

1 **THE LAW OFFICE OF MATT BLUM**

Matt Blum (SBN 285944)

2 mblumlaw@gmail.com

3 550 W. C Street, Suite 960

San Diego, California 92101

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

5 **COHELAN KHOURY & SINGER**

Isam C. Khoury (SBN 58759)

6 ikhoury@ckslaw.com

7 Michael D. Singer (SBN 115301)

msinger@ckslaw.com

8 Marta Manus (SBN 260132)

mmanus@ckslaw.com

9 605 C Street, Suite 200

San Diego, California 92101

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

11 Attorneys for Plaintiffs Antony M. Smith, Omar Ayala, and the Proposed Class

12 *[Additional Counsel, next Page]*

13 **SUPERIOR COURT OF CALIFORNIA**

14 **COUNTY OF SAN DIEGO – NORTH COUNTY**

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

19 Plaintiffs,

20 v.

21 ZODIAC POOL SYSTEMS, LLC, a
22 Delaware limited liability company doing
23 business in California; and Does 1 through
24 50, Inclusive

25 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

**[PROPOSED] ORDER GRANTING FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT AND ENTERING
JUDGMENT**

Hearing Set By Court Order (ROA #31&32)

Date: November 4, 2022

Time: 1:30 p.m.

Dept: N-28

Judge: Hon. Earl H. Maas, III

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, California 91356

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

7 Attorneys for Plaintiffs Antony M. Smith, Omar Ayala, and the Proposed Class

1 This matter came on for hearing on November 4, 2022 in Department N-28 of the
2 above-captioned Court on Plaintiffs' Motion for Order Granting Final Approval of Class
3 Action Settlement and Entering Judgment ("Motion") pursuant to California Rule of Court
4 3.769, and the Court's Order Granting Preliminary Approval filed June 10, 2022, and the
5 Stipulation of Class Action Settlement and Release of Claims ("Settlement Agreement").

6 Having received and considered the Settlement Agreement, the supporting papers filed
7 by the Parties, and the evidence and argument received by the Court in conjunction with the
8 Motion for Preliminary Approval of Class Action Settlement, and the supporting papers, and
9 evidence and argument received by the Court in conjunction with the Motion for Order
10 Granting Final Approval of Class Action Settlement, the Court grants final approval of the
11 Settlement and HEREBY ORDERS AND MAKES THE FOLLOWING DETERMINATIONS:

12 1. Pursuant to the Preliminary Approval Order filed June 10, 2022, a Notice of
13 Class Action Settlement, Change of Address form, and pre-printed return envelope ("Notice
14 Packet") were mailed to each Class Member by first-class United States mail. The Notice
15 informed the Class of the terms of the Settlement, their right to receive a Settlement Payment
16 without any required action, their right to comment upon or object to the Settlement, and their
17 right to appear in person or by counsel at the final approval hearing and to be heard regarding
18 approval of the Settlement. Adequate periods of time were provided for each of these
19 procedures.

20 2. No member of the Class filed a request to be excluded from the Settlement or a
21 written objection to the proposed Settlement as part of this notice process or stated an intention
22 to appear at the final approval hearing.

23 3. The Court finds and determines this notice procedure afforded adequate
24 protections to Class Members and provides the basis for the Court to make an informed
25 decision regarding approval of the Settlement based on the responses of the Class. The Court
26 finds and determines that the notice provided in this case was the best notice practicable, which
27 satisfies the requirements of law and due process.

28 ///

1 4. With respect to the Class and for purposes of approving this Settlement only,
2 this Court finds and concludes that: (a) the members of the Class are ascertainable and so
3 numerous that joinder of all members is impracticable; (b) there are questions of law or fact
4 common to the Class, and there is a well-defined community of interest among members of the
5 Class with respect to the subject matter of the Action; (c) the claims of the Class
6 Representatives are typical of the claims of the members of the Class; (d) the Class
7 Representatives have fairly and adequately protected the interests of the members of the Class;
8 (e) a class action is superior to other available methods for an efficient adjudication of this
9 controversy; and (f) the counsel of record for Plaintiffs, the Class Representatives, i.e., Class
10 Counsel, are qualified to serve as counsel for Plaintiffs in their individual and representative
11 capacity for the Class, and for the Class.

12 5. The Court confirms certification, for settlement purposes only, of the Class:

13 “All individuals employed by Zodiac in any non-exempt position in
14 California at any time during from May 27, 2016 through August 2,
15 2021.”

16 6. The Court finds and determines the terms set forth in the Settlement Agreement
17 are fair, reasonable, and adequate and, having found that the Settlement was reached as a result
18 of informed and non-collusive arms’-length negotiations facilitated by a neutral and
19 experienced mediator, directs the Parties to effectuate the Settlement according to the terms set
20 forth in the Settlement Agreement. The Court further finds the Parties conducted extensive
21 investigation, research, and discovery, and that their attorneys were able to reasonably evaluate
22 their respective positions. The Court also finds that Settlement will enable the Parties to avoid
23 additional and potentially substantial litigation costs, as well as delay and risks if the Parties
24 were to continue to litigate the case. The Court has reviewed the monetary recovery and
25 recognizes the significant value provided to the Class.

