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[Additional Counsel, next Page]

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO – NORTH COUNTY DIVISION

ANTONY M. SMITH, individually,
and on behalf of all other similarly-
situated employees,

Plaintiffs,

vs.

ZODIAC POOL SYSTEMS, LLC, a
Delaware Limited Liability Company
doing business in California, and
DOES 1 through 50, inclusive,

Defendants.

Case No. 37-2020-0036431-CU-OE-NC

ASSIGNED FOR ALL PURPOSES TO:

The Honorable Earl H. Maas, III – Department N-28

[PROPOSED]

**ORDER GRANTING PRELIMINARY
APPROVAL OF CLASS ACTION SETTLEMENT,
CONDITIONAL CERTIFICATION, APPROVAL
OF CLASS NOTICE, AND SETTING OF FINAL
APPROVAL HEARING DATE**

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

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1 This matter came on for hearing on June 10, 2022 in Department N-28 of the above-captioned
2 Court on Plaintiffs' Motion for Order Granting Preliminary Approval of Class Action Settlement
3 ("Motion").

4 The Court, having fully reviewed the Motion, the supporting memorandum of Points and
5 Authorities, Declarations of Class Counsel Diana M. Khoury and Matt Blum, Declaration of Plaintiffs
6 Antony M. Smith and Omar Ayala, and Declaration of Michael Bui on behalf of Simpluris filed in
7 support of the Motion, the Stipulation of Class and Representative Action Settlement and Release of
8 Claims ("Settlement Agreement"), the proposed Notice of Class and Representative Action Settlement
9 ("Class Notice") attached as Exhibit "A" to the Settlement Agreement and the Change of Address form
10 attached as Exhibit "B", having carefully analyzed the Settlement Agreement and its exhibits, and in
11 recognition of the Court's duty to make a preliminary determination as to the reasonableness of any
12 proposed class action settlement, and if preliminarily determined to be reasonable, to ensure proper
13 notice is provided to all Class Members in accordance with due process requirements, and to set a Final
14 Approval Hearing to consider the proposed Settlement as to the good faith, fairness, adequacy and
15 reasonableness of any proposed Settlement, THE COURT HEREBY MAKES THE FOLLOWING
16 DETERMINATIONS AND ORDERS:

17 1. The Court conditionally finds that, for the purposes of approving this settlement only,
18 the proposed Class meets the requirements for certification under section 382 of the California Code of
19 Civil Procedure: (a) the proposed Class is ascertainable and so numerous that joinder of all members
20 of the class is impracticable; (b) there are questions of law or fact common to the proposed Class, and
21 there is a well-defined community of interest among members of the proposed Class with respect to the
22 subject matter of the class action; (c) the claims of the Class Representatives are typical of the claims
23 of the members of the proposed Class; (d) the Class Representatives have and will fairly and adequately
24 protect the interests of the Members of the Class; (e) a class action is superior to other available methods
25 for an efficient adjudication of this controversy in the context of settlement; and (f) the counsel of
26 record for the Class Representatives are qualified to serve as counsel for them as well as their
27 representative capacity and for the Class.

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1 2. The Court finds on a preliminary basis that the Settlement Agreement, attached to the
2 Declaration of Diana M. Khoury as Exhibit “1,” incorporated herein by this reference in full, and made
3 a part of this Order of preliminary approval, appears to be within the range of reasonableness of a
4 settlement which could ultimately be given final approval by this Court.

5 3. Further, it appears to the Court on a preliminary basis that: (a) the settlement amount
6 is fair and reasonable to the Class Members when balanced against the probable outcome of further
7 litigation relating to class certification, liability and damages issues and potential appeals; (b)
8 significant investigation, research, and formal and informal discovery have been conducted such that
9 counsel for the Parties at this time are able to reasonably evaluate their respective positions; (c)
10 settlement at this time will avoid substantial costs, delay and risks that would be presented by the further
11 prosecution of the litigation; and (d) the proposed Settlement has been reached as the result of intensive,
12 serious and non-collusive negotiations facilitated by an experienced mediator at mediation and between
13 the Parties.

14 4. Accordingly, good cause appearing, the Motion for Order Granting Preliminary
15 Approval of Class Action Settlement is hereby GRANTED, and as a part of said preliminary approval,
16 the Court accepts and incorporates the Settlement Agreement and orders that the Class be conditionally
17 certified for settlement purposes only pursuant to the terms and conditions contained in the Settlement
18 Agreement.

19 5. For purposes of the settlement of the Lawsuit, the Class is defined as,
20 “All individuals employed by Zodiac in any non-exempt position in California
21 at any time during from May 27, 2016 through August 2, 2021.”

