

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 the Proposed Class

[Additional Counsel, next Page]

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 DIANA M. KHOURY
IN SUPPORT OF MOTION FOR 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

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

1 I, Diana M. Khoury, declare as follows:

2 1. I am a Partner at the law firm of Cohelan Khoury & Singer, co-counsel of record
3 for Plaintiffs and the Proposed Class. I submit this declaration in support of Plaintiffs' Motion
4 for Order Granting Preliminary Approval of Class Action Settlement. The following facts are
5 within my personal knowledge and if called to testify I could and would competently testify to
6 them.

7 2. I am a 1986 Western State University College of Law graduate and was admitted
8 to the California State Bar in June, 1987. I am admitted to practice in all state courts in
9 California and in the all federal courts in California.

10 3. In 1981, Timothy D. Cohelan and Isam C. Khoury formed Cohelan & Khoury, a
11 Partnership of Professional Law Corporations, and within a few years began to focus on class
12 actions. In 2009, Cohelan & Khoury became Cohelan Khoury & Singer. Our firm represents
13 plaintiffs in complex, class and representative action litigation, including wage and hour, labor
14 and employment, antitrust, consumer protection, construction defect and other public interest
15 type class and representative actions.

16 4. I am AV – Preeminent rated by Martindale-Hubbell. For the years, 2012 through
17 the present, I, together with my partners Isam C. Khoury and Michael D. Singer, have been
18 selected by our peers based on ethics, experience and reputation as Super Lawyers in Civil
19 Litigation by the Southern California Super Lawyers Magazine. Mr. Singer was admitted as a
20 fellow to the College of Labor and Employment Attorneys in 2020, and named to the Daily
21 Journal 2012, 2013, and 2018 list of Top California Labor and Employment Attorneys.

22 5. Cohelan Khoury & Singer has been certified by the State Bar of California to
23 provide the Mandatory Continuing Legal Education activity entitled “Litigating California Class
24 Actions” and has conducted MCLE certified seminars on this topic. Senior Partner, Timothy D.
25 Cohelan, is the author of Cohelan on California Class Actions (1997-2022, updated annually),
26 part of Thomson Reuters Expert Series updated annually. Michael D. Singer is a contributing
27 author on the CEB publication California Wage and Hour Law: Compliance and Litigation
28 (2010-2022 updated annually), in which he wrote the opening chapter overview on California

1 Wage and Hour laws, including the public policy underpinnings for those laws, and the Private
2 Attorneys General Act (PAGA) Claim chapter. He is also a contributing author to the CEB
3 Practitioner (2020), including guidelines for oral argument and forms for PAGA litigation. Mr.
4 Singer has served as a columnist for the California State Bar, Litigation Section on wage and
5 hour litigation and has contributed articles on wage and hour and class action issues through the
6 years to numerous California publications. Prior to COVID, he typically lectured several times
7 per year for continuing education courses on wage and hour and class action issues at events in
8 San Diego, Orange County, Los Angeles, and San Francisco. For over twelve years, Mr. Singer
9 has served as wage and hour amicus co-chair and liaison for the California Employment
10 Lawyers Association, drafting, reviewing, and coordinating amicus filings on wage and hour
11 issues in the California Supreme Court and Courts of Appeal. He has been engaged in the
12 practice of labor and employment law since 2000, handling well over 200 wage and hour class
13 and PAGA actions and several individual labor cases. He has litigated several types of
14 employment actions, including complex ERISA employee welfare benefit plan cases, as well as
15 wage and hour class actions before Federal and State Courts in California. In 2014, Mr. Singer,
16 along with Partner J. Jason Hill, tried a wage and hour class action involving claims for illegally
17 deducted wages and unreimbursed expenses. *Dilts v Penske Logistics LLC, Inc.* Mr. Singer
18 successfully appealed the trial court ruling in *Dilts* finding state laws preempted by the FAAAA
19 for truck drivers.

20 6. Since admission to the California State Bar, I have been a member of the San
21 Diego County Bar Association, Consumer Attorneys of San Diego, Consumer Attorneys of
22 California, and serving on numerous committees throughout the years for these organizations.
23 For six years from 2010 through 2015, I served on the Board of Directors for Consumer
24 Attorneys of San Diego, and chaired numerous committees during those terms.

25 7. As a part of our overall firm philosophy lawyers perform community service and
26 pro bono work. Firm volunteer work includes service through the Legal Aid at Work, San
27 Diego Volunteer Lawyer Program, the San Diego County Bar Foundation and Consumer
28 Attorneys of San Diego. Since 2014, I have actively served as a director on the San Diego

1 County Bar Foundation, the 501(c)(3) non-profit entity and the charitable arm of the San Diego
2 County Bar Association. Partner Jeff Geraci is past recipient of the Wiley W. Manuel Award
3 for Pro Bono Service, and during law school interned for the ACLU and Equal Rights
4 Assistance assisting on impact litigation class action lawsuits. Mr. Singer has served on the
5 Legal Aid at Work Board of Directors since 2011. Mr. Cohelan served as the Chair of the San
6 Diego Volunteer Lawyers Program from 2015-2018, and currently sits on the Board as past
7 Chair. He completed 24 years of volunteer judicial service as a Judge Pro Tem of the San Diego
8 Superior Court. Since admission to the California Bar, Partner Our firm's recent pro bono
9 victories include a settlement which prohibits the City of San Diego from targeting homeless
10 people for illegal lodging tickets under Penal Code Section 467(j). (*Spencer v. City of San*
11 *Diego*, USDC Case No 04CV-2314 BEN (WMC).) The *Spencer* settlement had the effect of
12 increasing the number of available shelter beds in San Diego.

13 8. Cohelan Khoury & Singer has been certified Class Counsel in the following
14 contested proceedings: *Aguilar v. Atlantic Richfield, et al.*, San Diego County Superior Court
15 Case No. 00700810; *Andino v. Kaiser Foundation Hospitals*, Alameda County Superior Court
16 Case No. RG11580548; *Arellano, et al. v. Container Connection of Southern California, Inc.*,
17 Los Angeles County Superior Court Case No. BC500675; *Bank Of America Wage And Hour*
18 *Employment Practices Litigation*, United States District Court, District of Kansas MDL Case
19 No. 2138 (FLSA Condition Certification); *Czuchaj v. Conair Corporation*, United States
20 District Court, Southern District of California Case No. 13CV1901; *Dilts, et al. v. Penske*
21 *Logistics, L.L.C., et al.*, United States District Court, Southern District of California Case No.
22 08CV0318; *Englert, et al. v. AT&T Wireless Services, Inc., et al.*, Circuit Court of the Second
23 Circuit, State of Hawaii Case No. 02-1-0074; *Evans v. Washington Mutual Bank*, Orange
24 County Superior Court Case No. 02CC15415; *Filion v. Ethan Allen Retail Inc.*, United States
25 District Court, Southern District of California Case No. 05CV2340; *Gerard v. Les Schwab Tire*
26 *Centers of California, Inc.*, Sacramento County Superior Court Case No. 2007-30000003;
27 *Grana, et al. v. PICO Enterprises, Inc. dba Phyle Inventory Control Specialist and PICS*
28 *L.A.S.C.* Case No. BC472891; *Gutierrez v. Save Mart Supermarkets* San Mateo County

1 Superior Case No. CIV530955; *Wilcox v Albertsons*, San Diego County Superior Court Case
2 No. GIC833922; *Gonzalez, et al. v. Freedom Communications, Inc. d/b/a The Orange County*
3 *Register*, Orange County Superior Court Case No. 03CC08756; *Graham, et al. v. Overland*
4 *Solutions, Inc.*, United States District Court, Southern District of California Case No.
5 10CV0672 (FLSA Conditional Certification); *Hicks v. Kaufman and Broad Home Corp.*, Los
6 Angeles County Superior Court Case No. B198414; *Hohnbaum, et al. v. Brinker Restaurant*
7 *Corporation, et al.*, San Diego County Superior Court Case No. GIC834348; *KEMP, et al. v.*
8 *CSEA, et al.*, Circuit Court of the First Circuit, State of Hawaii Case No. 98-3815-08; *Liberty*
9 *Mutual Overtime Cases*, Los Angeles County Superior Court Case No. JCCP 4234; *Mitchell, et*
10 *al. v. Acosta, Inc., dba Acosta Sales and Marketing Company*, United States District Court,
11 Central District of California Case No.11CV07196 (FLSA Conditional Certification); *Santana*
12 *v. Rady Children's Hospital-San Diego*, San Diego County Superior Court Case No. 37-2014-
13 00022411; *Schaffer v. Rady Children's Hospital-San Diego*, San Diego County Superior Court
14 Case No. 337-2015-00022978; *Schneider, et al. v. Catholic Healthcare West*, San Francisco
15 County Superior Court Case No. CGC-10-506243; *Salucci v. Amada Senior Care, Inc.*, Orange
16 County Superior Court Case No. 37-2015-00778081; *Smith v. California Pizza Kitchen*, San
17 Diego County Superior Court Case No. 37-2008-00083992; Steroid Hormone Product Cases,
18 Los Angeles County Superior Court Case No. JCCP 4363; *Stevenson Aibangbee v. Victoria*
19 *Apartments, et al.*, Los Angeles County Superior Court Case No. BC299498; *Swift v. Liebert*
20 *Corp.*, Orange County Superior Court Case No. 00CC04588; *Sylvia, et al. v. Wells Fargo Home*
21 *Mortgage, Inc.*, Orange County Superior Co Case No. 03CC05747; *Vaquero v. Ashley*
22 *Furniture Industries, Inc., et al.*, United States District Court, Central District of California Case
23 No. 12CV8590; *Vaquero v. Stoneledge Furniture LLC*, Los Angeles County Superior Court
24 Case No. BC522676; *Vazquez v. Kraft Heinz Foods Company*, Unites States District Court,
25 Southern District of California Case No. 16-CV-02749; *Watson v. Raytheon Company*, United
26 States District Court, Southern District of California Case No. 10CV0634; and *Weigele v.*
27 *FedEx Ground Package System, Inc.*, United States District Court, Southern District of
28

1 California Case No. 06CV1330, among others, as well as being appointed Class Counsel in
2 connection with well over 200 class action settlements.

3 9. As Class and PAGA Representative Counsel, Cohelan Khoury & Singer has
4 actively commenced, prosecuted and concluded numerous state and federal class and
5 representative actions. Since 2016, Cohelan Khoury & Singer has played a central role in the
6 resolution of over 200 such cases, including the following, which have received court approval:

7 (a) *Arellano, et al. v. Container Connection of Southern California, Inc.*, Los Angeles County
8 Superior Court, Case No. BC500675, Hon. Anne I. Jones; (b) *Castro v. Home Depot U.S.A.,*
9 *Inc.*, Los Angeles County Superior Court, Case No. BC577885, Hon. Elihu M. Berle; (c)
10 *Czuchaj v. Conair Corporation*, United States District Court, Southern District of California,
11 Case No. 13-CV-1901 BEN, Hon. Roger T. Benitez; (d) *Gardiner v. TSYs*, United States
12 District Court, Central District of California, Case No. 18-cv-00415, Hon. David O. Carter; (e)
13 *Grana v. PICO Enterprises, Inc.*, Los Angeles County Superior Court, Case No. BC472891,
14 Hon. Stephanie M. Bowick; (f) *Gutierrez v. Save Mart Supermarkets*, San Mateo County
15 Superior Court, Case No. CIV530955, Hon. Marie S. Weiner; (g) *Hernandez v. Workforce*
16 *Enterprises WFE, Inc.*, Los Angeles County Superior Court Case No. BC590913, Hon. Elihu
17 M. Berle; (h) *Hicks v. Poway Academy of Hair Design, Inc.*, San Diego County Superior Court,
18 Case No. 2014-00026517, Hon. Ronald L. Styn; (i) *Hubbard v. Caliber Home Loans, Inc.*,
19 Orange County Superior Court, Case No. 2018-01017838; (j) *Klein v. Loomis Armored US,*
20 *LLC*, San Bernardino County Superior Court, Case No. CIVDS1704547, Hon. David Cohn; (k)
21 *Laureano v. The Art of Shaving*, Los Angeles County Superior Court, Case No. BC550093,
22 Hon. Amy D. Hogue; (l) *Lopez, et al. v. Management & Training Corporation, et al.*, United
23 States District Court, Southern District of California, Case No. 17-CV-010624 JM, Hon. Jeffrey
24 T. Miller; (m) *Magdaleno v. Shelly Automotive, LLC*, Orange County Superior Court Case No.
25 2013-0043958, Hon. Kim. G. Dunning; (n) *McGrath, et al. v. Wyndham Resort Development*
26 *Corporation, et al.*, United States District Court, Southern District of California, Case. No. 15-
27 CV-1631 JM, Hon. Jeffrey T. Miller; (o) *Mena v. Wolfgang Puck Catering*, Los Angeles
28 County Superior Court Case No. BC582743, Hon. John Shepard Wiley, Jr.; (p) *Morales v. The*

1 *Los Angeles Country Club*, Los Angeles County Superior Court, Case No. BC566493, Hon.
2 William F. Highberger; (q) *Nijmeh v. Bon Appetit Management Company, Inc.*, Santa Clara
3 County Superior Court, Case No. 16CV294127, Hon. Thomas E. Kuhnle; (r) *Plascencia v.*
4 *Aramark Services, Inc.*, Santa Clara County Superior Court, Case No. 2015-1-CV-288310, Hon.
5 Brian C. Walsh; (s) *Plimpton v. Gordon Trucking, Inc.*, San Bernardino County Superior Court,
6 Case No. CIV-DS-1511918, Hon. Donald Alvarez; (t) *Raya v. Amazon*, USDC, Northern
7 District of California, Case No. 15-CV-02005 MMC, Hon. Maxine M. Chesney; (u) *Rivas v.*
8 *ESA Management*, USDC, Central District of California, Case No. 14-CV-5767, Hon. Dale S.
9 Fischer; (v) *Rodriguez v Healthcare Partner Medical Group, Inc.*, Los Angeles County
10 Superior Court, Case No. BC541313, Hon. Kenneth Freeman; (w) *Ryan v. Dignity Health*,
11 Sacramento County Superior Court Case No. 2013-00147371, Honorable Alan G. Perkins; (x)
12 *Santana v. Rady Children's Hospital-San Diego*, San Diego County Superior Court Case No.
13 37-2014-00022411, Hon. Joel R. Wohlfeil; (y) *Schaffer v. Rady Children's Hospital-San Diego*,
14 San Diego County Superior Court Case No. 337-2015-00022978; Hon. Joel R. Wohlfeil; (z)
15 *Schneider v. Catholic Healthcare West*, San Francisco County Superior Court, Case No. CGC-
16 10-506243, Hon. Angela Bradstreet; (aa) *Schwartz v Bank of the West*, San Francisco County
17 Superior Court, Case No. CGC-14-538955, Hon. Harold E. Kahn; (bb) *Syed v. M.I. Swaco*,
18 USDC, Eastern District of California, Case No. 12-CV-01718 DAD, Hon. Dale A. Drozd; (cc)
19 *Vaquero, et al. v. Stoneledge Furniture, LLC*, Los Angeles County Superior Court Case No.
20 BC522676, Hon. Elihu M. Berle; (dd) *Vazquez v. Kraft Heinz Foods Company*, USDC,
21 Southern District of California Case No. 16-CV-02749, Hon. William Q. Hayes; (ee) *Walsh v.*
22 *Cedars-Sinai Medical Center*, Los Angeles County Superior Court Case No. BC487290, Hon.
23 William F. Highberger; among others.

24 10. We are experienced and consider ourselves qualified to evaluate the claims and
25 defenses in this Action. This allowed our firm to assist in achieving an efficient resolution of the
26 claims in this matter for a non-reversionary pre-certification wage and hour class and PAGA
27 Settlement Payment of \$1,200,000.0 for approximately 323 individuals, who were employed in
28 California as non-exempt employees by Defendant Zodiac Pool Systems, LLC (“Defendant” or

1 “Zodiac”) at any time from May 27, 2016 through August 2, 2021 (“the Class Period). The
2 proposed Settlement is memorialized in the Stipulation of Class and Representative Action
3 Settlement and Release of Claims, (“Settlement Agreement” or “SA”), attached as Exhibit 1.

4 11. Plaintiffs: Plaintiff Omar Ayala worked for Zodiac in California as a non-
5 exempt “Assembler, Tester, and Builder” from October 2017 through October 2019. (Mr.
6 Ayala was actually hired in March 2013, by Grand Effects, Inc, which was acquired on October
7 2, 2017, by Zodiac which retained Mr. Ayala as an employee. Plaintiff Antony M. Smith
8 worked for Zodiac in California as a non-exempt “Technical Support Level One Advisor” from
9 August 2018 through August 2020.

10 12. Proposed Class: The proposed Class is defined as all individuals who were
11 employed by Zodiac in any non-exempt position in California at any time during the Class
12 Period, (May 27, 2016 through August 2, 2021).

13 13. There are an estimated 323 Class Members that worked an estimated 34,020
14 work weeks during the period from May 27, 2016 to May 4, 2016. The Agreement provides
15 that the total number of weeks covered by the Settlement shall be no greater than 37,422 (10%
16 greater than the estimated weeks through May 4, 2021).

17 14. Plaintiffs’ unpaid wages claim is based on Zodiac’s alleged failure to pay for all
18 hours worked. Plaintiffs allege that Plaintiffs and the Class Members performed work off-the-
19 clock for which they were not compensated and which resulted in unpaid straight-time and
20 overtime wages throughout the Class Period. Plaintiffs also allege that Zodiac’s use of a payroll
21 system that automatically rounds employee time up or down to the nearest quarter hour provides
22 an inaccurate measure of employee worktime, and violates California law.

23 15. Zodiac’s timekeeping system rounded the arrival and departure times of
24 employees to the nearest quarter-hour and based upon Plaintiffs’ analysis of Zodiac’s records,
25 Plaintiffs contend that meal periods were rounded as well. When rounding to the nearest
26 quarter-hour, the 7-minute rule was used, and was applied as follows: if a shift started at 8:00
27 a.m. and the employee clocked in at 8:06 a.m., the timecard would reflect a start time of 8:00
28 a.m. However, if the employee clocked in at 8:07 a.m., the timecard would reflect a start time of

1 8:15 a.m. Although neutral on its face, Plaintiffs contend that this method of calculating
2 employee hours worked violates the California Labor Code because it systematically
3 undercompensated employees, resulting in unpaid wages for all hours worked.

4 16. Plaintiffs' analysis of the time punch data revealed that in Plaintiffs' view,
5 Zodiac's timekeeping system rounded meal periods which Plaintiffs contend violates California
6 law, even though Zodiac's written policies stated they did not. ("The rounding rules apply to
7 arrival and departure times only. The system will not round for meal breaks;" "As a reminder,
8 rounding rules do not apply to meal breaks."). The time punch data revealed that all meal
9 periods were rounded as employees were paid for hours ending in .00, .25, .50, or .75.

10 17. Plaintiffs' meal and rest period claims are based on Zodiac's alleged failure to
11 provide meal and rest periods premiums (one-hour's pay at their regular rate) when Class
12 Members were unable to take timely and compliant breaks due to the demands of the job.
13 Plaintiffs also allege that although Class Members worked shifts of more than ten (10) hours,
14 Zodiac failed to provide a second meal period, as required under California law.

15 18. Plaintiffs' claim for overtime regular rate violations arises from Zodiac's alleged
16 failure to include all required forms of compensation in the calculation of Plaintiffs' and Class
17 Members' regular rates for purposes of calculating overtime wages. Specifically, Plaintiff
18 alleges that amounts paid to Plaintiffs and Class Members under Zodiac's flat-sum non-
19 discretionary incentive program were not included in their overtime regular rates.

20 19. Plaintiffs' claim for unreimbursed business expenses arises from Zodiac's
21 alleged failure to reimburse costs incurred in using personal cell phones to carry out Class
22 Members' job duties. Plaintiffs allege they and other putative Class Members frequently used
23 their cell phones for work-related purposes, such as taking photos of the work completed at
24 client locations and sending to supervisors for review, and taking calls regarding technical
25 issues experienced in the field, as well as calls from customers and homeowners who were
26 using the company's products. (See Declarations of Omar Ayala and Antony Smith). Plaintiffs
27 were not reimbursed for the use of their cell phones.

28 20. Plaintiffs' claims for Zodiac's alleged failure to provide accurate itemized wage

1 statements reflecting, among other things, the name and address of the legal entity that is the
2 employer, the correct overtime rate for overtime worked, including, work performed in excess
3 of eight (8) hours in a workday and/or forty (40) hours in any workweek, and the correct
4 premium payment for missed meal and rest periods.

5 21. On May 27, 2020, Plaintiff Ayala filed a class and PAGA complaint in the San
6 Diego County Superior Court (Case No. 37-2020-00017229-CU-OE-CTL) naming Zodiac as
7 Defendant after the requisite 65-day waiting period under the Private Attorneys General Act
8 (“PAGA”) – California Labor Code §2698, et seq., had elapsed, (“Ayala Action”). On July 20,
9 2020, Zodiac removed the Ayala Action to the United States District Court for the Southern
10 District of California, Case No. 20 CV01381-H (MSB). Attached as Exhibit 2 is a true and
11 correct copy of Plaintiff Ayala’s PAGA letter, March 20, 2020; Exhibit 3 is a true and correct
12 copy of Plaintiff Ayala’s Complaint; Exhibit 4 is a true and correct copy of the Notice of
13 Removal, United States District Court, Southern District of California Case No. 20-CV-1381-H-
14 MSB.

15 22. On October 7, 2020, Plaintiff Smith filed a class action complaint in the San
16 Diego County Superior Court – North County Division, Case No. 37-2020-00036431-CU-OE-
17 NC naming Zodiac as the Defendant, (“Smith Action”). The Smith Action alleged substantially
18 similar claims as those alleged in the Ayala Action. Attached as Exhibit 5 is a true and correct
19 copy of the Smith Complaint.

20 23. As a term of the proposed settlement of these cases, a First Amended Complaint
21 was filed on October 1, 2021 in the above-captioned Smith Action incorporating the Class and
22 PAGA claims of both these actions into a single complaint. Attached as Exhibit 6 is a true and
23 correct copy of the Smith First Amended Complaint.

24 24. Plaintiffs conducted significant investigation of the facts and law both before and
25 after the Action was filed. On July 17, 2020, prior to removal, Plaintiff Omar Ayala served
26 written discovery on Zodiac that included special interrogatories, requests for production of
27 documents, requests for admissions and form interrogatories. Following removal, on September
28 14, 2020, Ayala served Zodiac with the same discovery.

1 25. On October 2, 2020 the Parties exchanged their initial disclosures pursuant to
2 Fed.R.Civ.P. Rule 26(a)(1) identifying witnesses and relevant documents. Following meet and
3 confer discussions regarding the outstanding discovery, the Parties conferred about the
4 possibility of a Class-wide resolution and agreed to attend mediation. To that end, Plaintiffs'
5 Counsel requested Zodiac produce the relevant data and information to allow Plaintiffs to
6 prepare for a meaningful and informed session at mediation.

7 26. Subject to a stipulated protective order governing the disclosure and exchange of
8 confidential information, on February 8, 2021 Zodiac produced its policies and procedures for
9 the relevant time period for meal periods and rest breaks, its timekeeping and rounding system,
10 and paid sick leave policies and procedures. Zodiac also produced its employee handbook and
11 manual, and for the period through February 8, 2021: (1) the total number of Class Members
12 (323); (2) total number of separated Class Members (175); (3) total number of wage statements
13 issued to Class Members (3,917); (4) total number of pay periods [bi-weekly], (4,618); (5) total
14 number of work weeks (34,020); (6) average hourly rate of pay (\$19.56); and (7) the total
15 amount of meal period premiums paid (\$30,200.99). Zodiac provided Microsoft excel
16 spreadsheets containing over 30,868 lines of data that included time punch details for 12,550
17 shifts worked by Plaintiffs and 33 randomly selected Class Members. Plaintiffs' Counsel also
18 informally interviewed multiple Class Members regarding their experiences with taking
19 compliant meal and rest breaks, rounding of work time, impact on their wages, and use of their
20 cell phones for work. Shortly prior to mediation, Zodiac updated the Class' number of weeks
21 worked and number of PAGA Pay Periods that were extrapolated through to the date of
22 mediation.

23 27. Following review of the data and information obtained, Plaintiffs' Counsel
24 retained the services of a damages' consultant to evaluate the data for meal and rest periods
25 violations, and the incidence of underpaid wages due to rounding of time worked, and
26 extrapolated those damages to the entire Class.

27 28. On May 4, 2021, the Parties attended mediation with the Hon. Michael Latin
28 (Ret.), an experienced wage and hour mediator facilitating the serious, informed, arms'-length

1 and lengthy negotiations. The Parties were not able to reach agreement by the end of the day,
2 however, by May 6, 2021 agreement was reached as to the principle terms of the proposed
3 Settlement, and a memorandum of understanding was executed. In the weeks which followed,
4 the Parties continued to negotiate at arms'-length the balance of terms of the Stipulation of
5 Class and Representative Action Settlement and Release of Claims and its exhibits (Settlement
6 Agreement) submitted with this Motion as Exhibit 1.

7 29. The Parties agreed, subject to Court approval, the Action may be settled for the
8 Gross Settlement Amount (GSA) of \$1,200,000 no part of which may revert to Zodiac under
9 any circumstances.

10 30. The GSA includes: (a) attorneys' fees of \$400,000 (one-third of the GSA) to
11 compensate Class Counsel for all work performed and remaining to be performed in
12 documenting and administrating the Settlement, securing final Court approval, and litigation
13 expenses of up to \$18,500; (b) Class Representative Service Payments of \$10,000 to each
14 named Plaintiff in consideration of their initiation and prosecution of the Action on behalf of the
15 Class, work performed, risks undertaken for costs if the case had not concluded successfully, the
16 substantial benefits conferred on the Class, and general releases; (c) administration expenses to
17 Simpluris, Inc., of \$7,000; and (d) PAGA Payment of \$24,000 of which \$18,000 (75%) will be
18 paid to the LWDA for PAGA civil penalties, and \$6,000 (25%) will be distributed to PAGA
19 Members on a proportionate basis. In addition to the GSA, Zodiac will pay the employer-sided
20 taxes on the Participating Class Members' Settlement Payments characterized as wages.

21 31. Based on anticipated Court-approved deductions for attorneys' fees, litigation
22 costs, Class Representative Service Payments, administration expenses and PAGA Payment, the
23 Net Settlement Amount estimated at \$730,500 will be proportionately distributed to all Class
24 Members who do not request to be excluded from the Class based on the number of weeks
25 worked during the Class Period (May 27, 2016 through August 2, 2021).

26 32. With an estimated 34,982 weeks worked by the Class during the Class Period, a
27 Participating Class Member may expect to receive an estimated \$20.88 for each week worked
28 during the Class Period. If a Class Member worked throughout the entire Class Period, (270

1 weeks), they would receive an estimated \$5,637.60, or on average \$2,261.60 (\$730,500 NSA /
2 323 Class Members). Additionally, PAGA Members, (those employed during the March 20,
3 2019 through August 2, 2021 PAGA Period), will receive a proportionate share of the \$6,000
4 based on the number of Pay Periods worked during the PAGA Period. PAGA Members will
5 receive on average an additional \$31.58 (\$6,000 / 190 PAGA Members).

6 33. No part of the GSA will revert to Zodiac under any circumstances.

7 34. Each Participating Class Member's Settlement Payment will be characterized
8 50% wages for which an IRS Form W-2 will be issued, and 50% penalties and interest for
9 which IRS Forms 1099 will be issued.

10 35. Following preliminary approval, Simpluris, Inc., the Administrator selected by
11 the Parties and approved by the Court, will mail the Court-approved Notice of Class Action
12 Settlement ("Notice"), Change of Address Form, and preprinted return envelopes, (collectively
13 "Notice Packet") to each member of the Class by first-class U.S. Mail.

14 36. The Notice advises the Class: (1) of their right to participate in the Settlement;
15 (2) that Class Members who do not request exclusion will be mailed their Settlement Payments
16 without the need to return a claim form; (3) how to object to and opt-out of the Settlement and
17 the deadlines for doing either; (4) how to challenge the information on which Settlement
18 Payments are based; (5) of the claims to be released; and (6) of the date, time and place set for
19 the Final Approval Hearing.

20 37. Class Members will also be informed that if they opt out of the Class, but are
21 eligible PAGA Members, they will still receive their share of the PAGA Payment, and will
22 release only the Released PAGA Claims for civil penalties alleged under PAGA because no
23 right exists under PAGA to opt out of a PAGA Settlement.

24 38. Prior to mailing Notice Packets to the Class, the Administrator will conduct a
25 search of the National Change of Address database to update stale mailing addresses. Once
26 mailed, any Notice Packet returned as undelivered will be skip-traced using the Class Member's
27 social security number to locate a current address, and if one is found, the Notice Packet will be
28 remailed to the updated address. Class Members will have 45 days to return requests for

1 exclusion, submit written objections to the Settlement, or dispute their workweek count
2 identified in the Notice. Class Members may also appear at the Final Approval Hearing to
3 object to the Settlement without first having returned a written objection.

4 39. Following distribution of the GSA, Class Members will have 120 days to cash
5 their Settlement Payment checks. If checks are not cashed by the 30th day, the Administrator
6 will mail a postcard reminding Class Members to do so before the void date. Following the void
7 date, all uncashed checks will be cancelled and sums represented by those checks will be
8 forwarded to California's State Controller, Unclaimed Property Division for further handling on
9 behalf of the Class Member.

10 40. Class Members who remain in the Class will release the Released Class Claims
11 for any and all claims which were or could have been asserted against the Released Parties
12 based upon, arising out of, or relating to the facts or allegations set forth in any complaint in the
13 above-captioned Action or the Ayala Action. The Released Class Claims are stated in the Class
14 Notice.

15 41. Counsel for Plaintiffs and the Class have significant experience in litigating
16 employment wage and hour class actions.

17 42. Counsel for Zodiac, Winston & Strawn, LLC, are also skilled and experienced
18 wage and hour litigators who defended Zodiac vigorously through mediation and subsequent
19 negotiations to finalize all settlement terms.

20 43. While Plaintiffs believe in the strength of their claims, Zodiac's defenses create a
21 significant possibility Class claims would not be certified or would fail on the merits, conferring
22 no Class benefit. By contrast, the proposed Settlement will yield a prompt, certain, and
23 substantial Class recovery, without additional time or judicial resources benefitting an estimated
24 323 Class Members with payments averaging \$2,262.

25 44. Zodiac firmly disputed liability and contended, among other things, it abided by
26 all of California's labor laws and provided: proper wages for all hours worked, compliant meal
27 and rest periods, accurate and itemized wage statements, timely final wages, and
28 reimbursements for necessary business-related expenses, if any existed.

1 45. Plaintiffs' counsel relied on documents and data, including time, pay,
2 employment records, and other data, and retained a damages' consultant to review and analyze
3 such time and pay records to identify violation rates and to calculate a Class-wide damage
4 model for use at mediation.

