

THE LAW OFFICE OF MATT BLUM

Matt Blum (SBN 285944)

mblumlaw@gmail.com

550 W. C Street, Suite 960

San Diego, CA 92101

Telephone: (860) 271-6273 / Facsimile: (619) 238-1351

COHELAN KHOURY & SINGER

Isam C. Khoury (SBN 58759)

ikhoury@ckslaw.com

Michael D. Singer (SBN 115301)

msinger@ckslaw.com

Diana M. Khoury (SBN 128643)

dkhoury@ckslaw.com

J. Jason Hill (SBN 179630)

jhill@ckslaw.com

605 C Street, Suite 200

San Diego, CA 92101

Telephone: (619) 595-3001 / Facsimile: (619) 595-3000

Attorneys for Plaintiffs Antony M. Smith and Omar Ayala
and all others similarly situated

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO – NORTH COUNTY

ANTONY M. SMITH and OMAR AYALA,
individuals, on behalf of themselves, and on
behalf of all persons similarly situated and
aggrieved

Plaintiffs,

v.

ZODIAC POOL SYSTEMS, LLC, a
Delaware limited liability company doing
business in California; and Does 1 through
50, Inclusive

Defendants.

Case No. 37-2020-00036431-CU-OE-NC

ASSIGNED FOR ALL PURPOSES TO:
The Honorable Earl H. Maas, III – Dept. N-28

CLASS AND REPRESENTATIVE ACTION

**DECLARATION OF OMAR AYALA IN
SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: June 10, 2022

Time: 1:30 p.m.

Dept: N-28

Judge: Hon. Earl H. Maas, III

Reservation: 2488941

Filed: October 7, 2020

Trial date: Not set

1 **LAW OFFICES OF SAHAG MAJARIAN II**

2 Sahag Majarian, II (SBN 146621)

3 sahagii@aol.com

4 18250 Ventura Blvd.

5 Tarzana, CA 91356

6 Telephone: (818) 609-0807 / Facsimile: (818) 609-0892

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
Attorneys for Plaintiffs Antony M. Smith and Omar Ayala
and all others similarly situated

1 I, Omar Ayala, declare as follows:

2 1. I am a person over the age of eighteen years and am competent to complete this
3 declaration. All facts stated in this declaration are based on my own personal knowledge,
4 observations and experiences in relation to the claims made in the above-entitled matter. If
5 called to testify, I would and could testify to each of the following facts under oath and in open
6 court. I submit this declaration in support of the Motion for Preliminary Approval of Class and
7 Representative Action Settlement brought by Plaintiffs.

8 2. I am a named Plaintiff and proposed Class Representative in this litigation.

9 3. I worked for Zodiac as an “Assembler, Test, and Builder” in Rancho Santa
10 Margarita, California from approximately March 2013¹ to October 2019. My job duties
11 included assembling burners for high-end fire and water pool features, conducting electrical
12 and pressure tests, and cutting, staining, repairing, patching, and sealing concrete. During my
13 employment, I occasionally attended trade shows and set up and broke down displays.

14 4. During my employment, Zodiac required me and other Class members to use a
15 time clock to track our time worked. This meant that Zodiac had precise time clock entries of
16 our hours worked, including our overtime hours worked. Despite this, Zodiac had a policy of
17 rounding our timecard entries to the nearest quarter hour, which resulted in Zodiac underpaying
18 me and other Class members for out time worked. I was also not provided with duty-free rest
19 and meal breaks or paid an hour’s pay for a non-compliant rest or meal break. I was also not
20 reimbursed for the use of my personal cell phone for work-related purposes during my shifts.
21 Because of Zodiac’s time rounding policy and not paying meal and rest period premiums and
22 expense reimbursements, my coworkers and I were not provided accurate wage statements
23 showing the hours we worked and were not paid all final wages we were owed.

24 5. After I left Zodiac, I spoke with Mr. Majarian from the Law Office of Sahag
25 Majarian II and several attorneys at the Law Office of Cohelan Khoury & Singer regarding my
26 experiences at Zodiac. I agreed to become a Class Representative to represent other employees
27 who were not paid for all the time they worked, or given proper meal and rest breaks, or

28 ¹ I was hired in March 2013 by Grand Effect, Inc., which was acquired by Zodiac in October
2017, and continued to work for Zodiac. - 2 -

1 reimbursed for their business-related cell phone expenses. As a representative for the Class, I
2 understood it could take longer to bring this case as a class action, rather than as an individual
3 case for myself alone. I made the decision to bring the case even though there were certain risks
4 in doing so. For instance, that as the Plaintiff, my name could be found by a simple Google
5 search, and that when applying for a job in the future, the fact that I was involved in this case
6 might negatively impact those job opportunities. I also learned that if the case were lost, a
7 judgment could be taken against me for some, or all the costs incurred by Zodiac. Despite these
8 risks, I moved forward because I believed Zodiac's policies to not pay wages for all time
9 worked, or to provide meal and rest breaks, or to reimburse us for the use of our personal cell
10 phones for work were unfair.

11 6. I understood a lot of work would be required of me and I was willing to, and
12 did, do the work to keep the case moving forward. I have had multiple conversations with my
13 attorneys regarding the duties and responsibilities of my job, the fact that it was often difficult
14 to take proper rest and meal periods because of the demands of our job, and the need to use our
15 personal cell phones for work. My attorneys asked me to search for documents and records in
16 my possession related to my employment such as earnings statements and other materials I had
17 received during my nearly six-year employment with Zodiac. I searched for and provided
18 those documents together with answers to questions they had asked for. I was told my
19 deposition may likely be taken, and that the preparation and the deposition itself could take
20 multiple days. To familiarize me with the process, my attorneys started my preparation early so
21 I would be prepared and comfortable when the date and time were set. My deposition was not
22 taken, but I feel I would have been adequately prepared.