26 7. The Court further finds and determines that the terms of the Settlement are fair,
27 reasonable and adequate to the Class and to each Class Member and that the Settlement is
28 ordered finally approved, and that all terms and provisions of the Settlement Agreement should
be and hereby are ordered to be consummated, including but not limited to the Participating

1 Class Members' release of the Released Class Claims as to the Released Parties, the PAGA
2 Members' release of the Released PAGA Claims as to the Released Parties, and Plaintiffs
3 Antony M. Smith and Omar Ayala's general release of all claims as to the Released Parties.

4 8. The Court finds and determines that the Settlement Payments to be paid to
5 Participating Class Members as provided for by the Settlement are fair and reasonable. The
6 Court hereby grants final approval to and orders the payment of those amounts be made to the
7 Participating Class Members in accordance with the Agreement.

8 9. The Court finds and determines that the fees and expenses in administering the
9 Settlement incurred by Simpluris in the amount of \$7,000 are fair and reasonable. The Court
10 hereby grants final approval to and orders that the payment of that amount in accordance with
11 the Settlement Agreement.

12 10. The Court finds and determines the Class Representative Service Payment of
13 \$10,000 to Plaintiff Antony M. Smith and \$10,000 to Plaintiff Omar Ayala are fair and
14 reasonable. The Court hereby orders the Administrator to make this payment to each Plaintiff,
15 in accordance with the terms of the Settlement Agreement.

16 11. The Court finds and determines the payment of \$18,000 to the California Labor
17 and Workforce Development Agency (LWDA Payment) representing the 75% share of the
18 \$24,000 allocated to the satisfaction of PAGA civil penalties is fair and reasonable.

19 12. The Court finds and determines that the payment of \$6,000 to be apportioned
20 between PAGA Members in accordance with the terms of the Settlement Agreement
21 representing the 25% share of the \$24,000 allocated to the satisfaction of PAGA civil penalties
22 is fair and reasonable.

23 13. Pursuant to the terms of the Settlement Agreement, and the authorities, evidence
24 and argument submitted by Class Counsel, the Court hereby awards Class Counsel attorneys'
25 fees of \$400,000.00 and litigation costs of \$13,680.10. The Court finds such amounts to be fair
26 and reasonable. The Court hereby orders the Administrator to make these payments in
27 accordance with the terms of the Settlement Agreement.

28 ///

1 14. Without affecting the finality of this Order or the entry of judgment in any way,
2 the Court retains jurisdiction of all matters relating to the interpretation, administration,
3 implementation, effectuation, and enforcement of this Order and the Agreement.

4 15. Neither Defendant nor any related persons or entities shall have any further
5 liability for costs, expenses, interest, attorneys' fees, or for any other charge, expense, or
6 liability, except as provided for by the Settlement Agreement.

7 16. The Settlement is not an admission of liability by Defendant or any of the other
8 Released Parties, nor is this Judgment a finding of the validity of any claims in the Actions or
9 of any wrongdoing by Defendant or any of the other Released Parties. Neither this Judgment,
10 the Settlement, nor any document referred to herein, nor any action taken to carry out the
11 Settlement is, may be construed as, or may be used as an admission by or against Defendant or
12 any of the other Released Parties of any fault, wrongdoing or liability whatsoever. The entering
13 into or carrying out of the Settlement, and any negotiations or proceedings related thereto, shall
14 not in any event be construed as, or deemed to be evidence of, an admission or concession with
15 regard to the denials or defenses by Defendant or any of the other Released Parties and shall
16 not be offered in evidence against Defendant or any of the Released Parties in any action or
17 proceeding in any court, administrative agency or other tribunal for any purpose whatsoever
18 other than to enforce the provisions of this Judgment, the Settlement, or any related agreement
19 or release. Notwithstanding these restrictions, any of the Released Parties may file in the Action
20 or in any other proceeding this Judgment, the Settlement, or any other papers and records on
21 file in the Action as evidence of the Settlement and to support a defense of res judicata,
22 collateral estoppel, release, waiver or other theory of claim preclusion, issue preclusion or
23 similar defense as to the released claims.

24 17. Nothing in this Order shall preclude any action to enforce the Parties'
25 obligations under the Settlement Agreement or under this Order, including the requirement that
26 Defendant make payments to the Participating Class Members in accordance with the
27 Settlement.

28 ///

1 18. The Court hereby enters final judgment in accordance with the terms of the
2 Settlement Agreement, the Court's Preliminary Approval Order, and this Order and based
3 thereon, dismisses this Action in its entirety with prejudice.

4 19. The Parties will bear their own costs and attorneys' fees except as otherwise
5 provided by this Court's Order awarding Class Counsels' attorneys' fees and litigation costs.

6 IT IS SO ORDERED.

7
8 Dated: _____

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