5 46. Plaintiffs contend rounding to the nearest quarter of an hour was neither fair nor
6 neutral on its face or in practice. Time records analyzed reveal that on average, 1.9 minutes per
7 shift were unpaid due to rounding. At an average hourly rate of \$19.56, each Class Member was
8 unpaid \$460 during the Class Period. Plaintiffs estimated Zodiac's exposure on this claim,
9 without interest, at \$148,059 (\$460 x 323 Class Members). For purposes of negotiation,
10 Plaintiffs reduced the exposure by 50% to **\$74,029.50** based on recent case law suggesting a
11 court might uphold the rounding policy. Furthermore, as Class Counsel has litigated rounding
12 claims through appellate review, Zodiac could defeat certification by successfully arguing it is
13 Plaintiffs' burden to prove employees were actually working during the rounded "windows",
14 which would require individual inquiry. This is especially problematic when factual disputes
15 exist as to the nature of the rounded (deleted) time and the concept of a communicated "grace
16 period".

17 47. Zodiac's exposure for missed, late or short meal periods was estimated at
18 \$2,274,569, which factored in the \$30,000 meal period premiums paid by Zodiac to certain
19 Class Members during the Class Period. However, recognizing only one meal period premium
20 may be owed to a Class Member per shift, regardless of the number of meal period violations
21 suffered in a day, and that a second meal period may be waived if the first meal period is taken,
22 together with the difficulties of obtaining certification and success at trial, Plaintiffs discounted
23 this claim by 50% to **\$1,137,284**.

24 48. Plaintiffs contend Class Members' heavy workloads resulted in non-compliant
25 late, short or missed rest periods. Based on Plaintiffs' anecdotal experiences, Plaintiffs assumed
26 a 50% violation rate (79,291 violations) giving rise to \$1,550,929 in rest period premiums.
27 Given that rest periods are not recorded and that Class Members may likely not remember
28 which, if any, shifts were non-compliant or experienced missed, late or short rest periods, and

1 the lack of rest period records, and difficulties of certifying such claims and success at trial,
2 Zodiac's potential exposure was reduced by 80% to **\$310,186**.

3 49. Plaintiffs maximum exposure for the business expense reimbursement claim was
4 estimated at \$100,130 (\$5 a month x 62 months during Class Period x 323 Class Members).
5 Zodiac contends none of the Class Members' job duties required use of a personal cell phone.
6 Zodiac's exposure was reduced by 90% to **\$10,013**.

7 50. The wage statement maximum exposure was estimated at \$597,900. To recover,
8 Plaintiffs must prove the underlying violations and prove Zodiac intentionally and willfully
9 withheld such wages. Zodiac would also assert that to the extent this claim depends on unpaid
10 rest and meal period premiums, it has no value. In light of the proof required to establish this
11 violation, the good faith defense, and the obstacles to certification, and success at trial, the
12 realistic exposure was reduced by 75% to **\$149,475**.

13 51. Zodiac's exposure on the Labor Code § 203 claim for untimely final wages was
14 estimated at \$872,865. Due to the difficulties in proving the willfulness of Zodiac's failure to
15 timely pay final wages, the underlying claims, its good faith defense, and the difficulties of
16 obtaining certification, the realistic exposure on this claim was reduced by 75% to **\$218,216.25**.

17 52. With respect to calculating PAGA civil penalties: based on 6,132 pay periods in
18 the PAGA period, Plaintiffs estimated PAGA penalties at \$3,315,500 for the following
19 violations: Labor Code §510 (unpaid wages) at \$613,200; Labor Code §§226.7, 512 (rest
20 breaks) at \$613,200; Labor Code §226.7 (meal periods) at \$547,100; Labor Code § 203 (waiting
21 time) at \$9,000; Labor Code § 226 (wage statements) at \$1,533,000.

22 53. Plaintiffs considered the court may deem a PAGA trial unmanageable given the
23 need to interview Class members as to rest and meal period violations and cell phone usage.
24 Based on the risks of not proving the underlying claims, and the discretionary nature of PAGA
25 penalties, Plaintiffs' realistic exposure was discounted for purposes of settlement by 90% to
26 **\$331,500**.

27 ///

28 ///

54. Plaintiffs and their Counsel gave serious consideration to all facts and arguments and concluded the Settlement is fair and reasonable. The Gross Settlement Amount, discounted for the risks of proving liability on each claim, obtaining certification and success at trial represents 53.7% of the value of the Class and PAGA claims. (\$1,200,000/\$2,230,704).

55. On the same date this motion and its exhibits are filed with the Court, they will be served upon Defendant and provided to the Labor and Workforce Development Agency (“LWDA”) via the LWDA’s website, www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act, using the appropriate intake form. Attached as Exhibit 7 is a true and correct copy of the LWDA confirmation of Receipt.

I declare under the penalty of perjury under the laws of the State of California the foregoing is true and correct and this declaration is executed February 28, 2022, in San Diego, California.

Hilana M. Khoury

Diana M. Khoury

EXHIBIT 1

1 **THE LAW OFFICE OF MATT BLUM**

2 Matt Blum (SBN 285944)

3 MBlumlaw@gmail.com

4 550 West C Street, Suite 960

5 San Diego, California 92101

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

7 **COHELAN KHOURY & SINGER**

8 Michael D. Singer (SBN 115301)

9 msinger@ckslaw.com

10 J. Jason Hill (SBN 179630)

11 JHill@ckslaw.com

12 Diana M. Khoury (SBN 128643)

13 dkhoury@ckslaw.com

14 Rosemary C. Khoury (SBN 331307)

15 rkhoury@ckslaw.com

16 605 C Street, Suite 200

17 San Diego, California 92101

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

19 Attorneys for Plaintiffs Antony M. Smith and Omar Ayala,

20 On behalf of themselves and the Putative Class

21 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**

22 **COUNTY OF SAN DIEGO – NORTH COUNTY DIVISION**

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

27 Plaintiffs,

28 vs.

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

33 Defendants.

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

**STIPULATION OF CLASS AND
REPRESENTATIVE ACTION
SETTLEMENT AND RELEASE OF
CLAIMS**

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 and Omar

8 Ayala, and on behalf of the Putative Class

9 **WINSTON & STRAWN LLP**

10 Laura R. Petroff (SBN 123215)

11 lpetroff@winston.com

12 Tristan R. Kirk (SBN 313262)

13 tkirk@winston.com

14 333 S. Grand Avenue, 38th Floor

15 Los Angeles, California 90071-1543

16 Telephone: (213) 615-1700 / Facsimile: (213) 615-1750

17 Attorneys for Defendant Zodiac Pool Systems, LLC

1 Amended Class and Representative Action Complaint filed on October 1, 2021, adding, *inter alia*,
2 Plaintiff Omar Ayala as a named Plaintiff and any unique claims and/or allegations contained in the
3 Complaint filed in the Ayala Litigation.

4 2. “Ayala Litigation” refers to the class action litigation filed on May 27, 2020 by Plaintiff
5 Omar Ayala in the Superior Court for the State of California, County of San Diego, entitled: *Omar*
6 *Ayala, individually, and on behalf of all others similarly situated and aggrieved, Plaintiff vs. Zodiac*
7 *Pool Systems, LLC, et al.*, Case No. 37-2020-00017229-CU-OE-CTL, removed on July 20, 2020 to
8 the United States District Court for the Southern District of California. The complaint in the Ayala
9 Litigation alleges substantially similar claims as those alleged in the above-caption Smith Action, i.e.,
10 Defendant’s failure to pay minimum, regular and overtime wages due to rounding of time worked;
11 failure to provide compliant meal periods, including because of rounding; failure to provide compliant
12 rest breaks; failure to reimburse business related expenses for use of personal cell phones; and based
13 on these allegations, violation of the Unfair Competition Law, derivative claims for inaccurate
14 itemized wage statements, and untimely final wages upon separation from employment, and civil
15 penalties for the Labor Code violations pursuant to the Private Attorneys General Act, (“PAGA”).
16 The Parties have requested an Order from the Court presiding over the Ayala Litigation to stay that
17 litigation pending Final Approval of the Class Action Settlement in the above-captioned Smith Action.

18 3. “Attorneys’ Costs” and “Litigation Costs” mean the attorneys’ costs incurred and to be
19 incurred by Class Counsel in the litigation and resolution of the Action in an amount of up to \$18,500.
20 Attorneys’ Costs, as approved by the Court, shall be paid to Class Counsel from the Gross Settlement
21 Amount.

22 4. “Attorneys’ Fee Award” means the attorneys’ fees agreed upon by the Parties and
23 approved by the Court for Class Counsel’s litigation and resolution of the Action up to \$400,000, one-
24 third of the Gross Settlement Amount. Attorneys’ Fees shall be paid to Class Counsel from the Gross
25 Settlement Amount.

26 5. “Class” and “Class Members” for purposes of this Settlement shall be defined as all
27 individuals who were employed by Zodiac in any non-exempt position in California at any time during
28 the Class Period..

1 6. “Class Counsel” shall mean The Law Office of Matt Blum, Cohelan Khoury & Singer
2 and Law Offices of Sahag Majarian II, representing Plaintiffs Antony M. Smith and Omar Ayala in
3 the Action.

4 7. “Class Period” shall mean the time period from May 27, 2016 through August 2, 2021.

5 8. “Class Representative Service Payment” means an award up to \$10,000 to Plaintiff
6 Antony M. Smith and \$10,000 to Plaintiff Omar Ayala in recognition of their initiation of the Action,
7 effort and work in prosecuting the Action on behalf of the Class, risks undertaken for the payment of
8 costs in the event of loss, and the giving of a General Release. The Class Representative Service
9 Payments shall be paid from the Gross Settlement Amount.

10 9. “The Court” means the Superior Court of the State of California, County of San Diego
11 – North County Division.

12 10. “Defendant” or “Zodiac” shall mean Defendant Zodiac Pool Systems, LLC.

13 11. “Defendant’s Counsel” means Winston & Strawn LLP.

14 12. “Effective Date of Settlement” means the date on which the Court’s order approving
15 the Settlement and its entry of judgment becomes Final.

16 13. “Final” shall mean the latest of: (i) if there is an appeal of the Court’s judgment, the
17 date the order and judgment approving the settlement are affirmed on appeal, the date of dismissal of
18 such appeal, or the expiration of the time to file a petition for writ of certiorari to the California
19 Supreme Court; (ii) if a petition for writ of certiorari is filed, the date of denial of the petition for writ
20 of certiorari, or the date the order and judgment approving the settlement are affirmed pursuant to such
21 petition; or (iii) if no appeal is filed, the expiration date of the time for filing or noticing any appeal of
22 the order approving the settlement and/or entry of judgment.

23 14. “Employer Tax Obligations” means Zodiac’s share of employer-side payroll taxes to
24 be paid on that portion of each Class Member’s Settlement Payment characterized as wages, i.e. FICA,
25 FUTA, payroll taxes, and/or any similar tax or charge (the “Employer Taxes”). The Employer Taxes
26 will be paid outside of and in addition to the Gross Settlement Amount.

27 15. “Final Approval Hearing” means a hearing held before the Court to consider Final
28 Approval of the Settlement, what amount Attorneys’ Fees and Litigation Costs should be awarded to

1 Class Counsel, what amount Class Representative Service Payments should be awarded to the
2 Plaintiffs, and the merits of any objections to the Settlement, if any.

3 16. “Final Approval Order and Judgment” means an Order and Judgment issued by the
4 Court in substantially the form attached as **Exhibit D** approving the Settlement and this Agreement as
5 binding upon the Parties, the Participating Class Members, and the PAGA Members.

6 17. “General Release” means the release Plaintiffs in their individual capacity and with
7 respect to their individual claims only, and in exchange for the Class Representative Service Payments,
8 give to release the Released Parties from all known and unknown claims of any type whatsoever they
9 may have against the Released Parties arising or accruing at any time prior to the Effective Date.

10 18. “Gross Settlement Amount” (or “GSA”) means the maximum non-reversionary
11 amount of One Million Two Hundred Thousand Dollars (\$1,200,000.00) payable by Zodiac in
12 settlement of the Action, which will satisfy: the Settlement Payments to the Participating Class
13 Members, the Individual PAGA Payments to the PAGA Members, the LWDA Payment, the Class
14 Representative Service Payments to Plaintiffs, the Settlement Administration Costs to the Settlement
15 Administrator, the Attorneys’ Fees Award, and the Litigation Costs award. In no event will Zodiac
16 ever be required to pay more than the Gross Settlement Amount of \$1,200,000.00, except that Zodiac
17 shall pay the employer’s share of the payroll taxes separately from and in addition to the Gross
18 Settlement Amount. Any interest that accrues in the escrow account created by the Settlement
19 Administrator shall also be added to the Gross Settlement Amount. No portion of the Gross Settlement
20 Amount shall revert to Zodiac.

21 19. “Individual PAGA Payments” means each PAGA Member’s share of the PAGA
22 Payment calculated in accordance with the provisions of Paragraph 78.

23 20. “LWDA Payment” means the seventy-five percent (75%) portion of the PAGA
24 Payment to be paid to the California Labor and Workforce Development Agency pursuant to the
25 PAGA.

26 21. “Net Settlement Amount” means the Gross Settlement Amount less (a) the Class
27 Representative Service Payment awards, (b) Administration Costs, (c) Attorneys’ Fees Award, (d)
28 Attorneys’ Costs, and the (e) PAGA Payment.

22. “Notice of Class Action Settlement” or “Class Notice” shall mean the Court-approved notice to be disseminated to all members of the Class informing them of the terms of the Settlement, their rights to participate, object, or request exclusion, among other things, and of the date set for the final approval hearing in the form substantially similar to **Exhibit A**.

23. “Notice Packet” shall mean the Notice of Class Action Settlement (Exhibit A), and a Change of Address form in the form substantially similar to **Exhibit B**, and a pre-printed return envelope to be mailed via first class U.S. Mail to all members of the Class by the Administrator.

24. “Parties” shall mean collectively, Plaintiffs and Defendant.

25. “Plaintiffs” and “Class Representatives” shall mean Plaintiffs Antony M. Smith and Omar Ayala.

26. “PAGA” shall mean the Private Attorneys General Act of 2004, California Labor Code section 2698, *et seq.*

27. “PAGA Member(s)” means those Class Members that worked any time during the PAGA Period.

28. “PAGA Payment” means the payment of civil penalties under the PAGA of \$24,000, of which \$18,000 (75%) of will be paid to the California Labor and Workforce Development Agency (the “LWDA Payment”), and the remaining \$6,000 (25%) will be distributed to all PAGA Members on a proportionate basis using the number of Pay Periods worked during the PAGA Period.

29. “PAGA Period” means that period of time from March 20, 2019 through August 2, 2021 in which PAGA Members worked. PAGA Members were issued wage statements/pay checks semi-monthly during the PAGA Period, a “Pay Period”.

30. “Participating Class Member(s)” means any Class Member who does not return a valid and timely request to be excluded from the Settlement. All Participating Class Members will be mailed their Settlement Payment without the need to return a claim form.

31. “Preliminary Approval” means the Court has entered the Preliminary Approval Order which preliminarily approves the terms and conditions of this Settlement, including the form and manner of providing notice to the Class.

32. “Preliminary Approval Order” means the order issued by the Court substantially in the

1 form attached as **Exhibit C** preliminarily approving the terms and conditions of this Settlement,
2 including the form and manner of providing notice to the Class.

3 33. “Released Class Claims” means any and all claims which were or could have been
4 asserted against the Released Parties based upon, arising out of, or relating to the facts or allegations
5 set forth in any complaint in the Action or the Ayala Litigation, including but not limited to claims for
6 rest periods; meal periods, including alleged rounding violations related thereto; minimum wages;
7 overtime wages; pay for all hours worked, including but not limited to alleged off-the-clock work and
8 alleged rounding violations; calculation of the regular rate and/or overtime pay; timeliness of wages;
9 payment of wages at separation of employment; waiting time penalties; itemized wage statements
10 and/or accuracy of wage statements; reimbursement of expenses; recordkeeping; unfair competition;
11 any unpaid wages or compensation related to any or all of the foregoing; any premium payments
12 related to any or all the foregoing; restitution for any or all of the foregoing; any penalties, including
13 statutory and civil penalties, related to any or all of the foregoing; attorneys’ fees or costs related to
14 any or all of the foregoing; interest related to any or all of the foregoing; and/or any other damages or
15 amounts related to any or all of the foregoing. The release includes, but is not limited to, claims
16 pursuant to California Labor Code sections 201-203, 204(a), 210, 218, 218.5, 218.6, 223, 226, 226.3,
17 226.7, 256, 510, 512, 558, 558.1, 1174(d), 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2802, and
18 2804, the applicable California Industrial Welfare Commission Wage Order, and the California
19 Business & Professions Code.

20 34. “Released PAGA Claims” means any and all claims for civil penalties alleged under
21 California Labor Code section 2698 *et seq.* (PAGA) that were asserted in any complaint in the Action
22 or the Ayala Litigation and/or Plaintiffs’ letters and communications with the LWDA (including any
23 subsequently amended complaints or letters); and/or that could have been asserted in any complaint
24 in the Action or the Ayala Litigation or Plaintiffs’ letters and communications with the LWDA based
25 on the facts and/or allegations alleged in any complaint in the Action or the Ayala Litigation and/or
26 Plaintiffs’ letters and communications with the LWDA. This release includes, but is not limited to,
27 claims for PAGA civil penalties premised on rest periods; meal periods, including alleged rounding
28 violations related thereto; minimum wages; overtime wages; pay for all hours worked, including but

1 not limited to alleged off-the-clock work and alleged rounding violations; calculation of the regular
2 rate and/or overtime pay; timeliness of wages; payment of wages at separation of employment; waiting
3 time penalties; itemized wage statements and/or accuracy of wage statements; reimbursement of
4 expenses; vacation pay; sick pay and/or sick leave; recordkeeping; any unpaid wages or compensation
5 related to any or all of the foregoing; any premium payments related to any or all the foregoing; and
6 attorneys' fees or costs related to any or all of the foregoing. Each PAGA Member, regardless of
7 whether he or she opts out of the Settlement, shall upon the Effective Date be deemed to have released
8 the Released PAGA Claims as to the Released Parties for the PAGA Period.

9 35. "Released Parties" means Zodiac and all of its former, present or future parents,
10 subsidiaries, and/or affiliates; each of the foregoing's present, former, or future owners, officers,
11 directors, shareholders, partners, employees, insurers, successors, predecessors, contractors, assigns,
12 and managing agents; any and all agents, legal representatives, and/or attorneys of all of the foregoing
13 entities or individuals; and any entities alleged to be joint employers with Zodiac.

14 36. "Request for Exclusion" means a written request from a Class Member who wishes to
15 exclude themselves from the Class and this Settlement in the manner set forth in this Agreement and
16 described in the Class Notice. Because there is no right to opt out of a PAGA settlement, if the Class
17 Member requesting to be excluded worked during the PAGA Period, he or she will be mailed his or
18 her Individual PAGA Payment based on the number of Pay Periods worked during the PAGA Period,
19 and shall release only the Released PAGA Claims.

20 37. "Response Deadline" means the deadline by which Class Members must postmark and
21 return to the Administrator signed, dated, and timely requests for exclusion from the Class, or disputes
22 concerning the number of Weeks Worked during the Class Period and/or number of Pay Periods
23 worked during the PAGA Period. The Response Deadline will be forty-five (45) calendar days from
24 the initial mailing of the Notice Packets by the Administrator, unless the 45th day falls on a Sunday
25 or Federal holiday, in which case the Response Deadline will be extended to the next day on which
26 the U.S. Postal Service is open. The Response Deadline will be extended fifteen (15) calendar days
27 for any Class Member who is re-mailed a Notice Packet by the Administrator, unless the 15th day falls
28 on a Sunday or Federal holiday, in which case the Response Deadline will be extended to the next day

on which the U.S. Postal Service is open. The Response Deadline may also be extended by express agreement between Class Counsel and Defendant's Counsel.

38. "Settlement" or "Agreement" or "Settlement Agreement" shall mean this Stipulation of Class and Representative Action Settlement and Release of Claims.

39. "Settlement Administrator" or "Administrator" means Simpluris, or any other third-party class action settlement administrator agreed to by the Parties and approved by the Court for the purposes of administering this Settlement.

40. "Settlement Administration Costs" or "Administration Costs" means the costs allocated from the Gross Settlement Amount to pay for administration of the settlement in an amount up to \$7,000, as described in this Agreement, including the formatting, printing and mailing the Notice Packets to the Class; establishing a post office box, and toll-free number for receipt of Class Member communications; checking for address updates through the National Change of Address database (prior to the mailing of the Notice Packets); skip-tracing Notice Packets returned as undeliverable; calculating Settlement Payments based on Work Weeks and Pay Periods; completing tax calculations and tax reporting to the appropriate governmental entities in connection with the Settlement Payments; issuing of 1099 and W-2 IRS Forms; preparing and delivering weekly status reports to Class Counsel and Defendant's Counsel; resolving disputed claims with the aid of the Parties' counsel; and providing all reports and declarations deemed necessary by the Parties, among other things.

41. "Settlement Payment" means the amount each Participating Class Member shall be entitled to receive from the Settlement funds as consideration for the Released Class Claims pursuant to the terms of this Agreement for all Work Weeks worked during the Class Period.

42. "Work Week" or "Weeks Worked" means any seven (7) consecutive days starting with the same calendar day each week, and in which a Class Member worked at least one day during the Class Period. For purposes of mediation and negotiations, Zodiac represented there were an estimated 34,020 Work Weeks worked by Class during the period from May 27, 2016 through May 4, 2021. The total number of Work Weeks covered by this Settlement shall be no greater than 37,422, (i.e., 10% greater than the estimated workweeks extrapolated through May 4, 2021).

PROCEDURAL HISTORY

1 43. On May 27, 2020, Omar Ayala filed a class and representative action complaint in the
2 Superior Court for the State of California, County of San Diego styled: *Omar Ayala, individually, and*
3 *on behalf of all others similarly situated, Plaintiff vs. Zodiac Pool Systems, LLC, and Fluidra USA*
4 *LLC, Defendants*, Case No. 37-2020-00017229-CU-OE-CTL (“Ayala Litigation”). The Ayala
5 Litigation complaint alleged that Defendants failed to pay minimum, regular and overtime wages,
6 including but not limited to due to rounding of time worked; failed to provide compliant meal periods,
7 including but not limited to because of rounding; failed to provide compliant rest breaks; failed to
8 reimburse business related expenses, including but not limited to for use of personal cell phones; failed
9 to provide accurate itemized wage statements; and based on these foregoing allegations, that
10 Defendants violated the Unfair Competition Law under the Business and Professions Code section
11 17200, et seq, failed to pay all wages due upon separation from employment, and asserted a claim for
12 civil penalties for the alleged Labor Code violations pursuant to PAGA.

13 44. On July 16, 2020, Defendants filed their answer to the Ayala Litigation complaint. On
14 July 20, 2020, Defendants removed the case to the United States District Court for the Southern
15 District of California (which was assigned Case No. 3:20-cv-01381-H-MSB) pursuant to the Class
16 Action Fairness Act. On October 1, 2020, the parties to the Ayala Litigation filed a Joint Motion to
17 Dismiss Defendant Fluidra USA, LLC, which the Judge Marilyn L. Huff of the United States District
18 Court for the Southern District of California granted on October 2, 2020.

19 45. On October 7, 2020, Plaintiff Antony M. Smith filed a class action complaint in the
20 above-captioned Court, styled *Antony M. Smith, individually, on behalf of himself and all persons*
21 *similarly situated, Plaintiff vs. Zodiac Pool Systems, LLC, and Does 1 through 50, inclusive,*
22 *Defendants*, Case No. 37-2020-00036431-CU-OE-NC., alleging substantially similar California Labor
23 Code violations as alleged in the Ayala Litigation, (“Smith Litigation”), i.e., that Zodiac failed to pay
24 minimum and overtime wages; pay all wages to discharged and quitting employees; provide meal and
25 rest periods; furnish accurate itemized wage statements; and maintain required records. Plaintiff Smith
26 also alleged violation of the Unfair Competition Law (Bus. & Prof. Code §§ 17200 et seq.). Plaintiff
27 Smith also sent a letter to the Labor and Workforce Development Agency asserting claims pursuant
28 to PAGA for each of the foregoing California Labor Code claims on the same date he filed his class

1 action complaint. Plaintiff Smith never effectuated service of this initial class action complaint.

2 46. Upon the Parties' agreement to attend mediation, and in order to engage in meaningful
3 discussions regarding liability and Class-wide damages at mediation, Plaintiff's Counsel requested
4 and Zodiac produced the following information, *inter alia*, which was reviewed and analyzed by
5 Plaintiff's damages consultant to calculate Class-wide damages, extrapolated through the date of
6 mediation: (a) the estimated total number of Class Member workweeks for the time period from May
7 27, 2016 extrapolated through May 4, 2021; (b) the estimated total number of Class Member shifts for
8 the time period from May 27, 2016 extrapolated through May 4, 2021; (c) the estimated total number
9 of PAGA Member pay periods for the time period from March 20, 2019 extrapolated through May 4,
10 2021; (d) the estimated total number of separated Class Members for the time period from May 27,
11 2017 to January 26, 2021 (which Plaintiff's damages consultant extrapolated through May 4, 2021);
12 (e) average Class Member hourly rate; (f) relevant Zodiac policies; (g) Plaintiffs' timekeeping records;
13 and (h) timekeeping records for a random sample of thirty-three (33) Class Members.

14 47. On May 4, 2021, the Parties participated in a private mediation session with Hon.
15 Michael Latin (Ret.), a well-regarded and experienced wage and hour class action mediator. As a
16 result of the mediation the Parties, through counsel, reached agreement and ultimately signed a
17 memorandum of understanding outlining the material terms of a proposed class action settlement to
18 fully resolve the Action in its entirety, subject to the Parties entering into a more comprehensive
19 written settlement agreement.

20 48. As a term of the proposed Settlement, a First Amended Class and Representative
21 Action Complaint was filed on October 1, 2021 in the above-captioned Smith Litigation adding Omar
22 Ayala as a named Plaintiff, and adding all the factual allegations and claims alleged in the Ayala
23 Litigation solely for the purpose of facilitating a global settlement of the Ayala and Smith Actions.

24 49. With respect to the filing of the First Amended Class and Representative Action
25 complaint, the Parties agree that Defendant shall maintain any and all affirmative defenses, but shall
26 not be required to file an Answer or other responsive pleading to the First Amended Class and
27 Representative Action Complaint and that such agreement precludes Plaintiffs from any right to:
28 (a) obtain a default judgment against Defendant on the basis that Defendant did not respond to the

1 First Amended Class and Representative Complaint; (b) argue that Defendant waived any right to a
2 demurrer or other challenge to the pleadings; and (c) argue that Defendant waived any affirmative
3 defense. If the Settlement is not granted Final Approval, Plaintiffs will withdraw the First Amended
4 Class and Representative Action Complaint and it will be void *ab initio*.

5 50. Upon the Court's order granting Final Approval of the Settlement and the time to appeal
6 has expired, the Parties will file a dismissal of the Ayala Litigation with prejudice. During the
7 processing of the Settlement in this Action, the Parties will seek an order from the United States
8 District Court for the Southern District of California seeking to stay the Ayala Litigation.

9 **PLAINTIFFS' CLAIMS**

10 51. Plaintiffs have claimed and continue to claim that the Released Claims have merit and
11 gives rise to the Released Parties' liability. Neither this Agreement nor any documents referred to, or
12 any action taken to carry out this Agreement is, or may be construed as or may be used as, an admission
13 by or against the Class Members or Class Counsel or any Party or Counsel as to the merits or lack
14 thereof of the claims asserted, except to show resolution of the Released Claims.

15 52. Class Counsel conducted informal discovery, and have diligently pursued an
16 investigation and litigation of the claims of Plaintiffs and the Class Members. Based on their own
17 independent investigation and evaluation, Class Counsel is of the opinion that the Settlement with
18 Zodiac for the consideration and on the terms of this Settlement is fair, reasonable, and adequate and
19 is in the best interest of the Class in light of all known facts and circumstances, including the risk of
20 significant delay and defenses asserted by Zodiac.

21 **NO ADMISSION OF LIABILITY**

22 53. While Zodiac specifically denies all liability in the Action, it has agreed to enter into
23 this Settlement to avoid the cost and business disruption associated with further defense of the Action.

24 54. Zodiac has denied and continues to deny that it committed any unlawful acts, and
25 contends Plaintiffs and all Class Members were treated lawfully, were not harmed by its actions, and
26 are not entitled to any recovery. This Agreement represents a compromise and settlement of the
27 Action. Neither this Agreement, nor any document referred to or contemplated, nor any action taken
28 to carry out this Agreement may be construed as, or may be used as an admission, concession, or

1 indication by or against any of the Released Parties that Plaintiffs' claims in the Action have merit or
2 that they have any fault, wrongdoing, or liability to Plaintiffs or the Class on those claims whatsoever,
3 including any concession that certification of a class continues to be appropriate in this case.

4 55. This Agreement is made for the sole purpose of consummating settlement of all causes
5 of action pending in the First Amended Class and Representative Action Complaint filed in this
6 Action. By entering into this Agreement, the Parties do not admit the allegations or contentions of the
7 other Party, and each Party is entering into this Agreement for the sole purpose of resolving this matter
8 and avoiding the time and expense incident to protracted litigation. The Released Parties specifically
9 deny all of Plaintiffs' claims as to liability and remedies, as well as Plaintiffs' class and representative
10 allegations, and expressly reserve all rights to challenge all such claims and allegations upon all
11 procedural and substantive grounds, including the assertion of any and all defenses if the Court does
12 not approve this Agreement and/or if the Settlement does not become effective as defined.

13 **CLASS ACTION CERTIFICATION FOR SETTLEMENT PURPOSES ONLY**

14 56. The Parties agree to stipulate to certification of the Class for purposes of the Settlement
15 only. If, for any reason, the Settlement is not approved and/or if the judgment following Final
16 Approval does become Final, the stipulation to certification shall be void and the Parties agree that
17 class certification will be revoked. The Parties further agree that certification for purposes of the
18 Settlement is not an admission that class action certification is proper under the standards applied to
19 contested certification motions and that this Settlement shall not be admissible in this or any other
20 proceeding as evidence that either: (i) a class action should be certified or (ii) Zodiac is liable to
21 Plaintiffs or any Class Member.

22 **INVESTIGATION IN THE CLASS ACTION**

23 57. The Parties have conducted significant investigation of the facts and law both before
24 and after the Action was filed. The Parties exchanged extensive data including time sheet reports,
25 class data, and employment policies pertinent to the claims and defenses in this matter.

26 **FAIRNESS AND BENEFITS OF SETTLEMENT TO THE CLASS**

27 58. Plaintiffs recognize the expense and length of continued proceedings necessary to
28 continue the litigation against Defendant through trial and through any possible appeals. Plaintiffs

1 have also considered the uncertainty and risk of the outcome of further litigation, and the difficulties
2 and delays inherent in such litigation, including those involved in the maintenance of class
3 certification. Plaintiffs are also aware of the burdens of proof necessary to establish liability for the
4 claims asserted in the Action, Defendant's defenses, and the difficulties in establishing damages for
5 the Class. Based on the foregoing, Plaintiffs, Class Counsel, Defendant, and Defendant's Counsel
6 have determined that the Settlement set forth in this Agreement, and its terms, are fair, adequate,
7 equitable and reasonable, the product of good faith, arms'-length negotiations between the Parties, are
8 consistent with public policy, and fully comply with applicable provisions of law, and is in the best
9 interests of all Class Members.