22 6. The Court further finds that the proposed Notice of Class Action Settlement (“Class
23 Notice”) fairly and adequately advises Class Members of a) the pendency of the Class Action; b)
24 conditional certification of the Class for settlement purposes only; c) preliminary Court approval of the
25 proposed Settlement; d) the date of the Final Approval Hearing; e) the terms of the proposed Settlement
26 and the benefits available to Class Members; f) their right to receive their proportionate share of the
27 Net Settlement amount without the need to return a claim form; g) their right to request exclusion from
28 the settlement and the procedures and deadline for doing so; h) their right to object to the Settlement,

1 and the procedure for doing so; and i) their right to file documentation in support of or in opposition
2 to, and to appear in connection with the Final Approval Hearing. The Court further finds that the Class
3 Notice clearly comports with all constitutional requirements, including those of due process.
4 Accordingly, good cause appearing, the Court hereby APPROVES the Class Notice.

5 7. The Court further finds that the mailing of the Class Notice, Change of Address form,
6 and pre-printed return envelope, (collectively, the “Notice Packet”), to the last known address of Class
7 Members as specifically described within the Settlement Agreement, with measures taken for
8 verification of an address and skip tracing constitutes an effective method of notifying Class Members
9 of their rights with respect to the class action and Settlement. Accordingly, it is hereby ORDERED,
10 that:

11 A. Simpluris be appointed the Settlement Administrator to administer the
12 settlement of this matter as more specifically set forth in the Settlement Agreement.

13 B. The Law Office of Matt Blum, Cohelan Khoury & Singer, and Law Office of
14 Sahag Majarian II, be appointed as Class Counsel.

15 C. Plaintiffs Antony M. Smith and Omar Ayala be appointed as the Class
16 Representatives.

17 D. Within fourteen (14) calendar days after entry of a Preliminary Approval Order,
18 Defendant shall transmit to the Settlement Administrator in a readable, ready to use electronic excel
19 format spreadsheet, a list containing for each Class Member (to the extent maintained in its business
20 and payroll records) the following information: name, most current mailing address, telephone number,
21 social security number, dates of employment, the number of Work Weeks worked during the Class
22 Period, and the number of Pay Periods worked during the PAGA Period, (“Class List and Data”).

23 E. Within ten (10) business days after receipt of the Class List and Data, the
24 Settlement Administrator shall mail the Notice Packet to each Class Member. The Notice Packet shall
25 be mailed by first class, regular U.S. mail, using the most current mailing address information available,
26 with measures taken for updating an address as provided by the terms of the Settlement Agreement.

27 F. Within 45 calendar days from the initial date the Settlement Administrator first
28 mails the Notice Packet to Class Members (the “Response Deadline”), Class Members who wish to

1 exclude themselves from the Class must submit a written request for exclusion in the manner set forth
2 in the Class Notice and such request must be postmarked by the Response Deadline. Class Members
3 who receive a re-mailed Notice Packet shall have their Response Deadline extended fifteen (15)
4 calendar days from the original Response Deadline, to submit a Request for Exclusion.

5 G. On or before the Response Deadline, Class Members who wish to dispute the
6 number of Work Weeks attributed to them in the Class Notice must postmark and submit a written
7 explanation to the Settlement Administrator describing why the number of Work Weeks is incorrect,
8 with any supporting information or documents, as set forth in the Class Notice. Class Members who
9 receive a re-mailed Notice Packet shall have their Response Deadline extended fifteen (15) calendar
10 days from the original Response Deadline to postmark a dispute.

11 H. Class Members who wish to object to the Settlement, should submit to the
12 Settlement Administrator, a Notice of Objection which must include, (i) the objector's full name,
13 address, and last four digits of social security number; and (ii) state the basis for objection. Class
14 Members may also appear at the time of the Final Approval Hearing to comment upon the Settlement.

15 8. IT IS FURTHER ORDERED that the Final Approval Hearing shall be held before the
16 undersigned at ____ p.m. on _____, 2022, in Department N-28 of the Superior Court of California,
17 County of San Diego, North County Division located at the 325 S. Melrose Drive, Vista, California
18 92081 to consider the fairness, adequacy and reasonableness of the proposed Settlement preliminarily
19 approved by this Order of Preliminary Approval, and to consider the application for the Service
20 Payment awards to Plaintiffs and Class Representatives Antony M. Smith and Omar Ayala, for
21 Settlement Administration expenses and for Class Counsel's attorneys' fees and litigation expenses
22 incurred. All briefs and materials in support of an Order Granting Final Approval, the Service Payment,
23 Settlement Administration expenses, and Class Counsel's attorneys' fees and litigation costs shall be
24 filed with this Court on or before _____, 2022.

25 9. IT IS FURTHER ORDERED that if for any reason the Court does not sign and file an
26 Order Granting Final Approval, the Settlement Agreement shall be treated as if it had not been entered,
27 the conditional certification of the Class shall be revoked and deemed null and void, and the Parties
28 shall be restored without prejudice to their status quo ante rights, as specifically set forth in the

1 Settlement Agreement.

2 10. All proceedings in this matter, except those contemplated by the Settlement Agreement
3 or this Order, are stayed.

4 11. The Court expressly reserves the right to adjourn or continue the Final Approval
5 Hearing from time to time without further notice to Class Members.

6 IT IS SO ORDERED.

7
8 Date: _____

The Honorable Earl H. Maas, III
Judge of the Superior Court of California
County of San Diego – North County Division