23 7. On behalf of myself and all other employees such as myself, my attorneys filed
24 the lawsuit on May 27, 2020 in the San Diego County Superior Court. After my case was filed,
25 Zodiac removed it to the United States District Court for the Southern District of California.

26 8. On September 2, 2020, with my attorney Mr. Hill, I participated by Zoom, in
27 the Early Neutral Evaluation Conference held before the magistrate judge. This was an
28 interesting experience and afterward I had many questions that I spoke with Mr. Hill about at

length to get a better sense of how different class action cases are developed and all of the legal and procedural items that were necessary to certify a class.

9. In October 2020, Zodiac and my attorneys reached an agreement to try and settle this case at a mediation. I had planned to attend the original mediation date set in February 2021, but that date was moved to May 4, 2021, and I made myself available by phone to answer any questions. To help prepare for mediation, I met with my attorneys beforehand to discuss the mediation process, the facts of the case and the strength of the claims. I believe my experiences and knowledge of Zodiac's practices assisted them in evaluating the claims and assessing the potential damages for mediation. While we were preparing the case for mediation, Mr. Hill informed me there had been a lawsuit filed by Antony Smith against Zodiac on behalf the same group of employees in the San Diego County Superior Court, North County Division for the same claims in my case. I was informed the attorney for Mr. Smith participated in the May 4, 2021 mediation in order to have a potential for resolution of both my case and Mr. Smith's case.

10. After the mediation, Zodiac and my attorneys informed the Court that we had reached an agreement to settle both mine and the *Smith* case, and that the settlement would be processed in the *Smith* action. On October 1, 2021, I was added as a named Plaintiff in the First Amended Complaint filed in *Smith* action.

11. I have contributed to and participated in the prosecution of this case on behalf of myself and the estimated 323 other similarly employed Class Members in California. I have taken my duties as a class representative seriously. I have stayed in constant contact with my attorneys from day one through the present. I have communicated with them by phone and email on a regular basis and have been fully aware of all significant developments in the case. I have spent significant time devoted to this case, which included numerous conferences with my attorneys; composing and reading emails exchanged; reviewing paperwork sent to me by my attorneys; speaking with my attorneys regarding mediation prior to the date set, making myself available at the time of the mediation to answer questions, and discussing the proposed

1 Settlement and its proposed terms with my attorneys. I reviewed and signed the Memorandum
2 of Understanding, and later reviewed and signed the settlement agreement.

3 12. I understand Class Members will receive an estimated \$20.88 for each
4 workweek they worked at any time from May 27, 2016, through August 2, 2021. These
5 payments would not have been available to them but for mine and Mr. Smith's agreement to
6 do the work and to accept the burdens and risks for acting as their representatives in these
7 Actions. I believe that my contributions were important to the prosecution, which ultimately
8 resulted in settlement of this case.

9 13. As part of the settlement, I agreed to give a general release of all claims against
10 Zodiac arising from my employment. No other Class Member will be required to sign a
11 release of this kind.

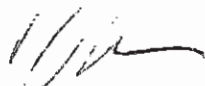
12 14. I am not related to any attorney working on the case, I am not aware of any
13 interests I have that are averse to the interests of the proposed Class, who were similarly
14 employed as myself, and I do not have any conflicts that would keep me from adequately
15 representing the Class. I have been and remain committed to prosecuting this case vigorously
16 on behalf of the Class. I decided to bring this case to represent the other employees who were
17 affected by Zodiac's practices and experienced similar violations.

18 15. After the notices describing the Settlement are mailed to the Class, I am
19 prepared to stay in contact with my attorneys to get updates and to speak with former co-
20 workers who know me, or those who reach out to me with questions about the case. I
21 anticipate that my involvement in the case will remain substantial and will consume
22 considerable time.

23 16. The requested \$10,000 service payment is fair and appropriate for acting as a
24 Class Representative based on my involvement which includes: (1) agreeing to bring this
25 litigation as a representative of all non-exempt employees, and being an active participant
26 throughout for nearly two years; (2) spending the time to regularly speak with and/or email my
27 attorneys to provide information, to answer questions, or to get a status report; (3) facing the
28 stigma and potential loss of job opportunities for having filed a class action lawsuit against a

1 former employer on behalf of the Class; (4) searching for and providing relevant documents to
2 my attorneys; (5) preparing for my deposition, although not taken; (6) risking the payment of
3 Zodiac's legal costs and having a judgment entered against me if we had lost the case; (7)
4 making myself available by telephone the day of mediation; (8) consenting to the Settlement,
5 reviewing and signing the Memorandum of Understanding and later the Settlement
6 Agreement; (9) the substantial payments 323 Class Members will receive, on average, \$2,262,
7 only because Mr. Smith and I accepted risks of litigation, and represented their interests in this
8 case; and for (10) giving a general release of claims I may have against Zodiac arising from
9 my employment, that no other Class Member is required to give. The time spent on this case,
10 both before and after it was filed, is time lost from being with my family and friends and
11 pursuing other interests.

12 I declare under penalty of perjury under the laws of the State of California the foregoing
13 is true and correct. Executed on 2/22/2022 at Laguna Niguel, California.

14 
15 _____
16 Omar Ayala
17
18
19
20
21
22
23
24
25
26
27
28