10 **RELEASE AS TO ALL CLASS MEMBERS**

11 59. Plaintiffs do, and all Participating Class Members will, agree that upon the Effective
12 Date, they shall be deemed to have, and by operation of the Final Approval Order and Judgment shall
13 have, released the Released Parties from the Released Class Claims. The Settlement Payments shall
14 be paid to Participating Class Members specifically in exchange for the release of the Released Parties
15 from the Released Class Claims.

16 **GENERAL RELEASE BY PLAINTIFFS**

17 60. In addition to the releases given by Participating Class Members, Plaintiffs will release
18 the Released Class Claims, the Released PAGA Claims, and shall make the additional following in
19 favor of the Released Parties upon the Effective Date:

20 a. Plaintiffs individually hereby unconditionally waive and forever release the
21 Released Parties from any and all demands, damages, debts, liabilities, actions, causes of action and
22 claims of every kind and nature whatsoever, whether now known or unknown, suspected or
23 unsuspected, contingent or non-contingent, whether or not concealed or hidden, arising or accruing at
24 any time prior to the Effective Date, which now exist, or heretofore have existed, upon any theory of
25 law or equity, including, without limitation, all claims under the Fair Employment and Housing Act,
26 Age Discrimination in Employment Act, Americans with Disabilities Act, and Title VII of the Civil
27 Rights Act of 1964. Plaintiffs are deemed by operation of the order granting Final Approval to have
28 agreed not to sue or otherwise make a claim against any of the Released Parties for any claim.

1 b. Plaintiffs acknowledge that they have each had the opportunity to review, and
2 have reviewed, California Civil Code section 1542, which provides:

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

9 Being fully informed of this provision of the Civil Code and understanding its provisions, Plaintiffs
10 agree to waive any rights under that section (or any statute or common law principle of similar effect),
11 and acknowledge that the Settlement and the release contained herein extends to all claims that they
12 have or might have against the Released Parties, including those which are presently unknown to them.

13 61. Plaintiff Ayala further understands and acknowledges that:

14 a. He is voluntarily waiving any and all rights and claims he has against the
15 Released Parties arising pursuant to the Age Discrimination in Employment Act, 29 U.S.C. §§ 623, et
16 seq. (“ADEA”) as of the date he signs the Settlement Agreement;

17 b. He is waiving these substantive rights or claims pursuant to the Settlement
18 Agreement in exchange for consideration, the value of which exceeds the payment or remuneration to
19 which he was already entitled;

20 c. He has been advised in writing to consult with an attorney of his choosing
21 concerning the Settlement Agreement prior to executing it. He further acknowledges that he sought
22 such advice, that his counsel advised him to sign the Settlement Agreement, and that his execution of
23 the Settlement Agreement is voluntary and without coercion;

24 d. He has been given at least twenty-one (21) days to consider the terms of the
25 Settlement Agreement, and in the event he decides to sign the Settlement Agreement in fewer than
26 twenty-one (21) days, he has done so with the express understanding that he had been given and
27 declined the opportunity to consider it for a full twenty-one (21) days;

28 e. He may revoke his waiver of claims arising pursuant to the ADEA at any time
during the seven (7) days following the date he signs the Settlement Agreement. Plaintiff Ayala
understands and agrees that should he revoke his waiver of claims arising pursuant to the ADEA at

1 any time during the seven (7) days following the date he signs the Settlement Agreement, he will
2 receive ten percent (10%) of his respective Court-approved Class Representative Service Payment and
3 such amount will be the consideration for the general release of all his rights and claims addressed in
4 the Settlement Agreement except any claims he may have pursuant to the ADEA. Plaintiff Ayala
5 further understands and agrees that should he not revoke his waiver of claims arising pursuant to the
6 ADEA during the seven (7) days following the date he signs the Settlement Agreement, he will receive
7 one hundred percent (100%) of his respective Class Representative Service Payment and such amount
8 will be consideration for the general release of all rights and claims addressed in the Settlement
9 Agreement, including any claims he may have pursuant to the ADEA;

10 f. Any revocation must be in writing and delivered by hand or certified mail to
11 Laura R. Petroff, Winston & Strawn LLP, 333 South Grand Avenue, 38th Floor, Los Angeles,
12 California 90071; and

13 g. Any changes to the Settlement Agreement, whether material or immaterial, do
14 not restart the twenty-one-day (21-day) consideration period.

15 **FUNDING AND DISTRIBUTION OF MAXIMUM SETTLEMENT AMOUNT**

16 62. Within 15 days of the Effective Date of the Settlement, Defendant shall pay the Gross
17 Settlement Amount of \$1,200,000 to the Administrator, together with the Employer's Tax Obligations
18 for all amounts allocated to the payment of wages as reported by the Administrator to Defendant
19 sometime prior to the Effective Date.

20 63. Within 30 days of the Effective Date of Settlement, and following the anticipated
21 Court-approved deductions for the Attorneys' Fee Award, the Attorneys' Costs, the Class
22 Representative Service Payments, the PAGA Payment, and the Administration Costs, the remaining
23 sum (the Net Settlement Amount estimated at \$730,500) will be entirely distributed to all Participating
24 Class Members on a proportionate basis using Work Weeks worked during the Class Period in relation
25 to the aggregate amount of Work Weeks worked by all Participating Class Members during the Class
26 Period. PAGA Members will also receive a share of the \$6,000 (25% of the PAGA Payment) on a
27 proportionate basis using Pay Periods worked during the PAGA Period in relation to the aggregate
28 amount of Pay Periods all PAGA Members worked during the PAGA Period.

**NOTICE/APPROVAL OF SETTLEMENT AND
SETTLEMENT IMPLEMENTATION**

64. As part of this Settlement, the Parties agree to the following procedures for obtaining Preliminary Approval of the Settlement, and providing notice of the Settlement to the Class:

A. Preliminary Approval Hearing. Class Counsel shall notice a hearing before the Court to request Preliminary Approval of the Settlement. In conjunction with this hearing, Class Counsel will submit this Agreement (including all exhibits) which set forth the terms of this Settlement.

B. Information Regarding Class. Within fourteen (14) calendar days of Preliminary Approval, Defendant shall provide to the Administrator an excel spreadsheet listing for members of the Class to the extent maintained in its business and payroll records, the following: name, most current mailing address, telephone number, social security number, dates of employment, the number of Work Weeks worked during the Class Period, and the number of Pay Periods worked during the PAGA Period (the "Class List and Data").

C. Class Notice to Class Members. The Settlement Administrator shall mail the Court-approved Notice of Class Action Settlement (Exhibit A), the Change of Address Form (Exhibit B), and preprinted return envelope ("Notice Packet") by U.S. First Class Mail to all persons shown by Defendant's records to be Class Members.

D. Settlement Administrator. The Administrator shall be responsible (a) for printing and mailing the Notice Packet as directed by the Court; (b) establishing a toll-free number and post-office box for receipt of Class Member communications; (c) receiving and reviewing all communications from Class Members and others seeking information on eligibility as a Class Member; (d) consulting with counsel for the Parties as necessary concerning the data, resolution of disputed claims, and status of the settlement process; (e) receiving and tracking Class Member communications; (f) issuing weekly status reports; (g) calculating the Employer Tax Obligations arising from the Settlement Payments; (h) calculating all Settlement Payments, including applicable taxes and withholdings, from the Gross Settlement Amount; (i) distributing Settlement Payments to Participating Class Members and Individual PAGA Payments to PAGA Members as Ordered by the

1 Court; (j) submitting tax documents to applicable taxing authorities; (k) handling uncashed checks; (l)
2 cooperating with counsel for the Parties as necessary to prepare declarations in support of the motion
3 for preliminary and/or final approval of the Settlement; and (m) for such other tasks as the Parties set
4 forth in this Agreement or as the Parties mutually agree or the Court orders the Settlement
5 Administrator to perform. The Parties each represent they do not have any financial interest in the
6 Administrator or otherwise have a relationship with the Administrator that could create a conflict of
7 interest. The Parties agree to cooperate in the settlement administration process and to make all
8 reasonable efforts to control and minimize the Settlement Administration Costs.

9 **CLASS NOTICE**

10 65. The Parties agree to the following procedures for giving notice of this Settlement to the
11 Class:

12 A. After conducting a National Change of Address (“NCOA”) search on all Class
13 Members and making the address corrections indicated, the Administrator shall mail the Notice Packet
14 to each Class Member by first class U.S. Mail within ten (10) business days of receipt of the Class
15 List and Data. The envelope containing the Notice Packet shall include the following language on the
16 exterior:

17 **IMPORTANT LEGAL DOCUMENT:**
18 **You may get Money from a Class Action**
19 **Settlement; your prompt reply to correct a**
20 **BAD address is required.**

21 B. Notice Packets returned to the Administrator with a forwarding address shall be
22 remailed within five (5) business days of receipt of the returned Notice Packet. All Notice Packets
23 returned to the Administrator as non-deliverable shall be researched by the Administrator using the
24 Class Member’s social security number to determine any possible new address, and if a new address
25 is located, the Notice Packet shall be remailed within five (5) business days of receipt of the returned
26 Notice Packet. Class Members who receive a remailed Notice Packet shall have their Response
27 Deadline extended fifteen (15) calendar days from the original Response Deadline. If a Notice Packet
28 belonging to a currently employed Class Member is returned as undeliverable, the Administrator will
notify the Parties and Defendant shall thereafter confirm the most recent address they have and provide

1 the same to the Administrator for remailing of the Notice Packet within five (5) business days of
2 receipt of the updated address.

3 C. Class Members will be responsible for keeping the Administrator apprised of
4 any changes of address to ensure receipt of their Settlement Payment checks.

5 **PROCEDURE FOR DISPUTING INFORMATION IN CLASS NOTICE OR OBJECTING**
6 **TO OR REQUESTING EXCLUSION FROM THE SETTLEMENT**

7 66. Class Members who wish to dispute information contained in their Class Notice, object
8 to the Settlement, and/or exclude themselves from the Class shall use the following procedures:

9 A. Procedure for Disputing Information on Class Notice. Each Class Member
10 may dispute the number of Work Weeks or Pay Periods attributed to him or her in the Class Notice
11 and must submit such a dispute to the Settlement Administrator on or before the Response Deadline.
12 If a Class Member disputes the number of Work Weeks or Pay Periods listed in the Class Notice, the
13 Class Member may produce evidence to the Settlement Administrator demonstrating that such
14 information is inaccurate. Absent evidence rebutting Defendant's records, Defendant's records will be
15 determinative.

16 B. Procedure for Objecting. Any Class Member who has not timely and properly
17 opted out (i.e., any Participating Class Member) shall have the right to object to the Settlement in
18 writing. To object, a Participating Class Member may mail his/her written objection by the Response
19 Deadline. A Participating Settlement Class may also appear at the Final Approval hearing to have their
20 objections heard by the Court. All written objections must include: (a) the objector's full name, current
21 address, and telephone number; (b) the case name and number (*Smith and Ayala v. Zodiac Pool*
22 *Solutions LLC*, Case No. 37-2020-0036431-CU-OE-NC); (c) the basis of the objection, including the
23 reasons why the objector believes that the Court should find that the Settlement is not in the best
24 interests of the Class and why the Settlement should not be approved; and (d) any and all supporting
25 papers (including, without limitation, all briefs, written evidence, and declarations) for which the
26 objection is based. The written objection must be mailed to the Settlement Administrator, who will
27 forward the objection to the Parties for submission to the Court, and be postmarked on or before the
28 Response Deadline. The postmark date of the mailing shall be deemed the exclusive means for

1 determining whether a written objection is timely. Alternatively, even if written objections are not
2 made, Participating Class Members may still appear at the Final Approval hearing to orally object.
3 Participating Class Members who fail to make objections in the manner specified above specified in
4 this Paragraph shall be deemed to have waived any objections and shall be foreclosed from making
5 any objections (whether by appeal or otherwise) to the Settlement. Participating Class Members shall
6 be permitted to withdraw their objections in writing by submitting a withdrawal statement to the
7 Settlement Administrator, orally at the Final Approval hearing, or as otherwise ordered by the Court.

8 C. Procedure for Requesting Exclusion. Class Members must return a written
9 statement (as directed by the Class Notice) requesting exclusion no later than the Response Deadline.
10 The written request for exclusion must contain the Class Member's name, address, telephone number,
11 the last four (4) digits of his/her social security number, and signature and state the following: I wish
12 to opt-out of the settlement of the lawsuit titled *Smith and Ayala v. Zodiac Pool Solutions LLC* (or
13 words to a similar effect). In the event that the postmark is illegible, the request for exclusion shall be
14 deemed untimely unless it is received within five (5) calendar days of the Response Deadline. Any
15 eligible person who properly opts out of the Class using this procedure will not be entitled to any
16 payment from the Gross Settlement Amount (other than an Individual PAGA Payment to the extent
17 applicable) and will not be bound by the Settlement or have any right to object, appeal, or comment
18 thereon. However, those Class Members who return a valid and timely Request for Exclusion will
19 still receive a an Individual PAGA Payment based on the number of Pay Periods they worked during
20 the PAGA Period, and shall release only the Released PAGA Claims. Class Members who do not
21 submit a valid and timely request for exclusion in the manner described in this paragraph, shall receive
22 a Settlement Payment and shall be bound by all terms of the Settlement and any Judgment entered in
23 this Action if the Settlement is approved by the Court, regardless of whether they ineffectively or
24 untimely request exclusion from the Settlement.

25 D. Defective Submissions. If a Class Member's request for exclusion is defective
26 as to any of the requirements listed above or in the Class Notice, that Class Member shall be given an
27 opportunity to cure the defect(s). The Administrator shall mail the Class Member a cure letter within
28 three (3) business days of receiving the defective submission to advise the Class Member that his or

1 her submission is defective and that the defect must be cured to render the Request for Exclusion valid.
2 The Class Member shall have until (i) the Response Deadline or (ii) ten (10) calendar days from the
3 date of the cure letter, whichever date is later, to postmark a revised request for exclusion. If the
4 revised request for exclusion is not postmarked within that period, it shall be deemed untimely. Class
5 Members shall be limited to one cure letter advising them of the defect. A Class Member who submits
6 an invalid or untimely request to be excluded will remain a Class Member, will receive their Settlement
7 Payment, and will be bound by the releases herein and judgment entered. The invalid and untimely
8 request for exclusion shall be deemed null and void.

9 E. Option to Reject the Settlement. No later than five (5) business days after the
10 close of the regular or extended Response Deadline, whichever is later, the Administrator shall provide
11 to Class Counsel and Defendant's Counsel a complete list of all persons who have timely requested
12 exclusion from the Class. If ten (10) percent or more of the Class Members opt out of the Settlement
13 by submitting timely requests for exclusion, Defendant will have the option at its sole discretion of
14 rejecting the Settlement in its entirety. Counsel for Defendant shall make such election to reject the
15 Settlement in a writing served on Class Counsel no later than ten (10) business days following the
16 issuance of the Administrator's notification of the persons who timely requested exclusion from the
17 Class. If Defendant makes this election, it will assume full responsibility for the payment of the
18 Administrator's fees and costs through the date of their election.

19 **NO SOLICITATION OF SETTLEMENT OBJECTIONS OR EXCLUSIONS**

20 67. The Parties agree to use their best efforts to carry out the terms of this Agreement. At
21 no time shall any Party or their counsel or agents (or the Administrator) seek to solicit or otherwise
22 encourage anyone to submit written objections to the Settlement or requests for exclusion from eligible
23 Class Members, or encourage anyone to appeal from the Court's Judgment.

24 **CALCULATION OF SETTLEMENT PAYMENTS**

25 **AND TAX OBLIGATIONS PAYMENT**

26 68. The Settlement Administrator shall have the authority and obligation to calculate the
27 amounts of Settlement Payments in accordance with the methodology set forth in this Agreement and
28 orders of the Court. Each Participating Class Member will be eligible to receive a Settlement Payment

1 based upon his/her individual compensable Work Weeks worked during the Class Period, and Pay
2 Periods worked during the PAGA Period. The Settlement Payment available to each Participating
3 Class Member will be determined by dividing the compensable Work Weeks worked by the individual
4 Participating Class Member by the aggregate sum of compensable Work Weeks worked by all
5 Participating Class Members and multiplying that value by the Net Settlement Amount.

6 69. The Parties agree the formula for allocating the Settlement Payments to the Class is
7 reasonable and that the payments are designed to provide a fair settlement to the Class, despite the
8 uncertainties of the compensation and penalties alleged to be owed to the Class and the calculation of
9 them.

10 70. The Parties agree that 50% of each Settlement Payment shall be deemed wages for
11 which the Settlement Administrator shall make all ordinary deductions from each Participating Class
12 Member's Settlement Payment for local, state, and federal taxes and withholdings or any other
13 applicable payroll deductions. The Parties further agree that 50% of the Settlement Payment represents
14 the payment of penalties and interest. The amount allocated as wages shall be reported on the IRS
15 Form W-2. The amounts allocated as penalties and interest shall be reported on the IRS Form 1099.
16 The W-2 and 1099 forms shall be provided to the respective Participating Class Members, the
17 Plaintiffs, and the applicable governmental authorities by the Settlement Administrator.

18 71. Each Participating Class Member will be responsible for paying all applicable local,
19 state, and federal taxes on Settlement Payments paid under the terms of this Settlement, as described
20 above. Each Participating Class Member shall cooperate with Defendant and the Administrator and
21 provide documentation as requested to demonstrate such payment should any taxing authority
22 challenge the allocation of the Settlement Payments.

23 72. The Settlement Administrator shall be responsible for issuing to Plaintiffs, and
24 Participating Class Members, the requisite IRS W-2 and 1099 forms, or other tax forms as may be
25 required by law for all amounts paid pursuant to this Settlement. It shall be the responsibility of the
26 Administrator or its designee to timely calculate and withhold from the Settlement Payments all
27 Participating Class Member tax obligations on the portion allocated as wages; to timely calculate and
28 withhold from the Gross Settlement Amount the appropriate payroll deductions and necessary

1 Employer Tax Obligations; and to prepare and deliver the necessary tax documentation for signature
2 by all necessary parties and, thereafter, to cause the appropriate deposits of withholding taxes and
3 informational and other tax return filings to occur. Once received from Defendant, the Administrator
4 shall pay the Employer Tax Obligations arising out of the Settlement Payments to the appropriate
5 taxing authorities.

6 73. Defendant makes no representations as to the tax treatment or legal effect of the
7 payments called for hereunder, and Plaintiffs and Participating Class Members are not relying on any
8 statement or representation by Defendant in this regard. Plaintiffs and Participating Class Members
9 understand and agree that except for Defendant's payment of the employer's portion of any payroll
10 taxes, they will be solely responsible for the payment of any taxes and penalties assessed on the
11 payments described herein.

12 **ATTORNEYS' FEES AND LITIGATION COSTS PAYMENT AND**
13 **PLAINTIFFS' SERVICE PAYMENT**

14 74. Subject to Court approval, Class Counsel shall be paid up to one-third of the Gross
15 Settlement Amount, \$400,000, as Attorneys' Fees and up to \$18,500 as reimbursement of litigation
16 costs. Class Counsel shall not be permitted to petition the Court for, or accept, any additional payments
17 for fees or costs. The amounts paid in fees and costs shall be for all claims for attorneys' fees,
18 expenses, or costs past, present, and future incurred in the Action. Defendant shall not oppose Class
19 Counsel's Attorneys' Fees and Litigation Costs Payment requests in these amounts.

20 75. The Attorneys' Fees and Litigation Costs Payments to Class Counsel shall constitute
21 full satisfaction of any obligation to pay any amounts to any person, attorney, or law firm for attorneys'
22 fees, expenses, or costs in the Action incurred by any attorney on behalf of the Plaintiffs and the Class,
23 and shall relieve the Released Parties of any other claims or liability to any other attorney or law firm
24 for any attorneys' fees, expenses, and/or costs to which any of them may claim to be entitled on behalf
25 of the Plaintiffs and/or the Class.

26 76. Plaintiff Omar Ayala and Plaintiff Antony Smith shall each be paid up to \$10,000 as a
27 Class Representative Service Payment for having initiated the Action, work performed in furtherance
28 of the Action, and the risks associated with the payment of attorneys' fees and costs in the event this

1 matter had not successfully concluded, for the substantial benefits conferred upon all members of the
2 Class, and a General Release of all claims. Zodiac shall not oppose the Class Representative Service
3 Payment requests in this amount. The Class Representative Service Payment approved by the Court
4 shall be a part of, and paid from, the Gross Settlement Amount. This payment shall not have any state
5 or federal taxes withheld and shall be reported on an IRS Form 1099 and provided to each Plaintiff
6 and applicable governmental authorities by the Administrator. Plaintiffs shall be responsible for
7 characterizing this payment for tax purposes and for paying any taxes owing.

8 77. Plaintiffs' Class Representative Service Payments will be paid in addition to the
9 Settlement Payment that all Class Members are entitled to receive. To the extent the Court does not
10 approve the full amount of requested Attorneys' Fees, Litigation Costs, and/or Class Representative
11 Service Amounts, the non-approved portion of the amounts will become a part of the Net Settlement
12 Amount.

13 **PAGA PAYMENT**

14 78. The Parties have allocated Twenty-Four Thousand Dollars (\$24,000) to settle the the
15 Released PAGA Claims pursuant to the Private Attorney Generals Act, Labor Code § 2699. Labor
16 Code § 2699(i) requires any settlement under this section be distributed 75% to the State's Labor and
17 Workforce Development Agency ("LWDA") for enforcement of labor laws and education of
18 employers and 25% to the PAGA Members. Accordingly, \$18,000 will be issued and paid to the
19 LWDA, and the remaining \$6,000 will be distributed to PAGA Members on a proportional basis based
20 on the number of Pay Periods worked during the PAGA Period. The PAGA Payment is in full
21 settlement of the Released PAGA Claims as to the PAGA Members against the Released Parties for
22 the PAGA Period.

23 **DEFENDANT'S LEGAL FEES**

24 79. All of Defendant's own legal fees, costs, and expenses incurred in the Action as well
25 as the employment related taxes normally paid by an employer shall be borne by Defendant.

26 **FINAL APPROVAL HEARING AND ENTRY OF ORDER AND JUDGMENT**

27 80. Following the Response Deadline, the Parties will ask the Court to conduct a Final
28 Approval Hearing. Upon final approval of the Settlement by the Court at or after the Final Approval

1 Hearing, the Parties shall present the Final Approval Order and the Judgment to the Court for its
2 approval and entry. Class Counsel shall submit the final approval papers to Defendant's Counsel for
3 their review prior to filing such papers with the Court.

4 **PROCEDURE FOR PAYMENT OF SETTLEMENT PAYMENTS**

5 81. Following Final Approval, and solely for purposes of this Agreement, the Settlement
6 Payments shall be distributed in accordance with the following eligibility requirements:

7 A. Participating Class Members. All Participating Class Members shall receive a
8 Settlement Payment under the plan of allocation and will be bound by the terms of the Settlement and
9 any order or judgment entered by the Court approving this Settlement.

10 B. Class Members Who Request Exclusion. Class Members who return a valid
11 and timely request for exclusion will not release any Class claims and will not be bound by this
12 Settlement or any order or judgment entered by the Court approving this Settlement, except that they
13 will still release the Released PAGA Claims, and will receive his or her share of the \$6,000 PAGA
14 Payment (their Individual PAGA Payment) based on the number of Pay Periods worked during the
15 PAGA Period.

16 82. Settlement Payments to Participating Class Members shall be paid pursuant to the
17 formula and at the times set forth in this Agreement.

18 83. Any Settlement Payment checks issued to Class Members shall remain valid and
19 negotiable until 120 calendar days after the date of issuance of the Settlement Payment checks, and
20 may thereafter automatically be canceled if not cashed by a Participating Class Member within that
21 time. All sums represented by uncashed checks will be transmitted to the State Controller's Office,
22 Unclaimed Property Division for further handling on behalf of the Class Members whose checks were
23 voided.

24 84. If a Class Member has not cashed a Settlement Payment check by the 30th day after
25 the date of the check's issuance, the Administrator shall send a postcard to the Class Members
26 reminding them to cash their check before the void date.

27 85. No person shall have any claim against the Released Parties, Defendant's Counsel, the
28 Plaintiffs, the Class, Class Counsel, or the Administrator based on mailings, calculations, distributions

1 and payments made in accordance with or pursuant to this Agreement.

2 **NULLIFICATION OF SETTLEMENT AGREEMENT**

3 86. In the event: (i) the Court does not enter any Order as requested; (ii) the Court does not
4 finally approve the Settlement; (iii) the Court does not enter a Judgment which becomes final, or (iv)
5 the Settlement does not become effective for any other reason, including Defendant's decision to reject
6 the Settlement in the event Class Members representing more than ten percent (10%) of the Work
7 Weeks timely request exclusion, or an objection which is sustained in the trial court and on all appeals,
8 this Agreement shall be null and void and any order or judgment entered by the Court in furtherance
9 of this Settlement shall be treated as withdrawn or vacated by stipulation of the Parties. In such a case,
10 the Parties shall be returned to their respective statuses as of the date and time immediately before the
11 execution of this Agreement, and the Parties shall proceed in all respects as if this Agreement had not
12 been executed. In the event an appeal is filed from the Court's Judgment, or any other appellate review
13 is sought prior to the Effective Date, administration of the Settlement shall be stayed pending final
14 resolution of the appeal or other appellate review.

15 **NOTIFICATION AND CERTIFICATION BY SETTLEMENT ADMINISTRATOR**

16 87. The Settlement Administrator shall keep Defendant's Counsel and Class Counsel
17 apprised of all distributions of Settlement Payments and upon completion of administration of that
18 portion of the Settlement, the Settlement Administrator shall provide written certification of progress
19 of such completion to counsel for all Parties and the Court as requested.

20 **NO EFFECT ON EMPLOYEE BENEFITS**

21 88. The Settlement Payments issued and paid to Participating Class Members and the Class
22 Representative Service Payments issued and paid to Plaintiffs shall be deemed not to be "pensionable"
23 earnings and shall not have any effect on the eligibility for, accrual of, or calculation of, any of the
24 employee benefits (e.g. vacations, holiday pay, retirement plans, 401K, Employee Stock Purchase
25 Plan, etc.) of the Plaintiffs or Participating Class Members. The Parties agree that any Settlement
26 Payments to Participating Class Members and the Class Representative Service Payments under the
27 terms of this Agreement do not represent any modification of Participating Class Members' previously
28 credited hours of service or other eligibility criteria under any employee stock purchase plan, employee

1 pension benefit plan, or employee welfare benefit plan sponsored by Defendant (if any). Further, any
2 Settlement Payments or Class Representative Service Payments shall not be considered
3 “compensation” in any year for purposes of determining eligibility for, or benefit accrual within, an
4 employee stock purchase plan, employee pension benefit plan, or employee welfare benefit plan
5 sponsored by Defendant (if any).

6 **GENERAL PROVISIONS**

7 89. Confidentiality Preceding Preliminary Approval. Plaintiffs and Class Counsel agree not
8 to file a press release regarding the Settlement, respond to press/media inquiries regarding the
9 Settlement (except to refer the person inquiring to the Court file), or otherwise publicize the terms of
10 this Settlement prior to the filing of the motion for preliminary approval of the Settlement. This
11 Paragraph does not apply to prevent any necessary disclosure to the Court to seek approval of the
12 Settlement, any court filings, or the Class Notice to be sent to the Class Members and PAGA Members
13 by the Administrator.

14 90. Exhibits. The terms of this Agreement include the terms included in Exhibits A-D,
15 which are incorporated by reference as though fully set forth. Any exhibits to this Agreement are an
16 integral part of the Settlement. Any changes to exhibits following preliminary approval by the Court,
17 shall be approved by all Parties, but shall not be re-submitted to the Court if changes are minor,
18 clerical, and do not materially alter the originally submitted documents.

19 91. Headings. The descriptive headings of any paragraphs or sections of this Agreement
20 are inserted for convenience of reference only and do not constitute a part of this Agreement.

21 92. Interim Stay of Proceedings. The Parties agree to hold all proceedings in the Action,
22 except such proceedings necessary to implement and complete the Settlement, in abeyance pending
23 the Final Approval Hearing to be conducted by the Court.

24 93. Amendment or Modification. This Agreement may be amended or modified only by
25 a written instrument signed by counsel for all Parties or their successors-in-interest.

26 94. Entire Agreement. This Agreement and any attached Exhibits constitute the entire
27 agreement among these Parties, and no oral or written representations, warranties, inducements, or
28 covenants have been made to any Party concerning this Agreement or its Exhibits other than the

1 representations, warranties, inducements, and covenants contained and memorialized in such
2 documents. All prior or contemporaneous negotiations, agreements, understandings, and
3 representations, whether written or oral, are expressly superseded and are of no further force and effect.
4 Each of the Parties acknowledges that it has not relied on any promise, representation, or warranty,
5 express or implied, not contained in this Agreement.

6 95. Authorization to Enter Into the Settlement Agreement. Counsel for all Parties warrant
7 and represent that they are expressly authorized by the Parties whom they represent to negotiate this
8 Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant
9 to this Agreement to effectuate its terms, and to execute any other documents required to effectuate
10 the terms of this Agreement. The Parties and their counsel will cooperate with each other and use their
11 best efforts to affect the implementation of the Settlement. In the event the Parties are unable to reach
12 agreement on the form or content of any document needed to implement the Settlement, or on any
13 supplemental provisions that may become necessary to effectuate the terms of this Settlement, the
14 Parties may seek the assistance of the Mediator (the Hon. Michael Latin (Ret.)) or the Court to resolve
15 such disagreement.

16 96. Enforcement Actions. In the event that one of the Parties institutes any legal action or
17 other proceeding against the other Party to enforce the provisions of this Settlement or to declare rights
18 and/or obligations under this Settlement, the successful Party or Parties shall be entitled to recover
19 from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including reasonable
20 expert witness fees incurred in connection with any enforcement actions.

21 97. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms and
22 conditions of this Settlement. Accordingly, this Settlement shall not be construed more strictly against
23 one party than another merely by virtue of the fact that it may have been prepared by counsel for one
24 of the Parties, it being recognized that, because of the arms-length negotiations between the Parties,
25 all Parties have contributed to the preparation of this Settlement.

26 98. Binding Agreement. Subject to the limitations in Paragraph 86, the Parties intend that
27 this Agreement shall be fully enforceable and binding on all Parties, including Class Members, and
28 that it shall be admissible and subject to disclosure in any proceeding to enforce its terms,

1 notwithstanding the mediation confidentiality provisions that otherwise might apply under federal or
2 state law. The Parties further agree that this Agreement is enforceable pursuant to California Code of
3 Civil Procedure section 664.6.

4 99. Binding on Successors. This Agreement shall be binding upon, and inure to the benefit
5 of, the heirs, beneficiaries, or successors of the Parties.

6 100. Assignment. None of the rights, commitments, or obligations recognized under this
7 Agreement may be assigned by any Party, Class Member, Class Counsel, or Defendant's Counsel
8 without the express written consent of each other Party and their respective counsel. The
9 representations, warranties, covenants, and agreements contained in this Agreement are for the sole
10 benefit of the Parties under this Agreement, and shall not be construed to confer any right or any
11 remedy to any other person.

