Administrator, Plaintiff, in his individual capacity only, hereby agrees to release the Released Parties from all claims, demands, rights, liabilities and causes of action of any and every nature and description whatsoever, known or unknown, asserted or that might have been asserted, whether in tort, contract, or for violation of any state or federal statute, rule or regulation arising out of, relating to, or in connection with any act or omission by or on the part of any of the Released Parties committed or omitted prior to the execution hereof, including a waiver of California Civil Code § 1542.

This General Release includes any unknown claims that Plaintiff does not know or suspect to exist in his favor at the time of the General Release, which, if known by him, might have affected his Settlement with, and release of, the Released Parties or might have affected his decision not to object to this Settlement or the General Release.

With respect to the General Release, Plaintiff stipulates and agrees that, upon the execution of this Agreement, he shall be deemed to have, and by operation of the Final Judgment shall have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code, or any other similar provision under state or federal law as to the generally released claims. Section 1542 provides as follows:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, AND THAT IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.**

#### **V COURT APPROVAL**

35. The Parties recognize that in accordance with Labor Code section 2699(f), Court approval is required in the event of a settlement of a PAGA action. The Agreement is contingent upon the approval by the Court of this Settlement. Plaintiff shall file a noticed motion to approve the PAGA Settlement. At the same time that Plaintiff files and serves his motion to approve the settlement, he shall also submit the motion to the LWDA in accordance with Labor Code section 2699(f)(2). Counsel for Plaintiff shall submit to the LWDA a copy of the judgment in the Lawsuit and a copy of any other order providing for or denying an award of civil penalties within ten (10) days after entry of such judgment or order, in compliance with Labor Code section 2699(f)(3).

36. This Settlement and any and all releases contained herein shall be void if the Court declines to approve the Settlement.

## **VI PAYMENT OF THE SETTLEMENT**

37. Within thirty (30) calendar days after the Effective Date, Defendants shall wire transfer the Gross PAGA Amount to the Qualified Settlement Fund ("QSF") setup and maintained by Atticus, and Atticus shall thereafter distribute the Gross PAGA Amount in accordance with the terms of this Agreement, no later than five (5) business days after receipt of the Gross PAGA Amount and PAGA Members' Information excel spreadsheet.

## **VII DUTIES OF THE PARTIES PRIOR TO APPROVAL**

38. Promptly upon execution of this Settlement, Plaintiff shall file a noticed motion to approve the Settlement. Plaintiff shall provide a draft of the settlement motion to counsel for Defendants at least two (2) days prior to filing, for purposes of receiving any feedback or comments. Provided that the noticed motion is consistent with the terms of this Settlement Agreement, the motion will be *unopposed* and Defendants shall file a notice of non-opposition within two (2) court days of Plaintiff's settlement motion being filed.

39. Neither Plaintiff nor Defendants, nor their respective counsel, will directly or indirectly solicit or otherwise encourage any PAGA Member to object to the Settlement or appeal from the Judgment.

## **VIII PARTIES' AUTHORITY**

40. The signatories hereto hereby represent that they are fully authorized to enter into this Settlement and bind the Parties hereto to the terms and conditions hereof.

## **IX MUTUAL FULL COOPERATION**

41. The Parties agree to cooperate fully with each other to accomplish the terms of this Settlement, including but not limited to, execution of such documents, and to take such other action(s) as may reasonably be necessary to implement the terms of this Settlement. The Parties to this Settlement shall use their best efforts, including all efforts contemplated by this Settlement, and any other efforts that may become necessary by Order of the Court, or otherwise, to effectuate this Settlement and the terms set forth herein. As soon as practicable after execution of this Agreement, PAGA Counsel shall, with the assistance and cooperation of Defendants and its counsel, take all necessary steps to secure the approval of this Settlement from the Court.

**X NO PRIOR ASSIGNMENTS**

42. The Parties hereto represent, covenant and warrant that they have not, directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or rights herein released and discharged except as set forth herein.