12 101. California Law Governs. All terms of this Agreement and the Exhibits shall be
13 governed by and interpreted according to the laws of the State of California.

14 102. Venue. Any adjudicated dispute regarding the interpretation or validity of or otherwise
15 arising out of this Agreement, or relating to the Action or the Released Claims, shall be subject to the
16 exclusive jurisdiction of the Court in which the Parties seek approval of this Settlement, and the
17 Plaintiffs, Class Members, and Defendant agrees to submit to the personal and exclusive jurisdiction
18 and venue of that Court.

19 103. Counterparts. This Agreement may be executed in one or more counterparts. All
20 executed counterparts and each of them shall be deemed to be one and the same instrument.

21 104. Facsimile and Electronic Signatures. A signed facsimile or electronic version of this
22 Agreement shall have the same force and effect as a signed original of this Agreement.

23 105. Jurisdiction of the Court. The Court shall retain jurisdiction solely with respect to the
24 interpretation, implementation, and enforcement of the terms of this Agreement and all orders and
25 judgments entered in connection with the Agreement, and the Parties and their counsel submit to the
26 jurisdiction of the Court for purposes of interpreting, implementing, and enforcing this Agreement and
27 all related orders and judgments entered in connection. In the event judicial intervention or
28 enforcement is necessary, the prevailing Party shall be entitled to an award of attorneys' fees, costs

1 and interest.

2 106. Cooperation and Drafting. Each of the Parties has cooperated in the drafting and
3 preparation of this Agreement; and the drafting of this Agreement shall not be construed against any
4 of the Parties.

5 107. Invalidity of Any Provision. The Parties request that before declaring any provision of
6 this Agreement invalid, the Court shall first attempt to construe all provisions valid to the fullest extent
7 possible consistent with applicable precedents.

8 108. Notices. Unless otherwise specifically provided, all notices, demands or other
9 communications given shall be in writing and shall be deemed to have been duly given by the third
10 business day after mailing by United States registered or certified mail, return receipt requested,
11 addressed as follows:

12
13 **To Plaintiffs and the Class:**

14 COHELAN KHOURY & SINGER
15 Diana M. Khoury / J. Jason Hill / Rosemary Khoury
605 C Street, Suite 200
San Diego, California 92101

16 **To Defendant Zodiac Pools Systems LLC:**

17 WINSTON & STRAWN LLP
18 Laura R. Petroff / Tristan R. Kirk
333 South Grand Avenue, 38th Floor
19 Los Angeles, California 90071

20 IN WITNESS THEREOF, the Parties hereto have so agreed.

21 Plaintiff/Class Representative

22
23 Dated: _____, 2021

24 Antony M. Smith

25 Plaintiff/Class Representative

26 Dated: _____, 2021

27 Omar Ayala

28 ///

///

1 and interest.

2 106. Cooperation and Drafting. Each of the Parties has cooperated in the drafting and
3 preparation of this Agreement; and the drafting of this Agreement shall not be construed against any
4 of the Parties.

5 107. Invalidity of Any Provision. The Parties request that before declaring any provision of
6 this Agreement invalid, the Court shall first attempt to construe all provisions valid to the fullest extent
7 possible consistent with applicable precedents.

8 108. Notices. Unless otherwise specifically provided, all notices, demands or other
9 communications given shall be in writing and shall be deemed to have been duly given by the third
10 business day after mailing by United States registered or certified mail, return receipt requested,
11 addressed as follows:

12 **To Plaintiffs and the Class:**

13 COHELAN KHOURY & SINGER
14 Diana M. Khoury / J. Jason Hill / Rosemary Khoury
15 605 C Street, Suite 200
San Diego, California 92101

16 **To Defendant Zodiac Pools Systems LLC:**

17 WINSTON & STRAWN LLP
18 Laura R. Petroff / Tristan R. Kirk
333 South Grand Avenue, 38th Floor
19 Los Angeles, California 90071

20 IN WITNESS THEREOF, the Parties hereto have so agreed.

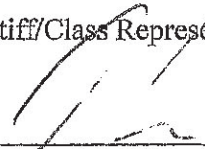
21 Plaintiff/Class Representative

22 Dated: 11/19/2021, 2021

23 
Antony M. Smith

24 Plaintiff/Class Representative

25 Dated: 2/22/2022, 2021

26 
27 Omar Ayala
28 ///

///

Defendant, Zodiac Pool Systems LLC

Dated: November 15, 2021


Troy Franzen, President

THE LAW OFFICE OF MATT BLUM

Dated: _____, 2021

By: _____
Matt Blum
Attorney for Plaintiff Antony M. Smith

COHELAN KHOURY & SINGER
LAW OFFICES OF SAHAG MAJARIAN II

Dated: _____, 2021

By: _____
Diana M. Khoury
J. Jason Hill
Rosemary C. Khoury
Attorney for Plaintiff Omar Ayala

WINSTON & STRAWN LLP

Dated: November 16, 2021

By: 
Laura R. Petroff
Tristan R. Kirk
Attorneys for Defendant Zodiac Pool Systems LLC

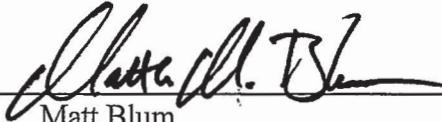
Defendant, Zodiac Pool Systems LLC

Dated: _____, 2021

Troy Franzen, President

THE LAW OFFICE OF MATT BLUM

Dated: November 23, 2021

By: 
Matt Blum
Attorney for Plaintiff Antony M. Smith

COHELAN KHOURY & SINGER
LAW OFFICES OF SAHAG MAJARIAN II

Dated: 11/23, 2021

By: 
Diana M. Khoury
J. Jason Hill
Rosemary C. Khoury
Attorney for Plaintiff Omar Ayala

WINSTON & STRAWN LLP

Dated: _____, 2021

By: _____
Laura R. Petroff
Tristan R. Kirk
Attorneys for Defendant Zodiac Pool Systems LLC

EXHIBIT A

*This Notice was authorized by the Court. This is not a solicitation from a lawyer.
This is not a lawsuit against you and you are not being sued.
However, your legal rights are affected whether you act or don't act.*

NOTICE OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT

*Smith and Ayala vs. Zodiac Pool Systems, LLC.
Superior Court of California, County of San Diego – North County Division,
Case No. 37-2020-00036431-CU-OE-NC*

TO: CLASS MEMBERS - All individuals who were employed by Zodiac Pool Systems, LLC in any non-exempt position in California at any time from May 27, 2016 through August 2, 2021 (the “Class Period”), (“the Class” or “Class Members”).

PAGA MEMBERS - All individuals who were employed by Zodiac Pool Systems, LLC in any non-exempt position in California at any time from March 20, 2019 through August 2, 2021 (the “PAGA Period”), (the “PAGA Members”).

You have been identified as a Class Member and/or PAGA Member in a lawsuit, and you could get a money payment from a proposed Settlement of the lawsuit without the need to return a claim form. This Notice is to tell you about the proposed Settlement and to explain your options in this case. Your legal rights are affected whether you act or don't act.

Please read this notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
DO NOTHING TO RECEIVE A PAYMENT	If the Court approves the Settlement, you will receive a Settlement Payment without needing to do anything and you will release your claims against Zodiac as described below. Your estimated Settlement Payment [see, Paragraph 9] will be automatically mailed to you after the Court grants final approval of the Settlement. <i>You must, however, keep a current address on file with the Settlement Administrator to ensure receipt of your award.</i>
DO NOTHING, BUT GET YOUR OWN LAWYER	You will still be a Participating Class Member, but you can hire your own lawyer to represent you. You must pay your lawyer's fees and costs.
UPDATE YOUR ADDRESS	Update your personal information with the Settlement Administrator to make sure your Settlement Payment is sent to the correct address. (A Change of Address Form and return envelope are enclosed with this Notice.)

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
EXCLUDE YOURSELF (OPT OUT)	You may ask to exclude yourself from the Settlement (to opt out) if you do not wish to participate in the Settlement. See Paragraph 15. If you exclude yourself, you will not release any Released Class Claims, but you will still receive an Individual PAGA Payment and will release the Released PAGA Claims alleged in the case (to the extent you are a PAGA Member). This is the only option that allows you to pursue your own claims (in your own lawsuit) against Zodiac about the legal claims raised in this case.
OBJECT	You may object to the Settlement. See Paragraph 18. If the Court approves the Settlement despite your objection, you will still be bound by the terms of the Settlement, and a Settlement Payment will be mailed to you and you will release your claims against Zodiac. Your objection may be submitted in writing, or you may appear at the time of the Final Approval Hearing to comment orally upon the Settlement.

- **YOUR RIGHTS AND OPTIONS – AND THE DEADLINES TO EXERCISE THEM – ARE EXPLAINED IN THIS NOTICE.**
- **ZODIAC DENIES ALL OF THE CLAIMS AND DENIES THAT IT IS LIABLE AT ALL, BUT SUPPORTS THE SETTLEMENT AND WILL NOT RETALIATE IN ANY MANNER AGAINST ANY CLASS MEMBER WHO REMAINS IN THE CLASS AND RECEIVES A SETTLEMENT PAYMENT.**

BASIC INFORMATION

1. Why did I receive this Notice?

You received this Notice because the company records of ZODIAC POOL SYSTEMS, LLC (“ZODIAC”) show you were employed by Zodiac in California as a non-exempt employee sometime during the period from May 27, 2016 through August 2, 2021.

The Court authorized this Notice because you have a right to know about a proposed Settlement of a class action lawsuit, and about all of your options, before the Court decides whether to approve it. This Notice explains the lawsuit, the Settlement, your rights, the benefits available, and how to get them.

2. What is this Lawsuit about?

This Settlement involves two cases: (1) *Omar Ayala v. Zodiac Pool Systems LLC* (United States District Court for the Southern District of California, Case No. 3:20-cv-01381-H-MSB) (“*Ayala Case*”); and (2) *Antony M. Smith v. Zodiac Pool Systems LLC* (Superior Court of California, County of San Diego, Case No. 37-2020-00036431-CU-OE-NC) (“*Smith Case*”). The *Ayala Case* was filed on May 27, 2020, and the *Smith Case* was filed on October 7, 2020. Both Plaintiffs Omar Ayala and Antony M. Smith (“*Plaintiffs*”) filed their lawsuits on behalf of themselves and all Class Members and PAGA members. On October 1, 2021, a First Amended Complaint was filed in the *Smith Case* which added Omar Ayala as a named Plaintiff and thus, this Settlement is being processed as *Smith and Ayala vs. Zodiac Pool Systems, LLC*, Case No. 37-2020-00036431-CU-OE-NC, in the Superior Court of California for the County of San Diego (the “*Lawsuit*” or “*Action*”).

The Plaintiffs have alleged that Zodiac failed to pay minimum, regular and overtime wages, including due to off-the-clock work and rounding of time worked; failed to provide compliant duty-free meal periods (including due to rounding) and rest breaks and/or pay premium wages (proper or otherwise) for non-compliant meal and rest breaks; failed to reimburse business-related expenses, including for use of personal cell phones; and based on these foregoing allegations, asserted a claim under the California Unfair Competition Law, claims for inaccurate itemized wage statements, a claim that Zodiac failed to timely pay final wages upon separation from employment, and claims for civil penalties for Labor Code violations pursuant to the California Labor Code Private Attorneys General Act, (“PAGA”).

Zodiac denies all liability for these claims and contends that its employment practices have always complied with applicable laws. Zodiac has asserted factual and legal defenses to Plaintiffs’ claims. Nonetheless, without admitting any liability and in the interest of resolving this dispute, Plaintiffs and Zodiac have agreed to the settlement described below. The Settlement is not an admission that Zodiac did anything wrong or an indication any law was violated.

3. What is a Class Action?

In a class action, a person called a Class Representative (here, Antony Smith and Omar Ayala) sue on behalf of themselves and other people who may have similar claims. The group of people with similar claims is called a “Class.” Each person covered by the Class definition is a “Class Member.” One court decides the issues for all Class Members.

4. Why is there a Settlement?

The Court did not decide in favor of Plaintiffs or Defendant Zodiac. Instead, both sides agreed to a settlement of the Lawsuit (“Settlement”). That way, they avoid the cost of a trial, and members of the Class get compensation from the Settlement. Messrs. Smith and Ayala (who were appointed the Class Representatives in this Lawsuit by the Court) and their attorneys (who were appointed Class Counsel by the Court to represent all Class Members), believe the Settlement is in the best interests of all Class Members and PAGA Members.

5. Who are the Parties in this Lawsuit?

Plaintiff Antony Smith was employed by Zodiac as a non-exempt employee from August 2018 through August 2020. Plaintiff Omar Ayala was also employed by Zodiac as a non-exempt employee from October 2017 through October 2019. Defendant is Zodiac Pool Systems LLC.

6. Who are the Attorneys for Plaintiffs and the Class?

The Court appointed The Law Office of Matt Blum, Cohelan Khoury & Singer, and Law Office of Sahag Majarian as Class Counsel and found they are competent and experienced and will adequately represent the Class. Their addresses are:

COHELAN KHOURY & SINGER

Diana M. Khoury / J. Jason Hill / Rosemary Khoury
605 C Street, Suite 200
San Diego, California 92101

LAW OFFICE OF MATT BLUM

Matt Blum
550 West C Street, Suite 960
San Diego, California 92101

7. What is the Settlement Amount?

The proposed Settlement provides for a Maximum Settlement Amount of \$1,200,000 to fully and finally resolve all claims in the Action. Class Counsel will apply to the Court for: (1) attorneys' fees not to exceed one-third of the Gross Settlement Amount (*i.e.* \$400,000), and (2) litigation costs estimated at \$18,500 ; (3) a Class Representative Service Payment of \$10,000 to each named Plaintiff for initiation of the Action, their work and efforts in prosecuting the Class action, for undertaking the risks of payment of costs in the event of an unsuccessful outcome, and general releases; (4) Settlement Administration expenses of up to \$7,000 to Simpluris as the Settlement Administrator; and (5) a payment to the California Labor Workforce and Development Agency as required under PAGA of \$18,000 (75% of the \$24,000 PAGA Payment) to cover the government's share of all applicable civil penalties raised by the allegations of the Action, and \$6,000 (25% of the \$24,000 PAGA Payment) to be distributed to eligible PAGA Members. The exact amounts of attorneys' fees and litigation costs, Class Representative Service Payments, and Settlement Administration expenses will be determined by the Court at a Final Approval hearing. The remaining portion of the Settlement, the Net Settlement Amount ("NSA"), is estimated at \$730,500 and will be apportioned and paid entirely to all Class Members who do not request to be excluded from (or "opt out" of) the Settlement ("Participating Class Members"). **A claim form is not required to receive a Settlement Payment (which means you do not need to do anything to receive a portion of the Settlement).** Any portion of the NSA which would otherwise have been paid to Class Members who opt out of the Settlement will be redistributed and paid to the Class Members who participate in the Settlement. In other words, the entire amount of the NSA will be paid to Participating Class Members who do not opt out of the Settlement.

8. How will Settlement Payments be Calculated?

Class Members who do not opt out of the Settlement will receive their share of the NSA based on the number of Work Weeks a Class Member worked for Zodiac during the Class Period (May 27, 2016 through August 2, 2021), as reflected by Zodiac's employment and payroll records. A compensable Work Week is defined as any week in which a Class Member worked at least one day during the Class Period.

Settlement Payments will be allocated as 50% unpaid wages for which withholdings and taxes will be deducted and an IRS W-2 issued; and 50% will be considered payment of penalties and interest which shall be reflected on IRS Forms 1099 issued to Class Members. Participating Class Members should consult with their tax advisors concerning the tax consequences of the payments they receive under the Settlement.

If you were employed during the PAGA Period defined as that time period from March 20, 2019 through August 2, 2021, you will also receive a proportionate share of the \$6,000 allocated to the PAGA Members (25% of the PAGA Payment) based on the number of Pay Periods (a "Pay Period" is defined as each semi-monthly period during the PAGA Period in which a PAGA Member received a wage statement/paycheck) worked during the PAGA Period, even if you request exclusion from the Settlement. All such payments will be allocated entirely to payment of penalties and reflected on an IRS Form 1099. Regardless of whether you opt out of the Settlement, you will remain a PAGA Member to the extent you qualify as one and will release Zodiac from the Released PAGA Claims (as defined below).

9. How much will my Settlement Payment be?

Zodiac's records personnel and payroll records reflect that you were employed as a non-exempt employee sometime during the Class Period and had [REDACTED] Work Weeks during the Class Period, and [REDACTED] Pay Periods during the PAGA Period. Based on this information, you will *automatically* be mailed a Settlement Payment estimated at \$XXXXXX, less payroll taxes, provided you do not timely request exclusion from the Settlement. The actual amount you receive may be more or less than the estimated amount shown, depending on a number

of factors including whether other Class Members request exclusion from the Settlement and how much the Court approves in attorneys' fees, litigation expenses, and other costs of suit.

10. What if the number of my Work Weeks shown above is wrong?

If you believe the number of Work Weeks you worked during the Class Period shown in Paragraph 9 above is wrong, you may send a letter to the Settlement Administrator, at the address shown in Paragraph 23 below or in the enclosed envelope, indicating what you believe to be the correct number of Work Weeks worked during the Class Period. Your letter must be postmarked on or before _____, 2022 (45 days after initial mailing). You should include any documents or other information which supports what you believe to be the correct number of Work Weeks worked during the Class Period, such as wage statements or wage stubs, IRS Form W-2's, etc. The Settlement Administrator will resolve any dispute regarding the correct number of Work Weeks worked during the Class Period based on Zodiac's records and any information you may provide. The information and documentation supplied by Zodiac will be presumed correct unless you supply company records from Zodiac showing a different number of Work Weeks worked during the Class Period.

HOW TO GET A SETTLEMENT PAYMENT

11. How can I get my Settlement Payment?

You do not need to do anything to receive your Settlement Payment. If the Court approves the Settlement at the scheduled Final Approval Hearing, your Settlement Payment will be mailed to the address this Notice was mailed to, unless you have updated your address with the Settlement Administrator. **It is your responsibility to keep the Settlement Administrator informed of any change in your mailing address, as your Settlement Payment will be mailed to the last known address it has on file for you.** A Change of Address form is enclosed with this Notice for your convenience. It is strongly recommended you retain a copy of any completed Change of Address form until you receive your Settlement Payment.

12. When can I expect to receive my Settlement Payment?

If no Class Member objects to the Settlement, and no appeal is sought, and the Court finally approves the Settlement, your share of the Settlement will be mailed to you approximately three months after the Court grants final approval of the Settlement.

13. What am I giving up to get my Settlement Payment?

You will give up or "release" the following claims described below:

Released Class Claims:

Participating Class Members (those who do not return a request to be excluded from the Settlement) will release the Released Claims, defined by the Settlement as any and all claims which were or could have been asserted against the Released Parties based upon, arising out of, or relating to the facts or allegations set forth in any complaint in the Action or *Ayala* Case, including but not limited to claims for rest periods; meal periods, including alleged rounding violations related thereto; minimum wages; overtime wages; pay for all hours worked, including but not limited to alleged off-the-clock work and alleged rounding violations; calculation of the regular rate and/or overtime pay; timeliness of wages; payment of wages at separation of employment; waiting time penalties; itemized wage statements and/or accuracy of wage statements; reimbursement of expenses; recordkeeping; unfair competition; any unpaid wages or compensation related to any or all of the foregoing; any premium payments related to any or all the foregoing; restitution for any or all of the foregoing; any penalties, including statutory and civil penalties, related to any or all of the foregoing; attorneys' fees or costs related to any or all of the foregoing; interest related to any or all of the foregoing; and/or any other damages or amounts related to any or all of the foregoing. The release includes, but is not limited to, claims pursuant to California Labor Code sections 201-203, 204(a), 210, 218, 218.5, 218.6, 223, 226, 226.3, 226.7,

256, 510, 512, 558, 558.1, 1174(d), 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2802, and 2804, the applicable California Industrial Welfare Commission Wage Order, and the California Business & Professions Code.

Class Members who do not exclude themselves from the Settlement will be considered to have accepted the release and to have waived any and all of the Released Class Claims against the Released Parties. The Released Parties are defined as Zodiac and all of its former, present or future parents, subsidiaries, and/or affiliates; each of the foregoing's present, former, or future owners, officers, directors, shareholders, partners, employees, insurers, successors, predecessors, contractors, assigns, and managing agents; any and all agents, legal representatives, and/or attorneys of all of the foregoing entities or individuals; and any entities alleged to be joint employers with Zodiac.

Class Members who return a valid and timely Request for Exclusion Form will still receive an Individual PAGA Payment (*i.e.* a share of 25% of the PAGA Payment) if they worked during the PAGA Period, and will release the Released PAGA Claims.

The Released PAGA Claims include: any and all claims for civil penalties alleged under California Labor Code section 2698 *et seq.* (PAGA) that were asserted in any complaint in the Action or the Ayala Litigation and/or Plaintiffs' letters and communications with the LWDA (including any subsequently amended complaints or letters); and/or that could have been asserted in any complaint in the Action or the Ayala Litigation or Plaintiffs' letters and communications with the LWDA based on the facts and/or allegations alleged in any complaint in the Action or the Ayala Litigation and/or Plaintiffs' letters and communications with the LWDA. This release includes, but is not limited to, claims for PAGA civil penalties premised on rest periods; meal periods, including alleged rounding violations related thereto; minimum wages; overtime wages; pay for all hours worked, including but not limited to alleged off-the-clock work and alleged rounding violations; calculation of the regular rate and/or overtime pay; timeliness of wages; payment of wages at separation of employment; waiting time penalties; itemized wage statements and/or accuracy of wage statements; reimbursement of expenses; vacation pay; sick pay and/or sick leave; recordkeeping; any unpaid wages or compensation related to any or all of the foregoing; any premium payments related to any or all the foregoing; and attorneys' fees or costs related to any or all of the foregoing.

14. Will I be subject to discipline based on whether I participate in the Settlement?

No. California law protects individuals and employees from retaliation based on their decision to participate or not participate in a class action settlement. Zodiac is prohibited by law from retaliating in any way based on your decision to participate or not participate in the settlement. Your decision to participate, not participate, or object to this Settlement will not impact Zodiac's treatment of you as a current or former employee in any manner.

EXCLUDING YOURSELF FROM THE SETTLEMENT?

15. How do I get out of the Class Action?

If you wish to pursue a separate lawsuit, with a separate attorney at your own expense, or do not want to participate in the Settlement for other reasons, you should exclude yourself from this Lawsuit (that is, "opt out") of the Class and Settlement. To opt out and exclude yourself from the Lawsuit, you must provide a signed and dated letter returned to the Settlement Administrator requesting to be excluded from the Settlement. The letter must state in substance:

“I wish to opt out of the class action Lawsuit and Settlement entitled *Smith and Ayala v. Zodiac Pool Systems, Inc.*, Case No. Case No. 37-2020-00036431 filed in the Superior Court of California, County of San Diego, North County Division. I understand that by requesting to be excluded from the Settlement, I will receive no money from the Settlement described in this Notice.”

The opt out request letter must include the case name, your full name, your current address, your telephone number, the last four digits of your social security number, be signed by you, and must be postmarked and mailed to the Settlement Administrator postmarked no later than _____, 2022 (*45 days of the initial mailing*) in the envelope provided or in a separate envelope addressed to:

Smith and Ayala v. Zodiac Pool Systems Class Action Settlement
c/o Simpluris Settlement Administrators
P. O. Box _____
Irvine, California _____

Because the proposed Settlement includes the settlement of claims for civil penalties under PAGA, a Class Member may not request exclusion from the settlement of a PAGA claim. Thus, if the Court approves this Settlement, and you are a PAGA Member, then even if you request exclusion from the Settlement, you will still receive a portion of the PAGA Payment allocated to PAGA Members, identified above in Paragraph 9, and you will be deemed to have released the Released PAGA Claims. A request for exclusion will preserve your right to individually pursue only the Class claims alleged in the case.

16. If I do not exclude myself, can I sue Zodiac for the same thing later?

No. Unless you exclude yourself from the Class and Settlement, you give up any right to sue Zodiac for the claims raised in this Lawsuit and which this Settlement resolves. ***If you have a claim or lawsuit already filed against Zodiac, you must speak to your lawyer in that case immediately.*** You may need to opt out of this Lawsuit to continue your own lawsuit. Remember, the deadline to postmark a valid request for exclusion is _____, 2022. (*45 days of the initial mailing*)

17. If I exclude myself from this Class Action and Settlement, can I still get a Settlement Payment?

No. If you exclude yourself from this Class Action lawsuit, you will not receive any money from this Settlement other than any Individual PAGA Payment to which you may be entitled as a PAGA Member. The portion of the Net Settlement you would have been entitled to receive will be redistributed to Participating Class Members. No portion of the Settlement Payment will go back to Zodiac as a result of any person excluding themselves from the Lawsuit.

OBJECTING TO THE SETTLEMENT

18. How do I object if I don't think the Settlement is fair?

If you don't think the Settlement is fair, you can object to the Settlement and tell the Court why you don't believe the Settlement or some part of it is fair. The Court will consider your views. An objection may be submitted in writing or you may offer an oral objection at the Final Approval Hearing (see Paragraph 19 below). You must state what your objection(s) are to the Settlement. If you submit a written objection, you must include the case name and number: *Smith v. Zodiac Pool Systems, Inc.*, Case No. Case No. 37-2020-00036431 filed in the Superior Court of California, County of San Diego, North County Division. Be sure to include your full name, current address and telephone number, the specific reasons you object to the Settlement, and any documents you have supporting your objection and you submit your written objection to the address listed below, on or before _____, 2022. (*45 days of the initial mailing*)

THE COURT'S FINAL FAIRNESS HEARING

19. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Approval hearing in Department ____ of the Superior Court of California, County of San Diego, North County Division located at _____ Vista, California _____ on _____, 2022 at ____m. At this hearing, the Court will determine whether the Settlement should be finally approved as fair, reasonable, and adequate. The Court will be asked to approve Class Counsel's request for attorneys' fees and litigation costs, the Class Representatives' Service Payments, and the Settlement Administrator's fees and expenses. The Court may reschedule the Final Approval hearing without further notice to Class Members. However, any Class Member who has submitted a written objection will be notified by Class Counsel of any rescheduling of the date and time of the Final Approval hearing.

20. Do I have to come to the hearing?

No. Class Counsel will answer any questions the Judge may have. But you are welcome to come at your own expense. You may also attend with or without your own lawyer.

21. May I speak at the hearing?

You may ask the Court for permission to speak at the Final Approval Hearing.

THE COURT'S FINAL FAIRNESS HEARING

22. Who may I contact if I have questions about the Settlement?

This Notice is a summary of the basic terms of the Settlement. For more information, you may review the Settlement documents, including the Settlement Agreement, and other pleadings at any time during regular business hours in the Superior Court of California, County of San Diego located at 325 S. Melrose Drive, Vista, California 92081. You may also examine the records online on the Superior Court's website: <https://www.sdcourt.ca.gov/>. The documents filed in this case are listed in the Register of Actions, some may be available to view at a minimal charge.

You may also contact the Administrator by calling toll free (800) _____ or writing to:

Smith and Ayala v. Zodiac Pool Systems Class Action Settlement
c/o Simpluris Settlement Administrators
P. O. Box _____
Irvine, California _____

You may also contact the attorneys for the Plaintiffs and the Class, whose contact information is included in Paragraph 6 above for more information or if you have specific questions.

Upon the Court's final approval of the Settlement, the Court's Order Granting Final Approval and Entering Judgment may be viewed on the Settlement Administrator's website, at [www._____](http://www._____.com), or it may be viewed on the Court's website; the link is shown above.

PLEASE DO NOT CONTACT THE CLERK OF THE COURT, THE JUDGE, OR ANY OF ZODIAC'S MANAGERS OR ATTORNEYS FOR INFORMATION.

ADDITIONAL IMPORTANT INFORMATION

- A. It is your responsibility to ensure the Settlement Administrator has your current mailing address and telephone number on file. The address on file is the address to which your Settlement Payment will be mailed.
- B. Settlement Payment checks must be cashed soon after receipt. Proceeds of checks which remain uncashed for 120 calendar days after the date of issuance will be transmitted to the State of California Controller's Office, Unclaimed Property Division for further handling on behalf of the individuals whose check were voided. If you lose or misplace a check, you should contact the Settlement Administrator immediately to request a replacement.

EXHIBIT B

Smith and Ayala vs. Zodiac Pool Systems, LLC.
Superior Court of California, County of San Diego – North County Division,
Case No. 37-2020-00036431

CHANGE OF ADDRESS FORM

I wish to change my name and/or mailing address and/or other contact information, for purposes of receiving communications related to this Lawsuit, to the following:

Name (First, Middle, Last): _____

Former Names (if any): _____

Home Street Address: _____

City, State, Zip Code: _____

Telephone Number(s): Home: _____ Work: _____

Email: _____

Last 4 digits of Social Security Number: _____ **[Required]**

I understand all future correspondence in this Action, including but not necessarily limited to important notices or settlement payments, will be sent to the address listed above and not to the address previously used. I hereby request and consent to the use of the address listed above for these purposes.

Dated: _____, 2022

Signature **[Required]**

**PLEASE RETURN THIS FORM IN THE ENVELOPE PROVIDED
OR VIA UNITED STATES FIRST CLASS MAIL TO:**

Smith and Ayala v. Zodiac Pool Systems Class Action Settlement
c/o Simpluris Settlement Administrators
P. O. Box _____
Irvine, California _____

QUESTIONS? CALL TOLL FREE 1-800-_____

EXHIBIT C

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 the Proposed Class

[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

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 and Omar Ayala, and the Proposed Class

8 **WINSTON & STRAWN LLP**

9 Laura R. Petroff (SBN 123215)

10 lpetroff@winston.com

11 Tristan R. Kirk (SBN 313262)

12 tkirk@winston.com

13 333 S. Grand Avenue, 38th Floor

14 Los Angeles, California 90071-1543

15 Telephone: (213) 615-1700 / Facsimile: (213) 615-1750

16 Attorneys for Defendant Zodiac Pool Systems, LLC

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.

28 ///

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

EXHIBIT D

1 **THE LAW OFFICE OF MATT BLUM**

2 Matt Blum (SBN 285944)

3 MBlumlaw@gmail.com

4 550 West C Street, Suite 960

5 San Diego, California 92101

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

7 **COHELAN KHOURY & SINGER**

8 Michael D. Singer (SBN 115301)

9 msinger@ckslaw.com

10 J. Jason Hill (SBN 179630)

11 JHill@ckslaw.com

12 Diana M. Khoury (SBN 128643)

13 dkhoury@ckslaw.com

14 Rosemary C. Khoury (SBN 331307)

15 rkhoury@ckslaw.com

16 605 C Street, Suite 200

17 San Diego, California 92101

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

19 Attorneys for Plaintiffs Antony M. Smith and Omar Ayala,

20 On behalf of themselves and the Putative Class

21 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**

22 **COUNTY OF SAN DIEGO – NORTH COUNTY DIVISION**

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

26 Plaintiffs,

27 vs.

28 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 FINAL APPROVAL OF
CLASS ACTION SETTLEMENT AND
ENTERING JUDGMENT**

Date:

Time:

Dept: N-28

Judge: Hon. Earl H. Maas, III

Reservation:

Filed: October 7, 2020

Trial date: Not set

Case No. 37-2020-0036431

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

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 and Omar

8 Ayala, individually, and on behalf of the Putative Class

9 **WINSTON & STRAWN LLP**

10 Laura R. Petroff (SBN 123215)

11 lpetroff@winston.com

12 Tristan R. Kirk (SBN 313262)

13 tkirk@winston.com

14 333 S. Grand Avenue, 38th Floor

15 Los Angeles, California 90071-1543

16 Telephone: (213) 615-1700 / Facsimile: (213) 615-1750

17 Attorneys for Defendant Zodiac Pool Systems, LLC

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

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

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

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

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

27 4. With respect to the Class and for purposes of approving this Settlement only, this Court
28 finds and concludes that: (a) the members of the Class are ascertainable and so numerous that joinder

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

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

10 "All individuals employed by Zodiac in any non-exempt position in California
11 at any time during from May 27, 2016 through August 2, 2021."

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

21 7. The Court further finds and determines that the terms of the Settlement are fair,
22 reasonable and adequate to the Class and to each Class Member and that the Settlement is ordered
23 finally approved, and that all terms and provisions of the Settlement Agreement should be and hereby
24 are ordered to be consummated.

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

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

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

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

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

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

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

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

16. The Settlement is not an admission of liability by Defendant or any of the other Released Parties, nor is this Judgment a finding of the validity of any claims in the Actions or of any wrongdoing by Defendant or any of the other Released Parties. Neither this Judgment, the Settlement,

1 nor any document referred to herein, nor any action taken to carry out the Settlement is, may be
2 construed as, or may be used as an admission by or against Defendant or any of the other Released
3 Parties of any fault, wrongdoing or liability whatsoever. The entering into or carrying out of the
4 Settlement, and any negotiations or proceedings related thereto, shall not in any event be construed as,
5 or deemed to be evidence of, an admission or concession with regard to the denials or defenses by
6 Defendant or any of the other Released Parties and shall not be offered in evidence against Defendant
7 or any of the Released Parties in any action or proceeding in any court, administrative agency or other
8 tribunal for any purpose whatsoever other than to enforce the provisions of this Judgment, the
9 Settlement, or any related agreement or release. Notwithstanding these restrictions, any of the
10 Released Parties may file in the Action or in any other proceeding this Judgment, the Settlement, or
11 any other papers and records on file in the Action as evidence of the Settlement and to support a
12 defense of res judicata, collateral estoppel, release, waiver or other theory of claim preclusion, issue
13 preclusion or similar defense as to the released claims.

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

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

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

22 IT IS SO ORDERED.

23
24 Date: _____

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

EXHIBIT 2

COHELAN KHOURY & SINGER

A PARTNERSHIP OF PROFESSIONAL LAW CORPORATIONS

TIMOTHY D. COHELAN, APLC*
ISAM C. KHOURY, APC
DIANA M. KHOURY, APC
MICHAEL D. SINGER, APLC •

(*Also admitted in the District of Columbia)
(•Also admitted in Colorado)

ATTORNEYS AT LAW

605 "C" STREET, SUITE 200
SAN DIEGO, CALIFORNIA 92101-5305

Telephone: (619) 595-3001

Facsimile: (619) 595-3000

www.ckslaw.com

JEFF GERACI
J. JASON HILL†
MARTA MANUS
KRISTINA DE LA ROSA

(† Also admitted in Illinois)

March 20, 2020

NOTICE VIA ONLINE SUBMISSION

California Labor and Workforce Development Agency (LWDA)

VIA CERTIFIED U.S. MAIL WITH RETURN RECEIPT

Zodiac Pool Systems, LLC
2882 Whiptail Loop East # 100
Carlsbad, CA 92010

Fluidra USA, LLC
c/o Ted Kampe
27647 W. Redwood Way
Castaic, CA 91384

Zodiac Pool Solutions, LLC
2882 Whiptail Loop East # 100
Carlsbad, CA 92010

Zodiac Pool Systems, LLC
Zodiac Pool Solutions, LLC
c/o CSC-Lawyers Incorporating Service
2710 Gateway Oaks Dr., Suite 150N
Sacramento, CA 95833

Re: Notice pursuant to California Labor Code sections 2698, *et seq.*, the Private Attorneys General Act ("PAGA"), sent by Omar Ayala on behalf of himself and all other non-exempt employees of Zodiac Pool Systems, LLC, Zodiac Pool Solutions, LLC and Fluidra USA, LLC in the State of California, as an individual and as proposed a Representative of the State of California

Dear PAGA Administrator and Zodiac Pool Systems, LLC, Zodiac Pool Solutions, LLC, and Fluidra USA, LLC:

This letter shall serve as Omar Ayala's (hereafter "Claimant") Notice pursuant to the California Private Attorneys General Act of 2004 ("PAGA"), California Labor Code sections 2698, *et seq.* regarding his claims against Zodiac Pool Systems, LLC, Zodiac Pool Solutions, LLC (collectively "Zodiac"), and Fluidra USA, LLC, (collectively referred to herein as "the Employers"). Claimant submits this notice on behalf of himself and all current and former non-exempt employees employed by the Employers in California during the one year preceding the date of this notice suffered one or more of the violations described herein (collectively referred to as "aggrieved employees").

If the LWDA does not intend to investigate the allege violations, Claimant intends to file a representative action for PAGA *civil penalties* on behalf of himself and all other aggrieved employees of the Employers, seeking civil penalties on behalf of himself and all other aggrieved non-exempt employees in the State of California. A copy of this notice is being sent to the Employers by certified mail at the addresses above.

California LWDA
Zodiac Pool Systems, LLC
Zodiac Pool Solutions, LLC
Fluidra USA, LLC
Re: Omar Ayala
March 20, 2020
Page | 2

Claimant and other non-exempt employees were subject to the same policies and practices alleged herein which impermissibly denied aggrieved employees their rights pursuant to the California Labor Code and caused violation of the Labor Code as set forth below.

FACTUAL STATEMENT

Claimant worked for the Employers as a non-exempt employee in the job position(s) of “Assembler, Tester, and Builder” beginning in approximately March 2013 when Claimant was hired by Grand Effects, Inc. On October 2, 2017, Zodiac Pools Systems LLC acquired Grand Effects, Inc. Zodiac Pool Systems LLC is a subsidiary of Zodiac Pool Solutions, LLC. In July 2018, Zodiac Pool Systems, LLC merged with Fluidra USA, LLC. The Employers are a global provider of equipment and solutions for in-ground residential swimming pools and spas. Claimant’s employment ended in approximately October 2019.

At all relevant times at least one year prior to the date of this Notice, the Employers subjected Claimant and non-exempt employees to policies and practices which caused the violations of the Labor Code as described herein. Claimant now seeks civil penalties individually and on behalf of other non-exempt employees (“aggrieved employees”) based on the alleged violations of the California Labor Code and applicable IWC Wage Order, including civil penalties pursuant to Labor Code section 558(a), *excluding underpaid wages per ZB, N.A. v. Superior Court* (2019) 8 Cal. 5th 175, 252 Cal. Rptr. 3d 228, 448 P.3d 239. Claimant’s claims are set forth in further detail below.

For reasons set forth herein, Claimant alleges the following violations of the California Labor Code and the applicable IWC Wage Order(s) on behalf of himself and all other non-exempt employees employed by the Employers in California.

FAILURE TO PAY MINIMUM, REGULAR, AND OVERTIME WAGES

(Labor Code §§ 218, 510, 1194, 1197, 1197.1, 1198, and 1199(c) and the “Minimum Wages” and “Hours and Days of Work” Sections of the Applicable Wage Order)

At all times during his employment and at least one year prior to the date of this Notice, Claimant was subjected to a uniform policy and practice of unlawful time rounding. That is, the Employers did not pay Claimant and other aggrieved employees precisely for all hours worked and rounded his and other aggrieved employees’ hours worked to the nearest quarter of an hour, which over time, unlawfully favored the Employers and resulted in time lost to the employees, including Claimant. This rounding policy was not neutral on its face or in application and resulted in a cumulative loss of time to the employees. The Employers had the ability to pay for the precise hours worked but opted instead to utilize the rounding policy with no apparent benefit other than to benefit the Employers and deprive employees of payment for all hours worked. Strict rules regarding punctuality and rules favoring meal periods of less than thirty minutes further affected the rounding policy to result in more favorable results to the Employers. As a result, Claimant and other employees were not paid all minimum and regular wages for all hours worked. When the employees worked overtime, the rounding policy also resulted in the failure to

pay all overtime wages for all overtime hours worked. Furthermore, on information and belief, Claimant and other aggrieved employees were paid non-discretionary bonus if they met their sales quotas, which the Employers failed to factor into the regular rate of pay for purposes of calculating the accurate overtime rate of pay due and owed for overtime hours worked.

Labor Code section 510 provides in pertinent part: “Eight hours of labor constitutes a day’s work. Any work in excess of 8 hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.”

Labor Code section 1194(a) states: “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.”

Labor Code section 1198 provides: “The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

Labor Code section 1199, which is a statute listed for which PAGA default civil penalties are recoverable pursuant to Labor Code sections 2699.5 and 2699(f)(2), provides that:

“Every employer or other person acting either individually or as an officer, agent, or employee of another person is guilty of a misdemeanor and is punishable by a fine of not less than one hundred dollars (\$100) or by imprisonment for not less than 30 days, or by both, who does any of the following:

- (a) Requires or causes any employee to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission.
- (b) Pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission.
- (c) Violates or refuses or neglects to comply with any provision of this chapter or any order or ruling of the commission.”

Labor Code section 1197 states: “The minimum wage for employees fixed by the commission or by any applicable state or local law, is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful. This section does not change the applicability of local minimum wage laws to any entity.”

Labor Code section 1197.1 states: “Any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203. For any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid. For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed.”

Pursuant to the “Hours & Days of Work” Section of the applicable Wage Order, an employer may not pay non-exempt employees less than the applicable overtime rate for all overtime hours worked.

Pursuant to the “Minimum Wages” and “Hours & Days of Work” Sections of the applicable Wage Order, an employer may not pay employees less than the applicable minimum wage for all hours worked and provides that an employer may not pay non-exempt employees less than the applicable overtime rate for all overtime hours worked.

The Employers violated Labor Code sections 218, 510, 1194, 1197, 1198, and the “Minimum Wages” and “Hours and Days of Work” Sections of the Applicable Wage Order because it did not pay Claimant and other aggrieved current and former employees all minimum, regular, and overtime wages for all hours worked as a result of its unlawful rounding system and failure to accurately calculate the overtime rate of pay during pay periods when/if a non-discretionary bonus was paid.

Accordingly, Claimant now seeks *civil penalties* pursuant to the PAGA on behalf of himself and other aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

FAILURE TO PROVIDE MEAL AND REST PERIODS

(Labor Code §§ 226.7, 512, and 1198, and the “Meal Period” and “Rest Period” Sections of the applicable IWC Wage Order)

Labor Code section 512(a) states in pertinent part: “[A]n employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes” Labor Code section 226.7(a) states that “no employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.”

The “Rest Period” Section of applicable IWC Wage Order states: “Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.” If an employer fails to provide an employee a rest period in accordance with the applicable provision of the order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation of each workday that the rest period is not provided.

Labor Code section 226.7(c) states: “[I]f an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the IWC, the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each work day that the meal or rest period is not provided.”

The Employers failed to provide Claimant and other aggrieved employees with legally compliant meal and rest periods on eligible workdays. The Employers regularly failed to provide a duty-free and uninterrupted meal period before the end of the fifth hour of work and failed to provide a second meal period on shifts of more than 10 hours, as required under California law. Furthermore, the meal periods provided to Claimant and other aggrieved employees were often short insofar as they were not at least 30 minutes in length, as required under California law. On information and belief, Claimant and other aggrieved employees did not waive their right to receive meal periods, including second meal periods and third rest periods on eligible shifts. During Claimant’s employment, the Employers failed to provide Claimant and other aggrieved employees with legally compliant off-duty meal periods and duty-free rest periods as required by Labor Code sections 226.7 and 512, and sections 11 and 12 of the applicable IWC Wage Order. Furthermore, the Employers failed to pay one (1) hour of pay at the employee’s *regular rate* of compensation for each workday that the meal and/or rest period was not provided, in accordance with California law.

Accordingly, Claimant now seeks *civil penalties* pursuant to the PAGA on behalf of himself and other aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

FAILURE TO REIMBURSE BUSINESS-RELATED EXPENSES
(Labor Code §§ 2802 and 2804, and the “Tools and Equipment” section of the applicable IWC Wage Order)

Labor Code section 2802(a) provides that “[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.”

Labor Code section 2802(c) states that “[f]or purposes of [2802], the term ‘necessary expenditures or losses’ shall include all reasonable costs, including, but not limited to attorney’s

fees incurred by the employee enforcing the rights granted by [2802].”

Section 9(b) of the applicable IWC Wage Order states in pertinent part: “When tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer.”

Labor Code section 2802 prohibits employers, such as the Employers, from shifting their cost of doing business onto the employee. California Labor Code section 2802 states that employers must “indemnify” an employee for “all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer.” This means that if the expense in question is “necessary” for performance of the job, the employer must reimburse the employee 100% of the cost. An expense is considered “necessary” if it directly results from the employee’s performance of his or her work duties. An expense is also “necessary” if it occurs because the employee is following the directions given by the employer.

“Any contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled to under the laws of this State.” Cal. Labor Code § 2804.

The Employers failed to comply with Labor Code section 2802 and the applicable IWC Wage Order by failing to reimburse Claimant and other aggrieved employees for necessary business-related expenses incurred in direct consequence of the discharge of his or her duties, including for the use of personal cell phones for work-related purposes.

Accordingly, Claimant now seeks *civil penalties* pursuant to the PAGA on behalf of himself and other aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

FAILURE TO PAY ALL VACATION WAGES
(Labor Code §§ 218.5, 218.6, 227.3, and 2698, *et seq.*)

California Labor Code section 227.3 states, in pertinent part: “Whenever a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in accordance with such contract of employment or employer policy respecting eligibility or time served; provided, however, that an employment contract or employer policy shall not provide for forfeiture of vested vacation time upon termination. The Labor Commissioner or a designated representative, in the resolution of any dispute with regard to vested vacation time, shall apply the principles of equity and fairness.”

On information and belief, the Employers failed to comply with Labor Code section 227.3 by failing to pay all vacation wages due and earned to Claimant and all other aggrieved

California LWDA
Zodiac Pool Systems, LLC
Zodiac Pool Solutions, LLC
Fluidra USA, LLC
Re: Omar Ayala
March 20, 2020
Page | 7

employees. By failing to accurately pay for all hours worked, the Employers failed to accurately calculate vacation wages earned, and therefore, failed to pay all vacation wages due upon termination of employment.

Accordingly, Claimant now seeks *civil penalties* pursuant to the PAGA on behalf of himself and other aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

FAILURE TO PROVIDE PAID SICK LEAVE
(Labor Code §§ 246, 248.5)

Labor Code section 246 grants the right to employees to paid sick days. Specifically, Cal. Labor Code section 246(b) states that:

“(1) An employee shall accrue paid sick days at the rate of not less than one hour per every 30 hours worked, beginning at the commencement of employment or the operative date of this article, whichever is later, subject to the use and accrual limitations set forth in this section.

(2) An employee who is exempt from overtime requirements as an administrative, executive, or professional employee under a wage order of the Industrial Welfare Commission is deemed to work 40 hours per workweek for the purposes of this section, unless the employee’s normal workweek is less than 40 hours, in which case the employee shall accrue paid sick days based upon that normal workweek.

(3) An employer may use a different accrual method, other than providing one hour per every 30 hours worked, provided that the accrual is on a regular basis so that an employee has no less than 24 hours of accrued sick leave or paid time off by the 120th calendar day of employment or each calendar year, or in each 12-month period.

(4) An employer may satisfy the accrual requirements of this section by providing not less than 24 hours or three days of paid sick leave that is available to the employee to use by the completion of his or her 120th calendar day of employment.”

Labor Code section 246(i) further requires that an employer provide employees written notice setting forth the amount of paid sick leave available either on an employee’s wage statement pursuant to Section 226 or in a separate writing on the designated pay date.

On information and belief, the Employers failed to comply with Labor Code sections 246 and 248.5 by failing to provide all paid sick leave due and earned and failing to set forth in a written notice the accurate amount of paid sick leave Claimant and other aggrieved employees accrued. By failing to accurately record all hours actually worked and failing to pay for all hours worked, the Employers failed to provide all paid sick leave in accordance with California law,

which requires that paid sick days accrue at the rate of not less than one hour per every 30 hours worked.

Accordingly, Claimant now seeks *civil penalties* pursuant to the PAGA on behalf of himself and other aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(Labor Code §§ 226(a), 226.3, 1198, 2699, and the “Records” Section of the applicable IWC Wage Order)

Labor Code section 226(a) states in pertinent part that every employer shall provide an accurate itemized statement in writing with respect to each one of its employees showing: 1) gross wages earned; 2) total hours worked by an employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission; (3) the number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item; (5) net wages earned; (6) the inclusive dates of the period for which the employee is paid; (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number; (8) the name and address of the legal entity that is the employer...; and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

Furthermore, Labor Code section 226(e)(2)(A) states: “An employee is deemed to suffer injury for purposes of this subdivision if the Employer fails to provide a wage statement.”

Labor Code section 226.3 imposes an additional civil penalty on the Employers of \$250.00 per employee per violation of Labor Code section 226(a) in an initial citation and \$1,000.00 per employee for each violation in a subsequent citation. In addition, Labor Code section 226(e) imposes a penalty of the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of \$4,000, and Claimant is entitled to an award of costs and reasonable attorney’s fees.

Due to the Employers’ failure to pay all wages due at all times during Claimant’s employment, including minimum, regular, or overtime for all hours worked in excess of 8 hours in a given workday, due in part to the Employers’ unlawful rounding practice, the Employers violated Labor Code section 226 by failing to provide accurate itemized wage statements to Claimant and other aggrieved employees. The wage statements issued by the Employers fail to inform of the accurate number of hours worked, accurate total wages due and earned, accurate vacation wages earned, and accurate number of paid sick days.

Accordingly, Claimant now seeks *civil penalties* pursuant to the PAGA on behalf of himself and other aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

FAILURE TO MAINTAIN ACCURATE RECORDS

(Labor Code § 1174 and the “Records” Section of the applicable IWC Wage Order)

Labor Code section 1174(d) states: “Every person employing labor in this state shall: Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than three years.”

Labor Code section 1174.5 states “Any person employing labor who willfully fails to maintain accurate and complete records required by subdivision (d) of Section 1174, shall be subject to a civil penalty of five hundred dollars.”

IWC Wage Order 4-2001, section 7 obligates an employer to keep accurate information by underpaying minimum wages, regular wages, and overtime, and not recording accurate meal periods. IWC Wage Order 4-2001, section 7(A)(3) states in pertinent part: “Every employer shall keep accurate information with respect to each employee including the following: ... (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded.”

The Employers failed to maintain accurate records showing the accurate number of hours worked and accurate wages owed. Accordingly, Claimant now seeks *civil penalties* pursuant to the PAGA on behalf of himself and other aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

FAILURE TO TIMELY PAY WAGES DUE DURING AND UPON TERMINATION OF EMPLOYMENT

(Labor Code §§ 201, 202, 203, 204, 256, 1198, and 2699)

Labor Code section 201 states: “If an Employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” Labor Code section 202 states “If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.”

Labor Code section 203(a) states, in relevant part: “If an Employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall

California LWDA
Zodiac Pool Systems, LLC
Zodiac Pool Solutions, LLC
Fluidra USA, LLC
Re: Omar Ayala
March 20, 2020
Page | 10

continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days. An employee who secretes or absents himself or herself to avoid payment to his or her, or who refuses to receive the payment when fully tendered to his or her, including any penalty then accrued under this section, is not entitled to any benefit under this section for the time during which he or she so avoids payment.”

Labor Code section 204(a) states, in pertinent part: “All wages . . . earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays.” The “Minimum Wages” Section of the applicable Wage Order further states “every employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period.”

Labor Code section 256 states: “The Labor Commissioner shall impose a civil penalty in an amount not exceeding 30 days of pay as waiting time under the terms of Section 203.”

As detailed above, the Employers failed to pay Claimant and other aggrieved employees all wages that were due and owing to them including meal and rest period premiums, and regular, minimum, overtime, and vacation wages within the required time during their employment and upon their separation of employment, in violation of the Labor Code and the applicable IWC Wage Order because of the violations alleged herein. As a result, the Employers violated the above sections of the Labor Code.

Accordingly, Claimant now seeks *civil penalties* pursuant to the PAGA on behalf of himself and other aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

CIVIL PENALTIES FOR VIOLATION OF
THE LABOR CODE AND IWC WAGE ORDERS
(Labor Code §§ 558, 558.1, and 1197.1)

Labor Code section 558 subjects any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of Part 2, Chapter 1, of the Labor Code or any provision regulating hours and days of work in any IWC Wage Order to a civil penalty in the amount of \$50 for any initial violation for each pay period in which an employee is underpaid in addition to an amount sufficient to recover underpaid wages, and \$100 for each subsequent violation in addition to an amount sufficient to recover underpaid wages, which shall be paid to each affected employee.

Labor Code section 558.1(a) states: “Any Employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the

California LWDA
Zodiac Pool Systems, LLC
Zodiac Pool Solutions, LLC
Fluidra USA, LLC
Re: Omar Ayala
March 20, 2020
Page | 11

Employer for such violation.” Labor Code section 558.1 expressly defines “employer or other person acting on behalf of an employer” to include a “natural person who is an owner, director, officer, or managing agent of the employer.”

Labor Code section 1197.1 states that any employer or other person acting either individually or as an officer, agent or employee of another person, which pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission shall be subject to a civil penalty and restitution of wages payable to the employee in an amount of \$100 for the initial violation for each pay period in which an employee underpaid in addition to an amount sufficient to recover underpaid wages, and \$250 for each subsequent violation in addition to an amount sufficient to recover underpaid wages, which shall be paid to each affected employee.

As set forth above, the Employers underpaid Claimant and other aggrieved employees by failing to provide them with compliant meal and rest periods or compensation in lieu thereof and failed to pay regular, minimum, overtime, and vacation wages as required by Labor Code sections 226.7, 510, 512 and sections 3 and 11 of the applicable IWC Wage Order. As a result, the Employers are liable for *civil penalties* under Labor Code section 558.

Accordingly, Claimant will pursue civil penalty or other lawful remedies for himself and other current and former non-exempt employees, including recovery of attorney’s fees, costs, and civil penalties to the extent allowed by law. However, pursuant to the recent California Supreme Court decision in *ZB, N.A. v. Superior Court* (2019) 8 Cal. 5th 175, 252 Cal. Rptr. 3d 228, 448 P.3d 239, Claimant does not seek underpaid wages as part of any anticipated PAGA action.

DUTIES OF EMPLOYER

(Labor Code §§ 1174, 1174.5, 1175, and 1198, and the Applicable Wage Order)

Labor Code section 1174 describes certain duties of every employer in this state. Subsection (d) of this labor code section requires that payroll records show the hours worked daily by employees and the corresponding wages to be paid for the hours worked. The Employers violated this requirement by their failure to accurately record employee hours worked and/or paid including wages owed for rounded time and meal and rest period premiums. Labor Code section 1174.5 imposes a civil penalty of \$500 for an employer’s failure to maintain accurate and complete records. This civil penalty is addition to the civil penalty of \$100 per pay period, per aggrieved employee that would be imposed pursuant to Labor Code section 2699 for a violation of Labor Code section 1174(d). Furthermore, Claimant and all other aggrieved current and former employees are entitled to collect 25% of the penalty imposed pursuant to Section 2699.

The Employers failed to accurately record all hours worked by Claimant and other aggrieved employees and failed to record all accurate wages to be paid.

California LWDA
Zodiac Pool Systems, LLC
Zodiac Pool Solutions, LLC
Fluidra USA, LLC
Re: Omar Ayala
March 20, 2020
Page | 12

Claimant will pursue all remedies on behalf of himself and other current and former employees, including recovery of attorney's fees, costs, damages and penalties to the extent allowed by law.

ATTORNEY'S FEES, COSTS, INTEREST AND PENALTIES

(Labor Code §§ 218.6, 226(e), 1194, 1194.2, and 2699, *et seq.*)

Labor Code sections 218.6, 226(e), 1194, 1194.2, and 2699, *et seq.* give employees the right to recover in a civil action the unpaid balance of the full amount of minimum wages, regular wages, overtime compensation, damages, liquidated damages, and penalties, including interest thereon, reasonable attorney's fees, and costs of suit.

Pursuant to Labor Code sections 2699, *et seq.*, aggrieved employees are entitled to collect 25% of the penalty assessment and 100% of the underpaid wages. Accordingly, the Employers are liable for these items in addition to the unpaid wages. Claimant has already incurred in actual damages, costs and attorney's fees and will continue to incur costs as a result of the Employers' unlawful actions.

CONCLUSION

Claimant requests the Labor and Workforce Development Agency ("LWDA") initiate enforcement for the violations described above. If the LWDA does not pursue enforcement, Claimant will pursue claims for civil penalties and will seek all remedies available for violations of the Labor Code and the applicable Industrial Welfare Commission Wage Orders, including all available penalties set forth in Labor Code section 2699(f).

Sincerely,
COHELAN KHOURY & SINGER



Marta Manus, Esq.

cc:
Via Email only
Sahag Majarian, Esq.
Law Offices of Sahag Majarian II
18250 Ventura Blvd.
Tarzana, CA 91356
sahagii@aol.com

Amber Worden

From: noreply@salesforce.com on behalf of LWDA DO NOT REPLY
<lwdadonotreply@dir.ca.gov>
Sent: Friday, March 20, 2020 3:39 PM
To: Amber Worden
Subject: [External] Thank you for submission of your PAGA Case.

3/20/2020

LWDA Case No. LWDA-CM-779415-20
Law Firm : Cohelan Khoury & Singer
Plaintiff Name : Omar Ayala
Employer: Zodiac Pool Systems, LLC

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: https://urldefense.proofpoint.com/v2/url?u=http-3A__labor.ca.gov_Private-5FAttorneys-5FGeneral-5FAct.htm&d=DwICAw&c=euGZstcaTDllvimEN8b7jXrwqOf-v5A_CdpgnVfiiMM&r=1sYpYEGF76QN6w9hehxsqElpMNt5gOV6_IRPmxDj0Ew&m=smOlVV-IBzYELDEN7KmEX-Ilam1Z57yoTfVVZ3zWKNk&s=pTXJaTiBTDxkAgdwTvt_ysnG-2RdQr8hdSP8fb1dWyU&e=

EXHIBIT 3

COHELAN KHOURY & SINGER

Michael D. Singer (SBN 115301)

msinger@ckslaw.com

Marta Manus (SBN 260132)

mmanus@ckslaw.com

605 C Street, Suite 200

San Diego, CA 92101

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

LAW OFFICES OF SAHAG MAJARIAN II

Sahag Majarian (SBN 146621)

sahagii@aol.com

18250 Ventura Blvd.

Tarzana, CA 91356

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

Attorneys for Plaintiff Omar Ayala,

individually and on behalf of all others similarly situated and aggrieved

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

OMAR AYALA, individually and on behalf
of all others similarly situated and
aggrieved,

Plaintiff,

v.

ZODIAC POOL SYSTEMS LLC, a
Delaware Limited Liability Company;
FLUIDRA USA LLC, a Florida Limited
Liability Company; and DOES 1 through
10, Inclusive,

Defendants.

Case No. 37-2020-00017229-CU-OE-CTL

**CLASS ACTION [Cal. Code Civ. Proc. § 382]
AND REPRESENTATIVE ACTION
[PRIVATE ATTORNEYS GENERAL ACT
OF 2004, Labor Code §§ 2698, *et seq.*]
COMPLAINT**

1. Failure to Pay Minimum, Regular, and Overtime Wages (Lab. Code §§ 510, 1194 and 1197.1, and IWC Order 7-2001 §§ 3 & 4);
2. Failure to Provide Meal Periods (Lab. Code §§ 226.7 and 512, and IWC Order 7-2001 § 11);
3. Failure to Provide Rest Periods (Lab. Code § 226.7 and IWC Order 7-2001 § 12);
4. Failure to Reimburse Business Expenses (Lab. Code § 2802);
5. Failure to Provide Accurate Itemized Wage Statements (Lab. Code § 226);
6. Failure to Timely Pay Wages Due Upon Separation of Employment (Lab. Code §§ 201, 202, and 203);
7. Violation of the Unfair Competition Law (Bus. & Prof. Code §§ 17200, *et seq.*).
8. PAGA Civil Penalties for Failure to Pay

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Minimum, Regular, and Overtime Wages (Lab. Code §§ 2698, *et seq.*);

9. PAGA Civil Penalties for Failure to Provide Meal Periods (Lab. Code §§ 2698, *et seq.*);

10. PAGA Civil Penalties for Failure to Provide Rest Periods (Lab. Code §§ 2698, *et seq.*);

11. PAGA Civil Penalties for Failure to Reimburse Business Expenses (Lab. Code §§ 2698, *et seq.*);

12. PAGA Civil Penalties for Failure to Provide Accurate Wage Statements (Lab. Code §§ 2698, *et seq.*);

13. PAGA Civil Penalties for Failure to Timely Pay Wages Due Upon Separation of Employment (Lab. Code §§ 2698, *et seq.*);

14. PAGA Civil Penalties for Failure to Timely Pay Wages Due During Employment (Lab. Code §§ 2698, *et seq.*); and

15. PAGA Civil Penalties for Failure to Maintain Accurate Records (Lab. Code §§ 2698, *et seq.*).

DEMAND FOR JURY TRIAL

1 Plaintiff OMAR AYALA (“Plaintiff”), individually, and on behalf of the general public,
2 all others similarly situated and aggrieved, and as a representative of the State of California and
3 the California labor and Workforce Development Agency (“LWDA”), complains and alleges as
4 follows:

5 **I.**

6 **INTRODUCTION**

7 1. Plaintiff brings this class action pursuant to California Code of Civil Procedure
8 section 382 and representative Private Attorneys General Act of 2004 (“PAGA”), Labor Code
9 section 2698, *et seq.*, action on behalf of himself and all other current and former non-exempt
10 employees of ZODIAC POOL SYSTEMS LLC, a Delaware Limited Liability Company;
11 FLUIDRA USA LLC, a Florida Limited Liability Company; and Does 1 through 10
12 (collectively, “Defendants”) within the State of California during the four years prior to April 6,
13 2014 (“Class Period”).¹ Plaintiff brings this action for Defendants’ failure to: pay non-exempt
14 employees all wages, including regular and/or minimum wages for all hours worked and
15 premium wages for overtime hours worked; inform of and provide off-duty meal and rest
16 periods; reimburse for necessary business-related expenses; provide accurate itemized wage
17 statements; and timely pay all wages due upon separation of employment. In addition, Plaintiff
18 brings this action for unfair competition under Business and Professions Code sections 17200,
19 *et seq.*

20 2. Plaintiff notified the LWDA of these claims. The LWDA did not intervene, and
21 Defendants did not attempt to cure within 65 days of that notice. Plaintiff seeks civil penalties
22 as a representative of the State of California, as provided by the PAGA, for the period one year
23 and 65 days from the date of filing for PAGA penalties (“PAGA Period”).