**XI NO ADMISSION**

43. The Parties agree that this Agreement does not constitute an admission by Defendants or any of the Releasees of any of the matters alleged in the Lawsuit or of any violation by any of them of any federal, state or local law, ordinance or regulation, or of any violation of any policy or procedure, or of any liability or wrongdoing whatsoever. Neither this Agreement nor anything in this Agreement shall be construed to be or shall be admissible in any proceeding as evidence of liability or wrongdoing by Defendants or the Releasees. Each of the Parties hereto has entered into this Settlement with the intention to avoid further disputes and litigation with the attendant inconvenience and expenses.

**XII ATTORNEYS' FEES, COSTS AND EXPENSES**

44. Except as specifically set forth herein, each of the Parties shall bear its/his/his own attorneys' fees, costs and expenses, taxable or otherwise, incurred by him/his/it/them arising out of the Lawsuit, and shall not seek reimbursement thereof from any other party to this Stipulation.

**XIII CONSTRUCTION**

45. The Parties hereto agree that the terms and conditions of this Settlement are the result of lengthy, extensive arm's-length negotiations between the Parties and were achieved only after a full-day mediation session with Mr. Russ Wunderli, Esq. This Agreement supersedes all prior agreements, written or oral, between or among the Parties. No other agreement, statement, or promise made by one Party to another as to any matter addressed in this Agreement shall be binding or valid.

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#### **XIV CAPTIONS AND INTERPRETATIONS**

46. Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope of this Settlement or any provision hereof. Each term of this Settlement is contractual and not merely a recital.

#### **XV MODIFICATION**

47. This Settlement may not be changed, altered, or modified, except in writing and signed by the Parties hereto, and approved by the Court. This Settlement may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties hereto.

#### **XVI MISCELLANEOUS**

48. This Settlement contains the entire agreement between the Parties relating to the Settlement of the Covered Claims, and all prior or contemporaneous agreements, understandings, representations and statements, whether oral or written and whether by a party or such Party's legal counsel, are merged herein. No rights hereunder may be waived except in writing.

49. This Settlement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators, successors and assigns.

50. This Settlement may be executed in counterparts, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one Settlement, which shall be binding upon and effective as to all Parties. The counterparts may be transmitted electronically (as PDF files) or by facsimile.

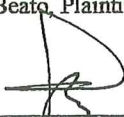
51. The Parties agree that upon approval by the Court, this Settlement shall be enforceable by the Court, and the Court shall retain exclusive and continuing equity jurisdiction of this action over all Parties to interpret and enforce the terms, conditions and obligations set forth in this Settlement. The Parties agree that if any provision of this Settlement is determined to be invalid, the invalid portion shall be deemed severed and the remaining Settlement deemed enforceable, which the Parties shall cooperate to effectuate. The Parties intend for this Agreement to be enforceable pursuant to Code of Civil Procedure Section 664.6.

I HAVE READ THE FOREGOING AGREEMENT. I ACCEPT AND AGREE  
TO THE PROVISIONS IT CONTAINS, AND HEREBY EXECUTE IT  
VOLUNTARILY WITH FULL UNDERSTANDING OF ITS CONSEQUENCES.

Dated: Mar 26, 2022

  
Michael beato (Mar 26, 2022 08:30 PDT)  
Michael Beato, Plaintiff

Dated: 5/2/22

  
By: Patrick Patel for Defendants  
Elite Rooter, Inc.; Elite Rooter South Bay, Inc.;  
Elite Rooter Orange, Inc.; Elite Rooter Fresno, Inc.;  
Elite Rooter Peninsula, Inc.; Elite Rooter San Jose,  
Inc.; Elite Rooter SDN, Inc.; Elite Rooter SFV, Inc.

APPROVED AS TO FORM AND CONTENT ONLY:

DYCHTER LAW OFFICES, APC

Dated: 3/25/2022

  
Alexander I. Dychter, Esq.  
Co-Counsel for Plaintiff

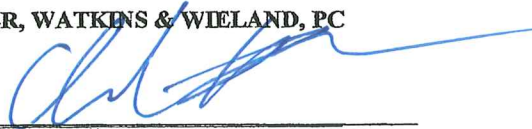
UNITED EMPLOYEES LAW GROUP, PC

Dated: March 25, 2022

  
Walter L. Haines, Esq.  
Co-Counsel for Plaintiff

SAGASER, WATKINS & WIELAND, PC

Dated: 5/13/22

  
Charles P. Hamamjian, Esq.  
Counsel for Defendants