24 3. A true and correct copy of the March 20, 2020 Notice showing compliance with
25 Labor Code section 2699.3 is attached as **Exhibit 1**.

26 ///

27 _____
28 ¹ The statute of limitations for this matter was tolled on April 6, 2020 pursuant to Cal. Rules of
Court, Appendix I, Emergency Rule No. 9.

1 II.

2 **JURISDICTION AND VENUE**

3 4. Venue as to each Defendant is proper in this judicial district, pursuant to Code of
4 Civil Procedure section 395. Defendants conduct business in San Diego County and each
5 Defendant is within the jurisdiction of this Court for service of process. The unlawful acts
6 alleged have a direct effect on Plaintiff and proposed members of the Plaintiff Class within San
7 Diego County and California. The California Superior Court also has jurisdiction in this matter
8 because individual members of the Plaintiff Class are under the seventy-five thousand dollar
9 (\$75,000.00) jurisdictional threshold for Federal Court. The aggregate amount in controversy
10 does not exceed \$5 million (\$5,000,000) and this matter is not subject to federal jurisdiction
11 under the Class Action Fairness Act (“CAFA”). There is no federal question for removal under
12 28 U.S.C. section 1331, as the issues are based solely on California law, including the Labor
13 Code, IWC Wage Orders, and Code of Civil Procedure.

14 5. The PAGA representative claims pled in this matter are not subject to removal.
15 28 U.S.C. §§ 1332(a)-(d).

16 III.

17 **THE PARTIES**

18 **A. Plaintiff**

19 6. Plaintiff OMAR AYALA is over the age of eighteen (18) and was at all relevant
20 times a California resident. From approximately March 2013 to October 2019, Plaintiff worked
21 for Defendants as an “Assembler, Tester, and Builder,” a non-exempt hourly-paid position, in
22 Defendants’ Carlsbad location within the San Diego County of California, as well as in Rancho
23 Santa Margarita, California.

24 **B. Defendants**

25 7. Plaintiff is informed, believes, and alleges that Defendant ZODIAC POOL
26 SYSTEMS LLC is a Delaware Limited Liability Company engaged in business throughout
27 California and in San Diego County, and during the Class Period, employed Plaintiff and the
28 members of the Plaintiff Class and Subclasses.

9. Plaintiff is unaware of the true names, capacities, relationships, and extent of participation in the conduct alleged of Defendants sued as DOES 1 through 10, but is informed and believes, and based on that alleges, that DOE Defendants are legally responsible for the wrongful conduct alleged and sues these Defendants by such fictitious names. Plaintiff will amend this complaint when their true names and capabilities are ascertained.

10. Plaintiff is informed, believes, and alleges each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all pertinent respects, and the acts of each Defendant are legally attributable to the other Defendants.

GENERAL ALLEGATIONS

11. During the Class Period, Plaintiff and each member of the Plaintiff Class were employed by Defendants in the State of California.

12. During the Class Period, Defendants have conducted business in California and San Diego County, California.

13. During the Class Period, Plaintiff and members of the Plaintiff Class worked shifts over eight hours per day and were paid as hourly, non-exempt employees.

14. During all, or portions, of the Class Period, Defendants had a consistent policy of failing to pay Plaintiff and members of the Plaintiff Class all wages due including overtime premium wages for hours worked in excess of eight (8) hours per day and/or forty (40) hours per week.

15. During all, or portions, of the Class Period, Defendants subjected all non-exempt hourly employees, including Plaintiff, to a uniform policy and practice of unlawful time rounding, resulting in the underpayment of wages, including minimum, regular, and overtime

1 wages, on a systematic basis. This rounding policy was not neutral on its face or in application
2 and resulted in a cumulative loss of time and wages to Plaintiff and members of the Plaintiff
3 Class. Despite being readily capable and able to use precise timeclock entries for all “hours
4 worked,” Defendants disregarded actual time worked and issued pay checks and wage
5 statements that systematically reflected rounded time as a basis to underpay their employees.
6 Defendants’ rounding policy resulted in underpayment for all straight-time and overtime
7 worked (including double-time hours). On information and belief, Defendants’ rounding policy
8 operated unilaterally to the benefit of Defendants and to detriment of Plaintiff and members of
9 the Plaintiff Class.

10 16. During the Class Period, Plaintiff and members of the Plaintiff Class were paid
11 non-discretionary bonuses if predetermined sales quotas were met. On information and belief,
12 Defendants failed to incorporate the non-discretionary bonus compensation into the employee’s
13 regular rate of pay for purposes of calculating the overtime rate of pay, resulting in the
14 underpayment of all overtime wages due.

15 17. During the Class Period, Defendants failed to pay for time actually worked by
16 Plaintiff and members of the Plaintiff Class, including overtime, including by failing to include
17 all compensation in the regular rate of pay to calculate the correct overtime rate.

18 18. During all, or portions, of the Class Period, Defendants had a consistent policy
19 which did not provide Plaintiff and members of the Plaintiff Class with duty-free meal periods
20 of at least thirty (30) minutes for shifts of five hours or more, which began before the end of the
21 fifth hour of work, and failed to pay such employees one (1) hour of pay at their regular rate of
22 compensation for each workday a meal period was not authorized or permitted, as required by
23 California wage and hour laws. Furthermore, Plaintiff and other members of the Plaintiff Class
24 regularly worked shifts of more than 10 hours per day and were not provided with a second off-
25 duty meal period of 30 minutes for each shifts of more than 10 hours. On information and
26 belief, Plaintiff and other members of the Plaintiff Class did not waive their right to receive
27 meal periods, including their right to a second meal period on eligible workdays.

28 19. During all, or portions, of the Class Period, Defendants had a consistent policy

1 which did not authorize or permit Plaintiff and members of the Plaintiff Class to receive duty-
2 free rest periods of at least ten (10) minutes per four (4) hours, or major fraction, worked, and
3 failed to pay such employees one (1) hour of pay at their regular rate of compensation for each
4 workday a rest period was not authorized or permitted, as required by California wage and hour
5 laws. Furthermore, Plaintiff and other members of the Plaintiff Class regularly worked shifts of
6 more than 10 hours per day and were not provided with a third duty-free rest period of 10-
7 minutes for each shifts of more than 10 hours.

8 20. During all, or portions, of the Class Period, Defendants had a consistent policy of
9 failing to reimburse Plaintiff and members of the Plaintiff Class for all necessary and reasonable
10 business expenses incurred by the requirement to use personal cell phones for work-related
11 purposes, in violation of California state wage and hour laws.

12 21. During all, or portions, of the Class Period, Defendants knowingly and willfully
13 failed to provide accurate itemized wage statements to Plaintiff and other members of the
14 Plaintiff Class, which did not include, among other things, the total number of hours worked
15 and/or wages due. Additionally, because Defendants failed to compensate Plaintiff and other
16 members of the Plaintiff Class for all hours worked and for any non-compliant meal or rest
17 periods, the itemized wage statements provided by Defendants to Plaintiff and other members of
18 the Plaintiff Class were inaccurate. As a result, the wage statements that Defendants furnished
19 to Plaintiff and other members of the Plaintiff Class were incomplete and inaccurate and fail to
20 comply with the requirements of Labor Code section 226(a).

21 22. During all, or portions, of the Class Period, Defendants had a consistent policy
22 and practice of failing to timely compensate Plaintiff and other members of the Plaintiff Class
23 for all wages owed during employment, in violation of California state wage and hour laws.

24 23. During all, or portions, of the Class Period, Defendants had a consistent policy of
25 failing to pay Plaintiff and members of the Plaintiff Class all wages due upon termination, in
26 violation of California state wage and hour laws.

27 24. Plaintiff, on behalf of himself and all similarly-situated employees in the State of
28 California, brings this class action pursuant to Labor Code sections 201, 202, 203, 204(a), 210,

218, 218.5, 218.6, 223, 226(a), 226(h), 226.3, 226.7, 256, 510, 512, 558, 558.1, 1174(d), 1174.5, 1194, 1194.5, 1194.2, 1197, 1197.1, 1198, 2802 seeking unpaid wages including minimum and overtime wages, meal and rest period premiums, unreimbursed expenses, penalties, equitable relief, and reasonable attorneys' fees and costs.

25. Plaintiff, on behalf of himself and all Plaintiff Class Members, brings this action pursuant to Business and Professions Code sections 17200-17208, seeking injunctive relief, restitution, and disgorgement of all benefits obtained by Defendants by failing to pay all wages owed.

V.

CLASS ACTION ALLEGATIONS

26. Plaintiff brings this action on behalf of himself and all other similarly-situated persons as a class action pursuant to California Code of Civil Procedure section 382. The class which Plaintiff seeks to represent is composed of and defined as follows:

Plaintiff Class:

All individuals employed by Defendants in the State of California as an hourly non-exempt employee at any time from April 6, 2016 through the date of trial.

27. Plaintiff seeks to certify a Subclass of employees defined as:

Unpaid Wages Subclass

All members of the proposed Plaintiff Class who worked over eight (8) hours of work in one day or forty (40) hours in one week.

28. Plaintiff seeks to certify a Subclass of employees defined as:

First Meal Period Subclass

All members of the proposed Plaintiff Class who worked one or more work periods in excess of five (5) hours.

29. Plaintiff seeks to certify a Subclass of employees defined as:

Second Meal Period Subclass

All members of the proposed Plaintiff Class who worked one or more work periods in excess of ten (10) hours.

30. Plaintiff seeks to certify a Subclass of employees defined as:

Rest Period Subclass

All members of the proposed Plaintiff Class who worked one or more work periods in excess of three and a half hours (3 ½).

31. Plaintiff seeks to certify a Subclass of employees defined as:

Third Rest Period Subclass

All members of the proposed Plaintiff Class who worked one or more work periods in excess of ten (10) hours.

32. Plaintiff seeks to certify a Subclass of employees defined as:

Unreimbursed Business Expense Subclass

All members of the proposed Plaintiff Class who were required to use a personal cell phone for business-related purposes and as a result incurred expenses in the discharge of duties for Defendants.

33. Plaintiff seeks to certify a Subclass of employees defined as:

Wage Statement Subclass

All members of the proposed Plaintiff Class who, within one year of the filing of the Complaint, received one or more itemized wage statements that did not include all wages due and/or the accurate number of hours worked from and after April 6, 2019.

34. Plaintiff seeks to certify a Subclass of former employees defined as:

Waiting Time Penalty Subclass

All members of the proposed Plaintiff Class whose employment ended at any time from and after April 6, 2017.

35. Plaintiff seeks to certify a Subclass of employees defined as:

UCL Subclass

All members of the proposed Plaintiff Class who were subject to Defendants' pay practices relating to failure to pay all wages, failure to pay meal and rest period premium compensation, failure to reimburse business expenses, and failure to timely pay all wages due during and at separation from employment.

36. Plaintiff reserves the right under Rule 3.765(b), California Rules of Court, to amend or modify the Plaintiff Class description with greater specificity or further division into subclasses or limitation to particular issues.

37. This action has been brought and may be maintained as a class action pursuant to Code of Civil Procedure section 382 because there is a well-defined common interest of many persons and it is impractical to bring them all before the court.

38. **Ascertainable Class**: The proposed Plaintiff Class and Subclasses are ascertainable in that their members can be identified and located using information contained in Defendants' payroll and personnel records.

1 39. **Numerosity**: The potential quantity of members of the Plaintiff Class and
2 Subclasses as defined is so numerous that joinder of all members would be unfeasible and
3 impractical. The disposition of their claims through this class action will benefit both the parties
4 and this Court. The quantity of members of the Plaintiff Class and Subclasses is unknown to
5 Plaintiff at this time, however, it is estimated that the Plaintiff Class and Subclasses number
6 approximately 100 individuals. The quantity and identity of such membership is readily
7 ascertainable via inspection of Defendants' records.

8 40. **Typicality**: The claims of Plaintiff for minimum, regular, and overtime
9 compensation, meal and rest period premiums, unreimbursed business expenses, wage statement
10 penalties, waiting time penalties, interest, and attorneys' fees are typical of the claims of all
11 members of the Plaintiff Class and Subclasses mentioned herein because all members of the
12 Plaintiff Class and Subclasses sustained similar injuries and damages arising out of Defendants'
13 common course of conduct in violation of law, and the injuries and damages of all members of the
14 Plaintiff Class and Subclasses were caused by Defendants' wrongful conduct in violation of law, as
15 alleged herein.

16 41. **Adequacy**: Plaintiff is an adequate representative of the Plaintiff Class and
17 Subclasses herein, will fairly protect the interests of the members of the Plaintiff Class and
18 Subclasses, has no interests antagonistic to the members of the Plaintiff Class and Subclasses, and
19 will vigorously pursue this suit via attorneys who are competent, skilled, and experienced in
20 litigating matters of this type. Class Counsel is competent and experienced in litigating large
21 employment law class actions.

22 42. **Superiority**: A class action is superior to other available means for fair and
23 efficient adjudication of the claims of the Plaintiff Class and would be beneficial for the parties
24 and the Court. Class action treatment will allow a large number of similarly-situated persons to
25 prosecute their common claims in a single forum, simultaneously, efficiently, and without the
26 unnecessary duplication of effort and expense numerous individual actions would require. The
27 damages suffered by each Plaintiff Class Member are relatively small in the sense pertinent to
28 class action analysis, and the expense and burden of individual litigation would make it

1 extremely difficult or impossible for individual Plaintiff Class Members to seek and obtain
2 individual relief. A class action will serve an important public interest by permitting such
3 individuals to effectively pursue recovery of sums owed to them. Class litigation also prevents
4 the potential for inconsistent or contradictory judgments raised by individual litigation.

5 43. **Existence and Predominance of Common Questions of Fact and Law**: There
6 are common questions of law and fact as to the members of the Plaintiff Class and Subclasses
7 which predominate over questions affecting only individual members of the Plaintiff Class and
8 Subclasses including, without limitation:

- 9 a. Whether Defendants compensated Plaintiff and members of the Plaintiff Class
10 for all hours worked, including all overtime wages for all hours worked in excess
11 of 8 hours per day and/or 40 hours per week;
- 12 b. Whether Defendants' rounding policy and practice resulted in the cumulative
13 loss of time and wages to Plaintiff and members of the Plaintiff Class;
- 14 c. Whether Defendants included non-discretionary bonus compensation in the
15 employee's regular rate of pay for purposes of calculating the accurate overtime
16 rate of pay;
- 17 d. Whether Defendants provided Plaintiff and members of the Plaintiff Class legally
18 compliant duty-free meal periods on eligible workdays;
- 19 e. Whether Defendants provided Plaintiff and members of the Plaintiff Class legally
20 compliant, duty-free rest periods on eligible workdays;
- 21 f. Whether Defendants reimbursed Plaintiff and members of the Plaintiff Class for
22 all business-expenses incurred in the discharge of job duties;
- 23 g. Whether Defendants maintained accurate records for Plaintiff and members of
24 the Plaintiff Class pursuant to Labor Code section 1174(d) and section 7 of the
25 applicable IWC Wage order;
- 26 h. Whether Defendants provided Plaintiff and members of the Plaintiff Class with
27 accurate itemized wage statements pursuant to Labor Code section 226;
- 28 i. Whether Defendants timely paid Plaintiff and members of the Plaintiff Class

wages due during employment pursuant to Labor Code section 204;

j. Whether Defendants timely paid Plaintiff and members of the Plaintiff Class wages due upon separation of employment pursuant to Labor Code sections 201, 202, and 203;

k. Whether Defendants violated sections 17200, *et seq.* of the Business and Professions Code; Labor Code sections 201-203, 226, 226.7, 510, 512, 1194, and 2802; and IWC Wage Order 7-2001, and other applicable IWC Wage Orders which constitutes a violation of fundamental public policy;

h. Whether Plaintiff and members of the Plaintiff Class are entitled to equitable relief pursuant to Business and Professions Code, sections 17200, *et seq.*

VI.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

FAILURE TO PAY MINIMUM, REGULAR, AND OVERTIME WAGES

[Lab. Code §§ 218, 510, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198 and 1199(c) and §§ 3 & 4 of IWC Wage Order 7-2001]

44. Plaintiff hereby incorporates all preceding paragraphs of this Complaint.

45. Labor Code section 218 provides in pertinent part: “Nothing in this article shall limit the authority of the district attorney of any county or prosecuting attorney of any city to prosecute actions, either civil or criminal, for violations of this article or to enforce the provisions thereof independently and without specific direction of the division. Nothing in this article shall limit the right of any wage claimant to sue directly or through an assignee for any wages or penalty due him under this article.”

46. Labor Code section 1194(a) states: “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.”

47. Labor Code section 1194.2 states: “In any action under Section 98, 1193.6, 1194,

1 or 1197.1 to recover wages because of the payment of a wage less than the minimum wage
2 fixed by an order of the commission or by statute, an employee shall be entitled to recover
3 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.”

4 48. Labor Code section 1194.2 provides for liquidated damages equal to unlawfully
5 unpaid minimum wages, with interest.

6 49. Labor Code section 1197 states: “The minimum wage for employees fixed by the
7 commission is the minimum wage to be paid to employees, and the payment of a less wage than
8 minimum wages so fixed is unlawful.”

9 50. Labor Code section 1197.1 states: “Any employer or other person acting either
10 individually or as an officer, agent, or employee of another person, who pays or causes to be
11 paid to any employee a wage less than the minimum fixed by an order of the commission shall
12 be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee,
13 and any applicable penalties imposed pursuant to Section 203. For any initial violation that is
14 intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay
15 period for which the employee is underpaid. For each subsequent violation for the same specific
16 offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for
17 which the employee is underpaid regardless of whether the initial violation is intentionally
18 committed.”

19 51. Labor Code section 1198 states: “The maximum hours of work and the standard
20 conditions of labor fixed by the commission shall be the maximum hours of work and the
21 standard conditions of labor for employees. The employment of any employee for longer hours
22 than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

23 52. Pursuant to the “Minimum Wages” Section of IWC Wage Order 7-2001 (Section
24 4), an employer may not pay employees less than the applicable minimum wage for all hours
25 worked.

26 53. Labor Code section 1198 and the applicable IWC Wage Order provide that it is
27 unlawful to employ persons without compensating them at a rate of pay either one and one-half
28 (1½) or two (2) times the person’s regular rate of pay, depending on the number of hours or

1 days worked by the person on a daily or weekly basis.

2 54. Section 3 of IWC Wage Order 7-2001 further provides that Defendants are and
3 were required to pay overtime compensation to Plaintiff and members of the Unpaid Overtime
4 Wages Subclass at a rate of two times their regular rate of pay when working and for all hours
5 worked in excess of twelve (12) hours in a day or in excess of eight (8) hours on the seventh day
6 of work in a workweek.

7 55. Labor Code section 510 codifies the right to overtime compensation at one and
8 one-half (1½) times the regular hourly rate for hours worked in excess of eight (8) hours in a
9 day or forty (40) hours in a week and for the first eight (8) hours worked on the seventh
10 consecutive day of work, and overtime compensation at twice the regular hourly rate for hours
11 worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the
12 seventh day of work in a workweek.

13 56. Labor Code section 510 and IWC Wage Order 7-2001 provide that employment
14 of more than six days in a workweek is only permissible if the employer pays proper overtime
15 compensation as set forth herein.

16 57. During all, or portions, of the Class Period, Defendants subjected all non-exempt
17 hourly employees, including Plaintiff, to a uniform policy and practice of unlawful time
18 rounding, resulting in the underpayment of wages, including overtime wages, on a systematic
19 basis. This rounding policy was not neutral on its face or in application and resulted in a
20 cumulative loss of time and wages to Plaintiff and members of the Unpaid Wages Subclass.
21 Despite being readily capable and able to use precise timeclock entries for all “hours worked,”
22 Defendants disregarded actual time worked and issued pay checks and wage statements that
23 systematically reflected rounded time as a basis to underpay their employees. Defendants’
24 rounding policy resulted in underpayment for all straight-time and overtime worked (including
25 double-time hours). On information and belief, Defendants’ rounding policy operated
26 unilaterally to the benefit of Defendants and to detriment of Plaintiff and members of the
27 Unpaid Wages Subclass.

28 58. During the Class Period, Plaintiff and members of the Unpaid Wages Subclass

1 were paid non-discretionary bonuses if predetermined sales quotas were met. On information
2 and belief, Defendants failed to incorporate the non-discretionary bonus compensation into the
3 employee's regular rate of pay for purposes of calculating the overtime rate of pay, resulting in
4 the underpayment of all overtime wages due.

5 59. As a direct result, Plaintiff and members of the Unpaid Wages Subclass have
6 suffered and continue to suffer, substantial losses related to the use and enjoyment of such wages,
7 including lost interest on such monies and expenses and attorney's fees in seeking to compel
8 Defendants to fully perform their obligation under state law, all to their respective damage in
9 amounts according to proof at trial and within the jurisdictional limitations of this Court.

10 60. Labor Code section 218.5(a) provides in pertinent part: "In any action brought for
11 the nonpayment of wages, fringe benefits, or health and welfare or pension fund contributions, the
12 court shall award reasonable attorney's fees and costs to the prevailing party if any party to the
13 action requests attorney's fees and costs upon the initiation of the action."

14 61. Defendants' unlawful acts deprived Plaintiff and members of the Unpaid Wages
15 Subclass Plaintiff seeks to represent of minimum and regular wages, and/or other compensation,
16 in amounts to be determined at trial, and are entitled to recovery of such amounts, plus interest
17 thereon, liquidated damages in an amount equal to the wages unlawfully unpaid, attorneys' fees,
18 and costs to the fullest extent permitted by law.

19 62. Plaintiff, on behalf of himself and members of the Unpaid Wages Subclass,
20 requests relief as described below.

21 **SECOND CAUSE OF ACTION**
22 **FAILURE TO PROVIDE MEAL PERIODS**
23 **[Lab. Code §§ 512, 226.7 and § 11 of IWC Wage Order 7-2001]**

24 63. Plaintiff hereby incorporates all preceding paragraphs of this Complaint.

25 64. Labor Code section 226.7(a) provides: "No employer shall require any employee
26 to work during any meal or rest period mandated by an applicable order of the Industrial
27 Welfare Commission."

28 65. Labor Code section 512(a) provides: "An employer may not employ an employee
for a work period of more than five hours per day without providing the employee with a meal

1 period of not less than 30 minutes, except that if the total work period per day of the employee
2 is no more than six hours, the meal period may be waived by mutual consent of both the
3 employer and employee. An employer may not employ an employee for a work period of more
4 than 10 hours per day without providing the employee with a second meal period of not less
5 than 30 minutes.”

6 66. Labor Code section 1198 states: “The maximum hours of work and the standard
7 conditions of labor fixed by the commission shall be the maximum hours of work and the
8 standard conditions of labor for employees. The employment of any employee for longer hours
9 than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

10 67. IWC Wage Order 7-2001, section 11 provides, in part, that no employer shall
11 employ any person for a work period of more than five (5) hours without a meal period of not
12 less than 30 minutes, except that when a work period of not more than six (6) hours will
13 complete the day’s work the meal period may be waived by mutual consent of the employer and
14 the employee, and that an employer may not employ an employee for a work period of more
15 than ten (10) hours without proving the employee with a second meal period of not less than 30
16 minutes, except if the total hours worked is no more than 12 hours, the second meal period may
17 be waived by mutual consent of the employer and the employee only if the first meal period was
18 not waived.

19 68. Subsection D of IWC Wage Order 7-2001, section 11 further provides that if an
20 employer fails to provide an employee a meal period in accordance with the applicable
21 provisions of this order, the employer shall pay the employee one (1) hour of pay at the
22 employee’s regular rate of compensation for each workday that the meal period is not provided.

23 69. Plaintiff and members of the First and Second Meal Period Subclasses were
24 frequently not provided with legally compliant meal periods before the end of the fifth hour
25 work. Furthermore, Plaintiff and members of the First and Second Meal Period Subclasses were
26 not provided a second meal period when working a shift of ten (10) hours or more, nor did
27 Plaintiff and members of the First and Second Meal Period Subclasses enter into a mutual
28 waiver to forgo a second meal period.

1 70. Defendants failed to pay meal premium compensation on work periods in which
2 a legally compliant meal period was not provided, as required under California law.

3 71. By failing to provide off-duty and uninterrupted meal periods of at least thirty
4 (30) minutes for shifts of five (5) hours or more, which began before the end of the fifth hour of
5 work, and failing to pay employees one hour of pay at their regular rate of pay for each workday
6 a meal period was not provided, Defendants willfully violated Labor Code sections 226.7 and
7 512(a), and section 11 of the IWC Wage Order No. 7-2001.

8 72. By failing to provide a second off-duty and uninterrupted meal period of at least
9 thirty (30) minutes for shifts of ten (10) hours or more and failing to pay employees one hour of
10 pay at their regular rate of pay for each eligible workday a second meal period was not
11 provided, Defendants willfully violated Labor Code sections 226.7 and 512(a), and section 11
12 of the IWC Wage Order No. 7-2001.

13 73. As a direct result of Defendants' violations alleged herein, Plaintiff and members
14 of the First and Second Meal Period Subclasses have suffered and continue to suffer substantial
15 losses related to the use and enjoyment of such wages, including lost interest on such monies
16 and expenses and attorney's fees in seeking to compel Defendants to fully perform their
17 obligation under state law, all to their respective damage in amounts according to proof at trial
18 and within the jurisdictional limitations of this Court.

19 74. Defendants' unlawful acts deprived Plaintiff and members of the First and
20 Second Meal Period Subclasses Plaintiff seeks to represent of premium wages and/or other
21 compensation in amounts to be determined at trial, and they are entitled to recover such
22 amounts, plus interest, attorneys' fees, and costs.

23 75. Plaintiff seeks to recover in a civil action the unpaid balance of the full amount
24 of the unpaid wages resulting from Defendants' meal period violations including interest
25 thereon, reasonable attorney's fees and costs of suit, and penalties to the fullest extent
26 permissible including those permitted pursuant to Labor Code sections 226.7 and 512, and Code
27 of Civil Procedure section 1021.5.

28 76. Plaintiff, on behalf of himself and members of the First and Second Meal Period

Subclasses, requests relief as described below.

THIRD CAUSE OF ACTION
FAILURE TO PROVIDE REST PERIODS
[Labor Code § 226.7; § 12 of IWC Wage Order 7-2001]

77. Plaintiff hereby incorporates all preceding paragraphs of this Complaint.

78. Labor Code section 226.7(a) provides: “No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.”

79. Labor Code section 1198 states: “The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

80. IWC Wage Order 7-2001, section 12(A) states that every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked, for which there shall be no deduction from wages.

81. IWC Wage Order 7-2001, section 12(B) states that if an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each work day that the rest period is not provided.

82. Defendants failed to provide Plaintiff and members of the Rest Period and Third Rest Period Subclasses with legally compliant, duty-free rest periods and failed to pay premium compensation equal to one hour of pay at the employee’s regular rate of pay for each workday that a rest period was not provided in accordance with California law. Plaintiff and members of the Rest Period and Third Rest Period Subclasses regularly worked shifts of more than 10 hours per workday. Despite working for more than 10 hours per workday, Defendants failed to provide

1 Plaintiff and members of the Rest Period and Third Rest Period Subclasses with a third duty-free
2 rest period on eligible workdays. Defendant failed to pay premium compensation in the form of a
3 rest period premium for eligible workdays on which a compliant rest period was not provided to
4 Plaintiff and members of the Rest Period and Third Rest Period Subclasses.

5 83. As a direct result of Defendants' violations alleged herein, Plaintiff and members
6 of the Rest Period and Third Rest Period Subclasses have suffered and continue to suffer
7 substantial losses related to the use and enjoyment of such wages, including lost interest on such
8 monies and expenses and attorney's fees in seeking to compel Defendants to fully perform their
9 obligation under state law, all to their respective damage in amounts according to proof at trial
10 and within the jurisdictional limitations of this Court.

11 84. Defendants' unlawful acts deprived Plaintiff and members of the Rest Period and
12 Third Rest Period Subclasses Plaintiff seeks to represent of premium wages and/or other
13 compensation in amounts to be determined at trial, and they are entitled to recover such
14 amounts, plus interest, attorneys' fees, and costs.

15 85. Plaintiff seeks to recover in a civil action the unpaid balance of the full amount of
16 the unpaid wages resulting from Defendants' rest period violations including interest thereon,
17 reasonable attorney's fees and costs of suit, and penalties to the fullest extent permissible
18 including those permitted pursuant to Labor Code section 226.7 and Code of Civil Procedure
19 section 1021.5.

20 86. Plaintiff, on behalf of himself and members of the Rest Period and Third Rest
21 Period Subclasses, requests relief as described below.

22 **FOURTH CAUSE OF ACTION**
23 **FAILURE TO REIMBURSE BUSINESS EXPENSES**
24 **[Lab. Code §§ 2800 and 2802]**

25 87. Plaintiff hereby incorporates all preceding paragraphs of this Complaint.

26 88. Labor Code section 2800 provides, in pertinent part, "[a]n employer shall in all
27 cases indemnify his employee for losses caused by the employer's want of ordinary care."

28 89. Labor Code section 2802 provides, in pertinent part, "[a]n employer shall
indemnify his or her employee for all necessary expenditures or losses incurred by the employee

1 in direct consequence of the discharge of his or her duties...”

2 90. Further, Labor Code section 2802 additionally provides, in pertinent part:
3 “(c)...the term ‘necessary expenditures or losses’ shall include all reasonable costs, including
4 but not limited to, attorney’s fees incurred by the employee enforcing the rights granted by this
5 section.”

6 91. California Labor Code section 2804 mandates that this statutory right cannot be
7 waived.

8 92. During the relevant time period, Defendants were required to indemnify and
9 reimburse Plaintiff and members of the Unreimbursed Business Expense Subclass for all
10 expenditures or losses caused by the employer’s want of ordinary care and/or incurred in direct
11 consequent of the discharge of their duties, but failed to indemnify and reimburse Plaintiff and
12 class members. For example, Plaintiff and members of the Unreimbursed Business Expense
13 Subclass were required to use their personal cellphones for business-related purposes, including
14 without limitation, to coordinate with clients and other employees, in violation of Labor Codes
15 sections 2800 and 2802.

16 93. As a direct and proximate result, Plaintiff and members of the Unreimbursed
17 Business Expense Subclass have suffered, and continue to suffer, substantial losses, related to
18 the use and enjoyment of such monies to be reimbursed, lost interest on such monies, and
19 expenses and attorney’s fees in seeking to compel Defendants to fully perform their obligations
20 under California law, all to their damage in amounts according to proof at the time of trial.

21 94. Accordingly, Plaintiff and members of the Unreimbursed Business Expense
22 Subclass are entitled to recover, and hereby seek, an amount equal to incurred necessary
23 expenditures, pre- and post-judgment interest, applicable penalties, attorneys’ fees and costs,
24 and any further equitable relief this Court may deem just and proper. See Cal. Lab. Code §
25 2802; see also, Cal. Civ. Proc. Code § 1021.5.

26 95. Plaintiff, on behalf of himself and members of the Unreimbursed Business
27 Expense Subclass, requests relief as described below.

28 ///

FIFTH CAUSE OF ACTION
FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS
[Labor Code § 226]

96. Plaintiff hereby incorporates all preceding paragraphs of this Complaint.

97. Labor Code section 226(a) provides: “Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees... an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, (5) net wages earned... ..and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee...”

98. Due to Defendants’ failure to pay for all hours worked and all meal and rest period premiums as required by the Labor Code, the wages and hours worked listed on each wage statement provided to Plaintiff and members of the Wage Statement Subclass were misstated and violated Sections 226(a)(1), (2), (5), and (9). Defendants’ actions were intentional and willful.

99. As a consequence of Defendants’ knowing and willful failure to comply with Labor Code section 226(a), Plaintiff and members of the Wage Statement Subclass are entitled to actual damages or penalties not to exceed \$4,000 for each employee pursuant to Labor Code section 226(b), together with interest and attorneys’ fees and costs.

100. Labor Code section 226(e) states: “An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorneys’ fees.” Labor Code section 226(e)(2)(B) states: “An employee is deemed to suffer injury for purposes of this subdivision if the employer fails to provide accurate and complete information as required by any one or more of items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly and easily determine from the wage statement alone one or more of the following: (i) The amount of gross wages or net wages paid to the employee during the pay period or any other information

1 required to be provided on the itemized wage statement pursuant to items (2) to (4), inclusive,
2 (6) and (9) of subdivision (a)...” Because Plaintiff’s wage statements did not include, among
3 other things, an accurate accounting of gross wages earned or the accurate total hours worked,
4 he is deemed to have suffered injury.

5 101. Labor Code section 226(h) states: “An employee may also bring an action for
6 injunctive relief to ensure compliance with this section, and is entitled to an award of costs and
7 reasonable attorney’s fees.”

8 102. Labor Code section 226.3 states, in part: “Any employer who violates
9 subdivision (a) of section 226 shall be subject to a civil penalty in the amount of two hundred
10 fifty dollars (\$250) per employee per violation in an internal citation and one thousand dollars
11 (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails
12 to keep the records required in subdivision (a) of Section 226. The civil penalties provided for
13 in this section are in addition to any other penalty provided by law.”

14 103. As a direct result of Defendants’ violations alleged herein, Plaintiff and members
15 of the Wage Statement Subclass have suffered, and continue to suffer injury including
16 substantial losses related to the use and enjoyment of such wages, lost interest on such monies
17 and expenses and attorney’s fees in seeking to compel Defendants to fully perform their
18 obligations under state law, all to their respective damage in amounts according to proof at trial
19 and within the jurisdictional limitations of this Court.

20 104. Plaintiff seeks to recover in a civil action all remedies including damages, unpaid
21 wages, penalties, attorney’s fees and costs, and injunctive relief to the fullest extent permissible
22 including those permitted pursuant to Labor Code sections 226(e), 226(h), and 226.3, and Code
23 of Civil Procedure section 1021.5.

24 105. Plaintiff, on behalf of himself and the members of the members of the Wage
25 Statement Subclass, requests relief as described below.

26 **SIXTH CAUSE OF ACTION**
27 **FAILURE TO TIMELY PAY WAGES UPON SEPARATION OF EMPLOYMENT**
28 **[Labor Code §§ 201, 202, 203]**

106. Plaintiff hereby incorporates all preceding paragraphs of this Complaint.

1 107. Labor Code section 201(a) states: “If an employer discharges an employee, the
2 wages earned and unpaid at the time of discharge are due and payable immediately.”

3 108. Labor Code section 202(a) states: “If an employee not having a written contract
4 for a definite period quits his or her employment, his or her wages shall become due and
5 payable not later than 72 hours thereafter, unless the employee has given 72 hours previous
6 notice of his or her intention to quit, in which case the employee is entitled to his or her wages
7 at the time of quitting. Notwithstanding any other provision of law, an employee who quits
8 without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so
9 requests and designates a mailing address. The date of the mailing shall constitute the date of
10 payment for purposes of the requirement to provide payment within 72 hours of the notice of
11 quitting.”

12 109. Through Defendants’ conduct during the applicable statutory period including,
13 but not limited to, the conduct alleged herein, including that alleged on information and belief,
14 Defendants willfully failed to provide Plaintiff and members of the Waiting Time Penalty
15 Subclass with all wages due and owing, including minimum, regular, and overtime wages, and
16 premium wages for non-compliant meal or rest periods, by the time specified by Labor Code
17 sections 201(a) and 202(a), as applicable.

18 110. Labor Code section 203(a) states, in relevant part: “If an employer willfully fails
19 to pay, without abatement or reduction, in accordance with sections 201, 201.3, 201.5, 202, and
20 205.5, any wages of an employee who is discharged or who quits, the wages of the employee
21 shall continue as a penalty from the due date thereof at the same rate until paid or until an action
22 therefore is commenced; but the wages shall not continue for more than 30 days.”

23 111. As a direct result of Defendants’ violations alleged herein, Plaintiff and
24 members of the Waiting Time Penalty Subclass have suffered and continue to suffer substantial
25 losses related to the use and enjoyment of such wages, including lost interest on such monies
26 and expenses and attorneys’ fees in seeking to compel Defendants to fully perform their
27 obligation under state law, all to their respective damage in amounts according to proof at trial
28 and within the jurisdictional limitations of this Court.

112. Plaintiff seeks to recover in a civil action all remedies to the fullest extent permissible including those permitted pursuant to Labor Code section 203 and Code of Civil Procedure 1021.5.

113. Plaintiff, on behalf of himself and the members of the Waiting Time Penalty Subclass, requests relief as described below.

SEVENTH CAUSE OF ACTION
VIOLATION OF THE UNFAIR COMPETITION LAW
[Business and Professions Code §§ 17200, *et seq.*]

114. Plaintiff hereby incorporates all preceding paragraphs of this Complaint.

115. The failure to pay regular, minimum, and overtime compensation, rest and meal period premiums, reimburse business expenses, and timely pay all pay due during and upon termination of employment to Plaintiff, and each Plaintiff Class Member and UCL Subclass Member, is an unlawful and unfair business practice within the meaning of Business and Professions Code sections 17200, *et seq.*, including but not limited to a violation of the applicable State of California Industrial Welfare Commission Wage Orders, regulations, and statutes, or is otherwise a practice which is otherwise unfair and unlawful, including that the Defendants did not pay tax contributions on the accrued compensation in the form of FICA, Social Security, Medicare, and Unemployment Insurance.

116. This cause of action is brought under Business and Professions Code sections 17203 and 17204, commonly called the Unfair Competition Law. Under this cause of action and pursuant to Business and Professions Code section 17208, Plaintiff and all Plaintiff Class Members seek restitution of wages owed and, where applicable, penalties under Labor Code section 203, where such wages were due to each of the Class Members during the Class Period, commencing four (4) years prior to filing of this complaint, according to proof.

117. This cause of action is brought as a cumulative remedy as provided in Business and Professions Code section 17205, and is intended as an alternative remedy for restitution for Plaintiff, each Plaintiff Class Member, and each UCL Subclass Member, for the time period, or any portion thereof, commencing within four (4) years prior to the filing of this complaint, and as the primary remedy for Plaintiff, each Plaintiff Class Member, and each UCL Subclass

1 Member for the time period of the fourth year prior to the filing of this complaint, as such one-
2 year time period exceeds the statute of limitations on statutory wage claims.

3 118. As a result of the Defendants' unlawful and unfair business practice of failing
4 to pay minimum, regular, and overtime wages, meal and rest period premiums, reimburse
5 business expenses, and prompt payment of wages in violation of Labor Code sections 201 and
6 202, each Plaintiff Class Member and UCL Subclass Member has suffered damages and is
7 entitled to restitution in an amount according to proof. The wages and restitution sought are
8 based on the alleged failure to provide legally compliant meal and rest periods, as these claims
9 relate only to wages or premiums that were required to be paid, but for which, due to
10 Defendants' unfair competition, were not paid as required by law.

11 119. Plaintiff, on behalf of himself and other proposed members of the Plaintiff
12 Class, will seek restitution of wages, including premium wages for non-compliant break
13 periods, in an amount according to proof within the UCL's applicable limitations period.

14 120. Plaintiff, on behalf of himself and the members of the UCL Subclass, requests
15 relief as described below.

16 **EIGHTH CAUSE OF ACTION**
17 **PAGA CIVIL PENALTIES FOR FAILURE TO PAY MINIMUM, REGULAR, AND**
18 **OVERTIME WAGES**
[Lab. Code §§ 2698, *et seq.*]

19 121. Plaintiff hereby incorporates all preceding paragraphs of this Complaint.

20 122. Labor Code section 1194(a) provides: "(a) Notwithstanding any agreement to
21 work for a lesser wage, any employee receiving less than the legal minimum wage or the legal
22 overtime compensation applicable to the employee is entitled to recover in a civil action the
23 unpaid balance of the full amount of this minimum wage or overtime compensation, including
24 interest thereon, reasonable attorney's fees, and costs of suit."

25 123. Labor Code section 1197 states: "The minimum wage for employees fixed by the
26 commission is the minimum wage to be paid to employees, and the payment of a less wage than
27 minimum wage so fixed is unlawful."

28 124. Labor Code section 510 codifies the right to overtime compensation at one and

1 one-half (1½) times the regular hourly rate for hours worked in excess of eight (8) hours in a
2 day or forty (40) hours in a week and for the first eight (8) hours worked on the seventh
3 consecutive day of work, and overtime compensation at twice the regular hourly rate for hours
4 worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the
5 seventh day of work in a workweek.

6 125. Labor Code section 2699(a) provides: “Notwithstanding any other provision of
7 law, any provision of this code that provides for a civil penalty to be assessed and collected by
8 the Labor and Workforce Development Agency or any of its departments, divisions,
9 commissions, boards, agencies, or employees, for a violation of this code, may, as an
10 alternative, be recovered through a civil action brought by an aggrieved employee on behalf of
11 himself or herself and other current or former employees pursuant to the procedures specified in
12 Section 2699.3.”

13 126. Labor Code section 2699(f)(2) states: “For all provisions of this code except
14 those for which a civil penalty is specifically provided, there is established a civil penalty for a
15 violation of these provisions, as follows... (2) If, at the time of the alleged violation, the person
16 employs one or more employees, the civil penalty is one hundred dollars (\$100) for each
17 aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for
18 each aggrieved employee per pay period for each subsequent violation.” Labor Code §
19 2699(f)(2).

20 127. Labor Code section 2699.5 provides, in pertinent part that “provisions of
21 subdivision (a) of Section 2699.3 apply to any alleged violation of the following provisions:
22 [Labor Code §§] ...510, 1194, 1194.1” and allow for recovery of civil penalties pursuant to the
23 PAGA.

24 128. During all or a substantial part of the PAGA Period, Defendants failed to pay
25 minimum, regular, and overtime wages for all work hours.

26 129. As a result of Defendants’ failure to pay minimum, regular, and overtime wages
27 for all hours worked, Defendants, and each of them, are liable for civil penalties within the
28 applicable limitations period of Labor Code section 2699(f)(2) for violations of Labor Code

1 sections 510, 1194, and 1194.2, in the amount of \$100 for each aggrieved employee per pay
2 period for the initial violation and \$200 for each subsequent violation, for Defendants' failure to
3 pay Plaintiff and other aggrieved employees minimum, regular, or overtime wages.

4 130. Defendants' conduct also violates Wage Order 7-2001 by failing to pay
5 minimum and overtime wages to employees.

6 131. Plaintiff will seek civil penalties of \$50 for the initial pay period an employee
7 was underpaid, and \$100 for each subsequent violation. Funds recovered will be distributed in
8 accordance with the PAGA, with 75% of penalties recovered provided to the LWDA on behalf
9 of the State of California.

10 **NINTH CAUSE OF ACTION**
11 **PAGA CIVIL PENALTIES FOR FAILURE TO PROVIDE MEAL PERIODS**
12 **[Labor Code §§ 2698, *et seq.*]**

13 132. Plaintiff hereby incorporates all preceding paragraphs of this Complaint.

14 133. Labor Code section 226.7(b)(c) provides: "An employer shall not require an
15 employee to work during a meal period mandated pursuant to an applicable statute, or
16 applicable regulation, standard, or order of the Industrial Welfare Commission, the
17 Occupational Safety and Health Standards Board, or the Division of Occupational Safety and
18 Health."

19 134. Labor Code section 226.7(c) provides: "If an employer fails to provide an
20 employee a meal period in accordance with a state law...the employer shall pay the employee
21 one additional hour of pay at the employee's regular rate of compensation for each workday that
22 the meal or rest or recovery period is not provided."

23 135. During the PAGA Period, Plaintiff and other aggrieved employees were not
24 provided with legally compliant, off-duty meal periods.

25 136. By failing to provide off-duty and uninterrupted meal periods of at least thirty
26 (30) minutes for shifts of five (5) hours or more, which began before the end of the fifth hour of
27 work, and failing to pay employees one hour of pay at their regular rate of pay for each workday
28 a meal period was not provided, Defendants willfully violated Labor Code sections 226.7, 512,
and 558(a)(3), and Wage Order 7-2001.

1 137. Labor Code section 2699(f)(2) provides for civil penalties for violations of the
2 Labor Code for which there is no corresponding civil penalty, including Labor Code sections
3 226.7 and 512. The civil penalty is \$100 for the initial violation and \$200 for each subsequent
4 violation for each underpaid employee. Labor Code § 2699(f)(2).

5 138. Plaintiff, as a representative of the general public, seeks to recover all Labor
6 Code section 2699(f)(2) civil penalties for each Labor Code sections 226.7 or 512(a) violation,
7 according to proof, as to those penalties otherwise only available in public agency enforcement
8 actions. Funds recovered will be distributed in accordance with the PAGA, with 75% of
9 penalties recovered provided to the LWDA on behalf of the State of California.

10 **TENTH CAUSE OF ACTION**
11 **PAGA CIVIL PENALTIES FOR FAILURE TO PROVIDE REST PERIODS**
12 **[Labor Code §§ 2698, *et seq.*]**

13 139. Plaintiff hereby incorporates all preceding paragraphs of this Complaint.

14 140. During the PAGA Period, Plaintiff and other aggrieved employees were not
15 provided legally compliant, duty-free rest periods.

16 141. By failing to authorize and permit rest periods of at least ten (10) minutes for
17 every four (4) hours or major fraction thereof worked per day, and by failing to provide
18 premium wages at the regular rate of pay when these periods were not permitted or authorized,
19 Defendants willfully violated Labor Code section 226.7 and Wage Order 7-2001.

20 142. Labor Code section 2699(f)(2) provides for civil penalties for violations of the
21 Labor Code for which there is no corresponding civil penalty, including Labor Code section
22 226.7. The civil penalty is \$100 for the initial violation and \$200 for each subsequent violation
23 for each underpaid employee. Labor Code § 2699(f)(2).

24 143. Plaintiff, as a representative of the general public, seeks to recover all Labor
25 Code section 2699(f)(2) civil penalties for each Labor Code section 226.7 violation, according
26 to proof, as to those penalties otherwise only available in public agency enforcement actions.
27 Funds recovered will be distributed in accordance with the PAGA, with 75% of penalties
28 recovered provided to the LWDA on behalf of the State of California.

///

ELEVENTH CAUSE OF ACTION
PAGA CIVIL PENALTIES FOR FAILURE TO REIMBURSE BUSINESS EXPENSES
[Labor Code §§ 2698, *et seq.*]

144. Plaintiff hereby incorporates all preceding paragraphs of this Complaint.

145. California Labor Code section 2802 provides: “An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, obedience to the directions of the employer...[].”

146. For purposes of this section, the term “necessary expenditures or losses” shall include all reasonable costs, including, but not limited to, attorney’s fees incurred by the employee enforcing the rights granted by this section.

147. California Labor Code section 2804 mandates this statutory right cannot be waived.

148. Labor Code section 2699(f)(2) states: “For all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions, as follows... (2) If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.”

149. Aggrieved employees are entitled to pursue civil penalties under the PAGA for violations of Labor Code section 2802. Labor Code § 2699.5.

150. Because there is no established civil penalty for violations of Section 2802, Labor Code section 2699(f)(2) provides the appropriate civil penalty, as Defendants employed more than one person during the statutory period, and still employ more than one person.

151. Defendants violated the above statutes throughout the applicable statutory period by failing to fully reimburse Plaintiff and other aggrieved employees for necessary expenditures incurred in direct consequence of discharging their duties, including failing to reimburse for all expenses incurred by Plaintiff and aggrieved employees for the use of personal cell phones for business-related purposes.

153. Plaintiff hereby incorporates all preceding paragraphs of this Complaint.

154. Labor Code section 226(a) provides: “Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees... an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, (5) net wages earned... ..and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee...”

155. Due to Defendants' failure to pay for all hours worked and all meal and rest period premiums as required by the Labor Code, the wages and hours worked listed on each wage statement provided to Plaintiff and other aggrieved employees were misstated and violated Sections 226(a)(1), (2), (5), and (9). Defendants' actions were intentional and willful.

156. Plaintiff has satisfied all prerequisites to serve as a representative of the general public to enforce California’s labor laws, and the penalty provisions identified in Labor Code section 226.3. Plaintiff, as a representative of the people of the State of California, seeks all penalties otherwise capable of being collected by the Division of Labor Standards Enforcement (“DLSE”). Labor Code section 2699.5 provides that Section 2699.3(a) applies to an alleged violation of Labor Code section 226.

157. Labor Code section 226.3 provides for civil penalties for violations of Section 226. The civil penalty is \$250 for the initial violation and \$1,000 for each subsequent violation.

158. Plaintiff, as a representative of the general public, seek to recover all Labor Code section 2699(f)(2) civil penalties for each Labor Code section 226 violation, according to proof,

1 as to those penalties otherwise only available in public agency enforcement actions. Funds
2 recovered will be distributed in accordance with the PAGA, with 75% of penalties recovered
3 provided to the LWDA on behalf of the State of California.

4 **THIRTEENTH CAUSE OF ACTION**
5 **PAGA CIVIL PENALTIES FOR FAILURE TO TIMELY PAY WAGES DUE UPON**
6 **SEPARATION OF EMPLOYMENT**
7 **[Labor Code §§ 2698, *et seq.*]**

8 159. Plaintiff hereby incorporates all preceding paragraphs of this Complaint.

9 160. Labor Code sections 201-203 require employers to pay wages earned by
10 employees within strict time requirements. Defendants had a policy, practice, and procedure of
11 willfully failing to pay the earned wages of Defendants' former employees. If an employer
12 willfully fails to timely and fully pay all final wages the employer must, as a penalty, continue
13 to pay an employee's wages for 30 days, or until the back wages are paid in full.

14 161. Defendants failed to pay Plaintiff and other aggrieved employees who ended
15 their employment with the Defendant all wages, including minimum, regular, and overtime, and
16 meal and rest period premium wages, as required by Labor Code sections 201-203.

17 162. Labor Code section 256 states: "The Labor Commissioner shall impose a civil
18 penalty in an amount not exceeding 30 day's pay as waiting time under the terms of Section
19 203."

20 163. Labor Code section 2699(f)(2) provides for civil penalties for violations of the
21 Labor Code for which there is no corresponding civil penalty, including Labor Code section
22 203. The civil penalty is \$100 for the initial violation and \$200 for each subsequent violation for
23 each underpaid employee. Labor Code § 2699(f)(2).

24 164. Plaintiff, as a representative of the general public, seeks to recover all Labor
25 Code section 2699(f)(2) civil penalties for each Labor Code section 201-203 violation,
26 according to proof, as to those penalties otherwise only available in public agency enforcement
27 actions. Funds recovered will be distributed in accordance with the PAGA, with 75% of
28 penalties recovered provided to the LWDA on behalf of the State of California.

///

FOURTEENTH CAUSE OF ACTION
PAGA CIVIL PENALTIES FOR FAILURE TO TIMELY PAY WAGES DUE DURING
EMPLOYMENT
[Labor Code §§ 2698, *et seq.*]

165. Plaintiff incorporates all preceding paragraphs of this Complaint.

166. Labor Code section 204(a) requires employers to pay wages earned by employees within strict time requirements. Defendants had a policy, practice, and procedure of willfully failing to pay the earned wages of Defendants' employees twice during each calendar month, on days designated in advance by the employer as the regular paydays.

167. Labor Code section 210(a) provides: "In addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 204.11, 205, 205.5, and 1197.5, shall be subject to a penalty as follows: (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld."

168. Defendant failed to pay Plaintiff and other aggrieved employees all minimum, regular, and overtime wages and all meal and rest period premium wages during their employment, as required by Labor Code section 204.

169. Labor Code section 2699(f)(2) provides for civil penalties for violations of the Labor Code for which there is no corresponding civil penalty. The civil penalty is \$100 for the initial violation and \$200 for each subsequent violation for each underpaid employee. Labor Code § 2699(f)(2).

170. Plaintiff, as a representative of the general public, seeks to recover all civil penalties under Labor Code section 2699(f)(2) and/or section 210 for each and every violation of Labor Code section 204(a), in an amount according to proof, as to those penalties that are otherwise only available in public agency enforcement actions. Funds recovered will be distributed in accordance with the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State of California.

FIFTHTEENTH CAUSE OF ACTION
PAGA CIVIL PENALTIES FOR FAILURE TO MAINTAIN ACCURATE RECORDS
[Labor Code §§ 2698, *et seq.*]

171. Plaintiff hereby incorporates all preceding paragraphs of this Complaint.

172. Labor Code section 1174(d) requires, every person employing labor in California to “[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.”

173. Defendants failed to maintain accurate records by failing to record all hours worked and the wages owed to Plaintiff and other aggrieved employees. Defendants failed to keep accurate records of accurate minimum and overtime wages paid and hours worked, including hours worked during meal periods.

174. Labor Code section 2699(f)(2) provides for civil penalties for violations of the Labor Code for which there is no corresponding civil penalty, including Labor Code section 1174(d). The civil penalty is \$100 for the initial violation and \$200 for each subsequent violation for each underpaid employee. Labor Code § 2699(f)(2).

175. Plaintiff, as a representative of the general public, seeks to recover all Labor Code section 2699(f)(2) civil penalties for each Labor Code section 1174 violation, according to proof, as to those penalties otherwise only available in public agency enforcement actions. Funds recovered will be distributed in accordance with the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State of California.

VII.

PRAYER FOR RELIEF

Plaintiff prays for judgment as follows:

1. That the Court determine this action may be maintained as a class action and

1 Plaintiff as Class Representative and Plaintiff's counsel as Class Counsel;

2 2. For injunctive relief as provided by the Labor Code to the extent permitted by
3 law including, but not limited to, pursuant to Section 226(h), and Business and Professions
4 Code sections 17200, *et seq.*;

5 3. For restitution as provided by Business and Professions Code sections 17200, *et*
6 *seq.*;

7 4. For an order requiring Defendants to restore and disgorge all funds to each
8 affected person acquired by means of any act or practice declared by this Court to be unlawful,
9 unfair, or fraudulent and, therefore, constituting unfair competition under Business and
10 Professions Code sections 17200, *et seq.*;

11 5. For an award of unpaid wages, including minimum, regular, and overtime wages,
12 to the extent permissible by law to each affected person;

13 6. For an award of liquidated damages to the extent permissible by Labor Code
14 section 1194.2;

15 7. For an award of meal period premium wages equal to one hour of pay at the
16 employee's regular rate of pay for each workday that a meal period was not provided in
17 accordance with Labor Code sections 226.7 and 512, and Section 11 of the applicable IWC
18 Wage Order;

19 8. For an award of rest period premium wages equal to one hour of pay at the
20 employee's regular rate of pay for each workday that a rest period was not provided in
21 accordance with Labor Code section 226.7 and Section 12 of the applicable IWC Wage Order;

22 9. For reimbursement of unpaid expenses incurred as a result of the use of cell
23 phones at the direction of and for the benefit of Defendants, in accordance with Labor Code
24 section 2802;

25 10. For penalties to the extent permitted pursuant to the Labor Code, and Orders of
26 the Industrial Welfare Commission including, but not limited to penalties under Labor Code
27 section 226(e);

28 11. For an award of waiting time penalties per former employee pursuant to Labor

1 Code section 203(a);

2 12. For an award of penalties incurred under sections 210, 226.3, 226(e), and 1174.5
3 per underpaid employee pursuant to Labor Code sections 210, 226(e), 226.3, and 1174.5;

4 13. For the remedies provided by Labor Code section 233 including reasonable
5 attorneys' fees;

6 14. For an award of liquidated damages to the extent permissible by Labor Code
7 section 1194.2;

8 15. For penalties incurred under Labor Code section 1197.1 for each underpaid
9 employee per pay period for which the employee was underpaid;

10 16. For pre and post-judgment interest to the extent permitted by law including, but
11 not limited to, Labor Code section 1194;

12 17. Determine the appropriate remedy to compensate Plaintiff, Plaintiff Class, and
13 Subclass members, as required to promote fairness and justice, including but not limited to
14 establishing procedures for compensation, and fluid recovery if appropriate;

15 18. For recovery of all civil penalties as permitted by Labor Code section 2699, for
16 unpaid minimum, regular, and overtime wages owed pursuant to Labor Code section 1194,
17 according to proof;

18 19. For recovery of civil penalties as permitted by Labor Code section 2699, for
19 unpaid meal period premiums earned pursuant to Labor Code section 226.7, according to proof;

20 20. For recovery of civil penalties as permitted by Labor Code section 2699 for
21 unpaid rest period premiums earned pursuant to Labor Code section 226.7, according to proof;

22 21. For recovery of civil penalties as permitted by Labor Code section 2699 for
23 unreimbursed business expenses pursuant to Labor Code section 2802, according to proof;

24 22. For recovery of civil penalties as permitted by Labor Code section 2699, for
25 inaccurate itemized wage statements pursuant to Labor Code sections 226 and 226.3, according
26 to proof;

27 23. For recovery of civil penalties pursuant to Labor Code section 2699 where a
28 statutory civil penalty is not provided, for failing to comply with Labor Code sections 201-203;

24. For recovery of civil penalties pursuant to Labor Code section 256 in an amount not exceeding 30 days' pay as a waiting time penalty under the terms of section 203;

25. For recovery of civil penalties pursuant to Labor Code section 2699(f)(2) and/or section 210 for failing to timely pay all wage due pursuant to Labor Code section 204(a).

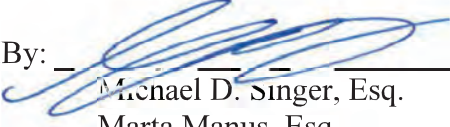
26. Attorneys' fees and costs of suit, including expert fees and fees pursuant to California Labor Code sections 218.5, 226, 226(h), 1194, and Code of Civil Procedure section 1021.5, the PAGA, and all other applicable state laws;

27. For Pre-Judgment and Post-Judgment interest, to the extent permitted by law as to any restitution recovery; and

28. Any other relief as this Court deems proper.

COHELAN KHOURY & SINGER
LAW OFFICES OF SAHAG MAJARIAN II

Dated: May 27, 2020

By: 
Michael D. Singer, Esq.
Marta Manus, Esq.
Attorneys for Plaintiff Omar Ayala

DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial of all claims triable as of right by jury.

COHELAN KHOURY & SINGER
LAW OFFICES OF SAHAG MAJARIAN II

Dated: May 27, 2020

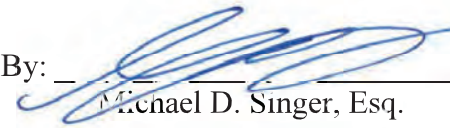
By: 
Michael D. Singer, Esq.
Marta Manus, Esq.
Attorneys for Plaintiff Omar Ayala

EXHIBIT 1

COHELAN KHOURY & SINGER

A PARTNERSHIP OF PROFESSIONAL LAW CORPORATIONS

TIMOTHY D. COHELAN, APLC*
ISAM C. KHOURY, APC
DIANA M. KHOURY, APC
MICHAEL D. SINGER, APLC •

(*Also admitted in the District of Columbia)
(•Also admitted in Colorado)

ATTORNEYS AT LAW

605 "C" STREET, SUITE 200
SAN DIEGO, CALIFORNIA 92101-5305

Telephone: (619) 595-3001

Facsimile: (619) 595-3000

www.ckslaw.com

JEFF GERACI
J. JASON HILL†
MARTA MANUS
KRISTINA DE LA ROSA

(† Also admitted in Illinois)

March 20, 2020

NOTICE VIA ONLINE SUBMISSION

California Labor and Workforce Development Agency (LWDA)

VIA CERTIFIED U.S. MAIL WITH RETURN RECEIPT

Zodiac Pool Systems, LLC
2882 Whiptail Loop East # 100
Carlsbad, CA 92010

Fluidra USA, LLC
c/o Ted Kampe
27647 W. Redwood Way
Castaic, CA 91384

Zodiac Pool Solutions, LLC
2882 Whiptail Loop East # 100
Carlsbad, CA 92010

Zodiac Pool Systems, LLC
Zodiac Pool Solutions, LLC
c/o CSC-Lawyers Incorporating Service
2710 Gateway Oaks Dr., Suite 150N
Sacramento, CA 95833

Re: Notice pursuant to California Labor Code sections 2698, *et seq.*, the Private Attorneys General Act ("PAGA"), sent by Omar Ayala on behalf of himself and all other non-exempt employees of Zodiac Pool Systems, LLC, Zodiac Pool Solutions, LLC and Fluidra USA, LLC in the State of California, as an individual and as proposed a Representative of the State of California

Dear PAGA Administrator and Zodiac Pool Systems, LLC, Zodiac Pool Solutions, LLC, and Fluidra USA, LLC:

This letter shall serve as Omar Ayala's (hereafter "Claimant") Notice pursuant to the California Private Attorneys General Act of 2004 ("PAGA"), California Labor Code sections 2698, *et seq.* regarding his claims against Zodiac Pool Systems, LLC, Zodiac Pool Solutions, LLC (collectively "Zodiac"), and Fluidra USA, LLC, (collectively referred to herein as "the Employers"). Claimant submits this notice on behalf of himself and all current and former non-exempt employees employed by the Employers in California during the one year preceding the date of this notice suffered one or more of the violations described herein (collectively referred to as "aggrieved employees").

If the LWDA does not intend to investigate the allege violations, Claimant intends to file a representative action for PAGA *civil penalties* on behalf of himself and all other aggrieved employees of the Employers, seeking civil penalties on behalf of himself and all other aggrieved non-exempt employees in the State of California. A copy of this notice is being sent to the Employers by certified mail at the addresses above.

California LWDA
Zodiac Pool Systems, LLC
Zodiac Pool Solutions, LLC
Fluidra USA, LLC
Re: Omar Ayala
March 20, 2020
Page | 2

Claimant and other non-exempt employees were subject to the same policies and practices alleged herein which impermissibly denied aggrieved employees their rights pursuant to the California Labor Code and caused violation of the Labor Code as set forth below.

FACTUAL STATEMENT

Claimant worked for the Employers as a non-exempt employee in the job position(s) of “Assembler, Tester, and Builder” beginning in approximately March 2013 when Claimant was hired by Grand Effects, Inc. On October 2, 2017, Zodiac Pools Systems LLC acquired Grand Effects, Inc. Zodiac Pool Systems LLC is a subsidiary of Zodiac Pool Solutions, LLC. In July 2018, Zodiac Pool Systems, LLC merged with Fluidra USA, LLC. The Employers are a global provider of equipment and solutions for in-ground residential swimming pools and spas. Claimant’s employment ended in approximately October 2019.

At all relevant times at least one year prior to the date of this Notice, the Employers subjected Claimant and non-exempt employees to policies and practices which caused the violations of the Labor Code as described herein. Claimant now seeks civil penalties individually and on behalf of other non-exempt employees (“aggrieved employees”) based on the alleged violations of the California Labor Code and applicable IWC Wage Order, including civil penalties pursuant to Labor Code section 558(a), *excluding underpaid wages per ZB, N.A. v. Superior Court* (2019) 8 Cal. 5th 175, 252 Cal. Rptr. 3d 228, 448 P.3d 239. Claimant’s claims are set forth in further detail below.

For reasons set forth herein, Claimant alleges the following violations of the California Labor Code and the applicable IWC Wage Order(s) on behalf of himself and all other non-exempt employees employed by the Employers in California.

FAILURE TO PAY MINIMUM, REGULAR, AND OVERTIME WAGES

(Labor Code §§ 218, 510, 1194, 1197, 1197.1, 1198, and 1199(c) and the “Minimum Wages” and “Hours and Days of Work” Sections of the Applicable Wage Order)

At all times during his employment and at least one year prior to the date of this Notice, Claimant was subjected to a uniform policy and practice of unlawful time rounding. That is, the Employers did not pay Claimant and other aggrieved employees precisely for all hours worked and rounded his and other aggrieved employees’ hours worked to the nearest quarter of an hour, which over time, unlawfully favored the Employers and resulted in time lost to the employees, including Claimant. This rounding policy was not neutral on its face or in application and resulted in a cumulative loss of time to the employees. The Employers had the ability to pay for the precise hours worked but opted instead to utilize the rounding policy with no apparent benefit other than to benefit the Employers and deprive employees of payment for all hours worked. Strict rules regarding punctuality and rules favoring meal periods of less than thirty minutes further affected the rounding policy to result in more favorable results to the Employers. As a result, Claimant and other employees were not paid all minimum and regular wages for all hours worked. When the employees worked overtime, the rounding policy also resulted in the failure to

pay all overtime wages for all overtime hours worked. Furthermore, on information and belief, Claimant and other aggrieved employees were paid non-discretionary bonus if they met their sales quotas, which the Employers failed to factor into the regular rate of pay for purposes of calculating the accurate overtime rate of pay due and owed for overtime hours worked.

Labor Code section 510 provides in pertinent part: “Eight hours of labor constitutes a day’s work. Any work in excess of 8 hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.”

Labor Code section 1194(a) states: “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.”

Labor Code section 1198 provides: “The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

Labor Code section 1199, which is a statute listed for which PAGA default civil penalties are recoverable pursuant to Labor Code sections 2699.5 and 2699(f)(2), provides that:

“Every employer or other person acting either individually or as an officer, agent, or employee of another person is guilty of a misdemeanor and is punishable by a fine of not less than one hundred dollars (\$100) or by imprisonment for not less than 30 days, or by both, who does any of the following:

- (a) Requires or causes any employee to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission.
- (b) Pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission.
- (c) Violates or refuses or neglects to comply with any provision of this chapter or any order or ruling of the commission.”

Labor Code section 1197 states: “The minimum wage for employees fixed by the commission or by any applicable state or local law, is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful. This section does not change the applicability of local minimum wage laws to any entity.”

Labor Code section 1197.1 states: “Any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203. For any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid. For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed.”

Pursuant to the “Hours & Days of Work” Section of the applicable Wage Order, an employer may not pay non-exempt employees less than the applicable overtime rate for all overtime hours worked.

Pursuant to the “Minimum Wages” and “Hours & Days of Work” Sections of the applicable Wage Order, an employer may not pay employees less than the applicable minimum wage for all hours worked and provides that an employer may not pay non-exempt employees less than the applicable overtime rate for all overtime hours worked.

The Employers violated Labor Code sections 218, 510, 1194, 1197, 1198, and the “Minimum Wages” and “Hours and Days of Work” Sections of the Applicable Wage Order because it did not pay Claimant and other aggrieved current and former employees all minimum, regular, and overtime wages for all hours worked as a result of its unlawful rounding system and failure to accurately calculate the overtime rate of pay during pay periods when/if a non-discretionary bonus was paid.

Accordingly, Claimant now seeks *civil penalties* pursuant to the PAGA on behalf of himself and other aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

FAILURE TO PROVIDE MEAL AND REST PERIODS

(Labor Code §§ 226.7, 512, and 1198, and the “Meal Period” and “Rest Period” Sections of the applicable IWC Wage Order)

Labor Code section 512(a) states in pertinent part: “[A]n employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes” Labor Code section 226.7(a) states that “no employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.”

The “Rest Period” Section of applicable IWC Wage Order states: “Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.” If an employer fails to provide an employee a rest period in accordance with the applicable provision of the order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation of each workday that the rest period is not provided.

Labor Code section 226.7(c) states: “[I]f an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the IWC, the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each work day that the meal or rest period is not provided.”

The Employers failed to provide Claimant and other aggrieved employees with legally compliant meal and rest periods on eligible workdays. The Employers regularly failed to provide a duty-free and uninterrupted meal period before the end of the fifth hour of work and failed to provide a second meal period on shifts of more than 10 hours, as required under California law. Furthermore, the meal periods provided to Claimant and other aggrieved employees were often short insofar as they were not at least 30 minutes in length, as required under California law. On information and belief, Claimant and other aggrieved employees did not waive their right to receive meal periods, including second meal periods and third rest periods on eligible shifts. During Claimant’s employment, the Employers failed to provide Claimant and other aggrieved employees with legally compliant off-duty meal periods and duty-free rest periods as required by Labor Code sections 226.7 and 512, and sections 11 and 12 of the applicable IWC Wage Order. Furthermore, the Employers failed to pay one (1) hour of pay at the employee’s *regular rate* of compensation for each workday that the meal and/or rest period was not provided, in accordance with California law.

Accordingly, Claimant now seeks *civil penalties* pursuant to the PAGA on behalf of himself and other aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

FAILURE TO REIMBURSE BUSINESS-RELATED EXPENSES
(Labor Code §§ 2802 and 2804, and the “Tools and Equipment” section of the applicable IWC Wage Order)

Labor Code section 2802(a) provides that “[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.”

Labor Code section 2802(c) states that “[f]or purposes of [2802], the term ‘necessary expenditures or losses’ shall include all reasonable costs, including, but not limited to attorney’s

fees incurred by the employee enforcing the rights granted by [2802].”

Section 9(b) of the applicable IWC Wage Order states in pertinent part: “When tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer.”

Labor Code section 2802 prohibits employers, such as the Employers, from shifting their cost of doing business onto the employee. California Labor Code section 2802 states that employers must “indemnify” an employee for “all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer.” This means that if the expense in question is “necessary” for performance of the job, the employer must reimburse the employee 100% of the cost. An expense is considered “necessary” if it directly results from the employee’s performance of his or her work duties. An expense is also “necessary” if it occurs because the employee is following the directions given by the employer.

“Any contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled to under the laws of this State.” Cal. Labor Code § 2804.

The Employers failed to comply with Labor Code section 2802 and the applicable IWC Wage Order by failing to reimburse Claimant and other aggrieved employees for necessary business-related expenses incurred in direct consequence of the discharge of his or her duties, including for the use of personal cell phones for work-related purposes.

Accordingly, Claimant now seeks *civil penalties* pursuant to the PAGA on behalf of himself and other aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

FAILURE TO PAY ALL VACATION WAGES
(Labor Code §§ 218.5, 218.6, 227.3, and 2698, *et seq.*)

California Labor Code section 227.3 states, in pertinent part: “Whenever a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in accordance with such contract of employment or employer policy respecting eligibility or time served; provided, however, that an employment contract or employer policy shall not provide for forfeiture of vested vacation time upon termination. The Labor Commissioner or a designated representative, in the resolution of any dispute with regard to vested vacation time, shall apply the principles of equity and fairness.”

On information and belief, the Employers failed to comply with Labor Code section 227.3 by failing to pay all vacation wages due and earned to Claimant and all other aggrieved

California LWDA
Zodiac Pool Systems, LLC
Zodiac Pool Solutions, LLC
Fluidra USA, LLC
Re: Omar Ayala
March 20, 2020
Page | 7

employees. By failing to accurately pay for all hours worked, the Employers failed to accurately calculate vacation wages earned, and therefore, failed to pay all vacation wages due upon termination of employment.

Accordingly, Claimant now seeks *civil penalties* pursuant to the PAGA on behalf of himself and other aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

FAILURE TO PROVIDE PAID SICK LEAVE
(Labor Code §§ 246, 248.5)

Labor Code section 246 grants the right to employees to paid sick days. Specifically, Cal. Labor Code section 246(b) states that:

“(1) An employee shall accrue paid sick days at the rate of not less than one hour per every 30 hours worked, beginning at the commencement of employment or the operative date of this article, whichever is later, subject to the use and accrual limitations set forth in this section.

(2) An employee who is exempt from overtime requirements as an administrative, executive, or professional employee under a wage order of the Industrial Welfare Commission is deemed to work 40 hours per workweek for the purposes of this section, unless the employee’s normal workweek is less than 40 hours, in which case the employee shall accrue paid sick days based upon that normal workweek.

(3) An employer may use a different accrual method, other than providing one hour per every 30 hours worked, provided that the accrual is on a regular basis so that an employee has no less than 24 hours of accrued sick leave or paid time off by the 120th calendar day of employment or each calendar year, or in each 12-month period.

(4) An employer may satisfy the accrual requirements of this section by providing not less than 24 hours or three days of paid sick leave that is available to the employee to use by the completion of his or her 120th calendar day of employment.”

Labor Code section 246(i) further requires that an employer provide employees written notice setting forth the amount of paid sick leave available either on an employee’s wage statement pursuant to Section 226 or in a separate writing on the designated pay date.

On information and belief, the Employers failed to comply with Labor Code sections 246 and 248.5 by failing to provide all paid sick leave due and earned and failing to set forth in a written notice the accurate amount of paid sick leave Claimant and other aggrieved employees accrued. By failing to accurately record all hours actually worked and failing to pay for all hours worked, the Employers failed to provide all paid sick leave in accordance with California law,

which requires that paid sick days accrue at the rate of not less than one hour per every 30 hours worked.

Accordingly, Claimant now seeks *civil penalties* pursuant to the PAGA on behalf of himself and other aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(Labor Code §§ 226(a), 226.3, 1198, 2699, and the “Records” Section of the applicable IWC Wage Order)

Labor Code section 226(a) states in pertinent part that every employer shall provide an accurate itemized statement in writing with respect to each one of its employees showing: 1) gross wages earned; 2) total hours worked by an employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission; (3) the number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item; (5) net wages earned; (6) the inclusive dates of the period for which the employee is paid; (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number; (8) the name and address of the legal entity that is the employer...; and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

Furthermore, Labor Code section 226(e)(2)(A) states: “An employee is deemed to suffer injury for purposes of this subdivision if the Employer fails to provide a wage statement.”

Labor Code section 226.3 imposes an additional civil penalty on the Employers of \$250.00 per employee per violation of Labor Code section 226(a) in an initial citation and \$1,000.00 per employee for each violation in a subsequent citation. In addition, Labor Code section 226(e) imposes a penalty of the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of \$4,000, and Claimant is entitled to an award of costs and reasonable attorney’s fees.

Due to the Employers’ failure to pay all wages due at all times during Claimant’s employment, including minimum, regular, or overtime for all hours worked in excess of 8 hours in a given workday, due in part to the Employers’ unlawful rounding practice, the Employers violated Labor Code section 226 by failing to provide accurate itemized wage statements to Claimant and other aggrieved employees. The wage statements issued by the Employers fail to inform of the accurate number of hours worked, accurate total wages due and earned, accurate vacation wages earned, and accurate number of paid sick days.

Accordingly, Claimant now seeks *civil penalties* pursuant to the PAGA on behalf of himself and other aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

FAILURE TO MAINTAIN ACCURATE RECORDS

(Labor Code § 1174 and the “Records” Section of the applicable IWC Wage Order)

Labor Code section 1174(d) states: “Every person employing labor in this state shall: Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than three years.”

Labor Code section 1174.5 states “Any person employing labor who willfully fails to maintain accurate and complete records required by subdivision (d) of Section 1174, shall be subject to a civil penalty of five hundred dollars.”

IWC Wage Order 4-2001, section 7 obligates an employer to keep accurate information by underpaying minimum wages, regular wages, and overtime, and not recording accurate meal periods. IWC Wage Order 4-2001, section 7(A)(3) states in pertinent part: “Every employer shall keep accurate information with respect to each employee including the following: ... (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded.”

The Employers failed to maintain accurate records showing the accurate number of hours worked and accurate wages owed. Accordingly, Claimant now seeks *civil penalties* pursuant to the PAGA on behalf of himself and other aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

FAILURE TO TIMELY PAY WAGES DUE DURING AND UPON TERMINATION OF EMPLOYMENT

(Labor Code §§ 201, 202, 203, 204, 256, 1198, and 2699)

Labor Code section 201 states: “If an Employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” Labor Code section 202 states “If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.”

Labor Code section 203(a) states, in relevant part: “If an Employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall

California LWDA
Zodiac Pool Systems, LLC
Zodiac Pool Solutions, LLC
Fluidra USA, LLC
Re: Omar Ayala
March 20, 2020
Page | 10

continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days. An employee who secretes or absents himself or herself to avoid payment to his or her, or who refuses to receive the payment when fully tendered to his or her, including any penalty then accrued under this section, is not entitled to any benefit under this section for the time during which he or she so avoids payment.”

Labor Code section 204(a) states, in pertinent part: “All wages . . . earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays.” The “Minimum Wages” Section of the applicable Wage Order further states “every employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period.”

Labor Code section 256 states: “The Labor Commissioner shall impose a civil penalty in an amount not exceeding 30 days of pay as waiting time under the terms of Section 203.”

As detailed above, the Employers failed to pay Claimant and other aggrieved employees all wages that were due and owing to them including meal and rest period premiums, and regular, minimum, overtime, and vacation wages within the required time during their employment and upon their separation of employment, in violation of the Labor Code and the applicable IWC Wage Order because of the violations alleged herein. As a result, the Employers violated the above sections of the Labor Code.

Accordingly, Claimant now seeks *civil penalties* pursuant to the PAGA on behalf of himself and other aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

CIVIL PENALTIES FOR VIOLATION OF
THE LABOR CODE AND IWC WAGE ORDERS
(Labor Code §§ 558, 558.1, and 1197.1)

Labor Code section 558 subjects any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of Part 2, Chapter 1, of the Labor Code or any provision regulating hours and days of work in any IWC Wage Order to a civil penalty in the amount of \$50 for any initial violation for each pay period in which an employee is underpaid in addition to an amount sufficient to recover underpaid wages, and \$100 for each subsequent violation in addition to an amount sufficient to recover underpaid wages, which shall be paid to each affected employee.

Labor Code section 558.1(a) states: “Any Employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the

California LWDA
Zodiac Pool Systems, LLC
Zodiac Pool Solutions, LLC
Fluidra USA, LLC
Re: Omar Ayala
March 20, 2020
Page | 11

Employer for such violation.” Labor Code section 558.1 expressly defines “employer or other person acting on behalf of an employer” to include a “natural person who is an owner, director, officer, or managing agent of the employer.”

Labor Code section 1197.1 states that any employer or other person acting either individually or as an officer, agent or employee of another person, which pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission shall be subject to a civil penalty and restitution of wages payable to the employee in an amount of \$100 for the initial violation for each pay period in which an employee underpaid in addition to an amount sufficient to recover underpaid wages, and \$250 for each subsequent violation in addition to an amount sufficient to recover underpaid wages, which shall be paid to each affected employee.

As set forth above, the Employers underpaid Claimant and other aggrieved employees by failing to provide them with compliant meal and rest periods or compensation in lieu thereof and failed to pay regular, minimum, overtime, and vacation wages as required by Labor Code sections 226.7, 510, 512 and sections 3 and 11 of the applicable IWC Wage Order. As a result, the Employers are liable for *civil penalties* under Labor Code section 558.

Accordingly, Claimant will pursue civil penalty or other lawful remedies for himself and other current and former non-exempt employees, including recovery of attorney’s fees, costs, and civil penalties to the extent allowed by law. However, pursuant to the recent California Supreme Court decision in *ZB, N.A. v. Superior Court* (2019) 8 Cal. 5th 175, 252 Cal. Rptr. 3d 228, 448 P.3d 239, Claimant does not seek underpaid wages as part of any anticipated PAGA action.

DUTIES OF EMPLOYER

(Labor Code §§ 1174, 1174.5, 1175, and 1198, and the Applicable Wage Order)

Labor Code section 1174 describes certain duties of every employer in this state. Subsection (d) of this labor code section requires that payroll records show the hours worked daily by employees and the corresponding wages to be paid for the hours worked. The Employers violated this requirement by their failure to accurately record employee hours worked and/or paid including wages owed for rounded time and meal and rest period premiums. Labor Code section 1174.5 imposes a civil penalty of \$500 for an employer’s failure to maintain accurate and complete records. This civil penalty is addition to the civil penalty of \$100 per pay period, per aggrieved employee that would be imposed pursuant to Labor Code section 2699 for a violation of Labor Code section 1174(d). Furthermore, Claimant and all other aggrieved current and former employees are entitled to collect 25% of the penalty imposed pursuant to Section 2699.

The Employers failed to accurately record all hours worked by Claimant and other aggrieved employees and failed to record all accurate wages to be paid.

California LWDA
Zodiac Pool Systems, LLC
Zodiac Pool Solutions, LLC
Fluidra USA, LLC
Re: Omar Ayala
March 20, 2020
Page | 12

Claimant will pursue all remedies on behalf of himself and other current and former employees, including recovery of attorney's fees, costs, damages and penalties to the extent allowed by law.

ATTORNEY'S FEES, COSTS, INTEREST AND PENALTIES

(Labor Code §§ 218.6, 226(e), 1194, 1194.2, and 2699, *et seq.*)

Labor Code sections 218.6, 226(e), 1194, 1194.2, and 2699, *et seq.* give employees the right to recover in a civil action the unpaid balance of the full amount of minimum wages, regular wages, overtime compensation, damages, liquidated damages, and penalties, including interest thereon, reasonable attorney's fees, and costs of suit.

Pursuant to Labor Code sections 2699, *et seq.*, aggrieved employees are entitled to collect 25% of the penalty assessment and 100% of the underpaid wages. Accordingly, the Employers are liable for these items in addition to the unpaid wages. Claimant has already incurred in actual damages, costs and attorney's fees and will continue to incur costs as a result of the Employers' unlawful actions.

CONCLUSION

Claimant requests the Labor and Workforce Development Agency ("LWDA") initiate enforcement for the violations described above. If the LWDA does not pursue enforcement, Claimant will pursue claims for civil penalties and will seek all remedies available for violations of the Labor Code and the applicable Industrial Welfare Commission Wage Orders, including all available penalties set forth in Labor Code section 2699(f).

Sincerely,
COHELAN KHOURY & SINGER



Marta Manus, Esq.

cc:
Via Email only
Sahag Majarian, Esq.
Law Offices of Sahag Majarian II
18250 Ventura Blvd.
Tarzana, CA 91356
sahagii@aol.com

EXHIBIT 4

1 WINSTON & STRAWN LLP
2 LAURA R. PETROFF (SBN: 123215)
3 lpetroff@winston.com
4 TRISTAN R. KIRK (SBN: 313262)
5 tkirk@winston.com
333 S. Grand Avenue, 38th Floor
Los Angeles, CA 90071-1543
Telephone: (213) 615-1700
Facsimile: (213) 615-1750

6 Attorneys for Defendants
7 ZODIAC POOL SYSTEMS LLC AND
8 FLUIDRA USA LLC

9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 OMAR AYALA, individually and on
12 behalf of all others similarly situated and
aggrieved,

13 Plaintiff,

14 v.

15 ZODIAC POOL SYSTEMS LLC, a
16 Delaware Limited Liability Company;
17 FLUIDRA USA LLC, a Florida Limited
Liability Company; and DOES 1 through
10, inclusive,

18 Defendants.

Case No. **'20CV1381 H MSB**

(San Diego County Superior Court Case
No. 37-2020-00017229-CU-OE-CTL)

**DEFENDANTS' NOTICE OF
REMOVAL OF CIVIL ACTION TO
FEDERAL COURT**

Complaint filed: May 27, 2020

TABLE OF CONTENTS

	Page
I. INTRODUCTION	5
II. THE STATE COURT ACTION	5
III. JOINDER.....	6
IV. TIMELINESS OF REMOVAL	6
V. JURISDICTION PURSUANT TO THE CLASS ACTION FAIRNESS ACT	7
A. Numerosity	7
B. Diversity of Citizenship	8
a. Zodiac: Citizen of Delaware	8
b. FUSA: Citizen of Delaware.....	9
C. The Amount in Controversy Exceeds \$5,000,000	9
VI. VENUE IS PROPER.....	15

TABLE OF AUTHORITIES

Page(s)

Cases

<i>Angus v. Shiley Inc.</i> , 989 F.2d 142 (3d Cir. 1993)	10
<i>Brady v. Mercedes-Benz USA, Inc.</i> , 243 F. Supp. 2d 1004 (N.D. Cal. 2002).....	13
<i>Clark v. Nat’l Travelers Life Ins. Co.</i> , 518 F.2d 1167 (6th Cir. 1975)	13
<i>Diaz v. A & R Logistics, Inc.</i> , 2015 WL 3464450 (S.D. Cal. May 29, 2015)	10
<i>Galt G/S v. JSS Scandinavia</i> , 142 F.3d 1150 (9th Cir. 1998)	10
<i>Holcomb v. Weiser Security Services, Inc.</i> , 424 F. Supp. 3d 840 (C.D. Cal. Dec. 3, 2019)	11
<i>Ibarra v. Manheim Investment, Inc.</i> , 775 F.3d 1193 (9th Cir. 2015)	9
<i>Johnson v. Columbia Properties Anchorage, LP</i> , 437 F.3d 894 (9th Cir. 2006)	8
<i>Kenneth Rothschild Trust v. Morgan Stanley Dean Witter</i> , 199 F. Supp. 2d 993 (C.D. Cal. 2002).....	9
<i>Mann v. City of Tucson</i> , 782 F.2d 790 (9th Cir. 1986)	8
<i>Omar Ayala v. Zodiac Pool Systems LLC</i> , as Case No. 34-2020-00017229-CU-OE-CTL	8
<i>Pagel v. Dairy Farmers of America, Inc.</i> , 986 F. Supp. 2d 1151 (C.D. Cal. Dec. 11, 2013)	10
<i>Stafford v. Brinks, Incorporated</i> , 2014 WL 10320456 (C.D. Cal. May 28, 2014).....	10

Wilson v. CitiMortgage,

No. 5:13-CV-02294-ODW SP, 2013 WL 6871822 (C.D. Cal. Dec. 17, 2013)..... 8

Statutes

28 U.S.C.

§ 1332 5

§ 1332(d)..... 5, 7, 9

§ 1332(d)(2) 8, 9

§ 1332(d)(2)(A) 7

§ 1332(d)(5) 7

§ 1391(c) 15

§ 1441(a)..... 5, 15

§ 1441(b)..... 5

§ 1446 5

§ 1446(b)..... 6

Cal. Bus. & Prof. Code § 17200, *et seq.* 6

Cal. Civ. P. Code § 1021.5 12

Cal. Lab. Code

§§ 201-203 6

§ 203 13

§ 226 6

§ 226(a)..... 14

§ 226(e)..... 14

§ 226.7 6, 12

§ 510 6

§ 512 6

§ 1194 6

§ 1197.1 6

§ 2698, *et seq.* (Private Attorneys General Act of 2004)(“PAGA”) 5

§ 2699(f)(2)..... 10

§ 2802 6

California’s Song-Beverly Consumer Warranty Act..... 13

Class Action Fairness Act 2005, Pub. L. 109-2 “CAFA”

..... *passim*

Other Authorities

Industrial Wage Commission (“IWC”) Order 7-2001

§ 3 6

§ 4 6

§ 11 6

§ 12 6

TO THE CLERK OF THE ABOVE-ENTITLED COURT:

PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. §§ 1332 (as amended by the Class Action Fairness Act 2005, Pub. L. 109-2, section 4(a) (the “CAFA”)), 1441(a) and (b), and 1446, Defendants Zodiac Pool Systems LLC (“Zodiac”) and Fluidra USA, LLC (“FUSA”)¹ (collectively “Defendants”) remove the above-entitled action to this Court from the Superior Court of the State of California for the County of San Diego. In support of removal, Defendants state as follows:

I. INTRODUCTION

1. This case is hereby removed from state court to federal court pursuant to 28 U.S.C. § 1332 because at the time the Complaint was filed, and at this time: (1) Plaintiff Omar Ayala’s (“Plaintiff”) proposed putative class, as alleged, may involve far in excess of 100 members; (2) diversity of citizenship exists between the parties; and (3) the amount in controversy for the claims of Plaintiff would exceed \$5,000,000, exclusive of interest and costs. Therefore, this Court has original jurisdiction under 28 U.S.C. § 1332(d).

II. THE STATE COURT ACTION

2. On May 27, 2020, an action was commenced in the Superior Court of California in and for San Diego County entitled *Omar Ayala v. Zodiac Pool Systems LLC*, as Case No. 34-2020-00017229-CU-OE-CTL. A true and correct copy of the Complaint is attached as Exhibit A. Plaintiff effected service of the Complaint on Defendants on June 18, 2020.

3. Plaintiff’s complaint seeks recovery of monetary damages, civil penalties under the Labor Code Private Attorneys General Act of 2004 (California Labor Code section 2698, *et seq.*) (“PAGA”), and other relief against Defendants in connection with the following purported causes of action: (1) alleged failure to pay

¹ FUSA is improperly named as a defendant in this action as it is located in Jacksonville, Florida, and has never directly or indirectly employed Zodiac’s California employees nor has it ever exercised any control over the wages, hours, or working conditions of any of Zodiac’s California employees relevant to this case. (Declaration of Misty Madrid, ¶ 5.)

1 minimum, regular, and overtime wages in violation of California Labor Code
 2 sections 510, 1194, and 1197.1 and Industrial Wage Commission (“IWC”) Order 7-
 3 2001 §§ 3 and 4; (2) alleged failure to provide meal periods in violation of
 4 California Labor Code sections 226.7 and 512 and IWC Wage Order No. 7-2001 §
 5 11; (3) alleged failure to provide rest periods in violation of California Labor Code
 6 section 226.7 and IWC Wage Order No. 7-2001 § 12; (4) alleged failure to
 7 reimburse business expenses in violation of California Labor Code section 2802; (5)
 8 alleged failure to provide accurate itemized wage statements in violation of
 9 California Labor Code section 226; (6) alleged failure to timely pay wages due upon
 10 separation of employment in violation of California Labor Code sections 201-203;
 11 and (7) alleged unlawful and unfair business practices in violation of California
 12 Business and Professions Code section 17200, *et seq.* Additionally, Plaintiff seeks
 13 PAGA civil penalties for Defendants’ alleged failure to maintain accurate records.

14 4. On July 16, 2020, Defendants timely filed and (“IWC”) served their
 15 Answer to the Complaint in the San Diego County Superior Court. A true and
 16 correct copy of Defendants’ Answer is attached as **Exhibit B**.

17 5. Attached hereto as **Exhibit C** are true and correct copies of all other
 18 process, pleadings, discovery, and orders served upon Defendants in this action.

19 **III. JOINDER**

20 6. Defendants Zodiac and FUSA have been properly served with a copy of
 21 the Complaint and jointly file this Notice of Removal. Defendants are not aware of
 22 any other defendant having been served with a copy of the Complaint.

23 **IV. TIMELINESS OF REMOVAL**

24 7. This Notice of Removal has been filed within thirty (30) days after
 25 Defendants were served with a copy of Plaintiff’s Complaint upon which this action
 26 is based. This Notice of Removal therefore is filed within the time period provided
 27 by 28 U.S.C. § 1446(b) because Plaintiffs effected service of the Complaint on
 28 Defendants on June 18, 2020.

V. JURISDICTION PURSUANT TO THE CLASS ACTION FAIRNESS ACT

8. Pursuant to CAFA, “[t]he district courts shall have original jurisdiction of any civil action in which the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs, and is a class action in which . . . any member of a class of plaintiffs is a citizen of a State different from any defendant.” 28 U.S.C. § 1332(d)(2)(A). In addition, CAFA provides for jurisdiction in the district courts where the proposed class involves 100 or more members, or where the primary defendants are not States, State Officials, or other governmental entities. 28 U.S.C. § 1332(d)(5). Thus, as set forth below, this is a civil action over which this Court has original jurisdiction under 28 U.S.C. section 1332(d) because it is a civil action filed as a class action potentially involving more than 100 members; the amount in controversy exceeds the sum of \$5,000,000, exclusive of interest and costs, based on the allegations that Plaintiff set forth in the Complaint; Plaintiff and at least one Defendant are from different states (indeed both Defendants are from different states than Plaintiff); and no Defendant is a state, state official, or government entity.

A. Numerosity

9. CAFA provides that the district courts shall not have jurisdiction over actions “where the number of members of all proposed plaintiff classes in the aggregate is less than 100.” 28 U.S.C. § 1332(d)(5). As defined in the Complaint, Plaintiff’s proposed putative class includes “[a]ll individuals employed by Defendants in the State of California as an hourly non-exempt employee at any time from April 6, 2016² through the date of trial” (the “Putative Class”). (Complaint ¶ 26.) There is no trial date for this matter, but, regardless, there are currently

² This is not the correct class period. Plaintiff filed his Complaint on May 27, 2020, thus the correct class period is from May 27, 2016 through the date of trial (for claims with a four-year statute of limitations). Accordingly, all of Defendants’ amount in controversy calculations are based on the time period from May 27, 2016 through June 30, 2020.

1 approximately 327 putative individuals in California who may fall within the scope
 2 of Plaintiff's proposed putative class as defined in his Complaint. (Declaration of
 3 Misty Madrid ["Madrid Decl.,"], ¶ 8.)

4 **B. Diversity of Citizenship**

5 10. CAFA's diversity requirement is satisfied when any member of a class
 6 of plaintiffs is a citizen of a state different from any defendant. 28 U.S.C. §
 7 1332(d)(2). The citizenship of the parties is determined by their citizenship status at
 8 the action's commencement. *See Mann v. City of Tucson*, 782 F.2d 790, 794 (9th
 9 Cir. 1986).

10 11. Defendants are informed and believe that Plaintiff is a citizen of the
 11 State of California because he is a resident of the State of California and was
 12 employed by and performed his work for Defendants in the State of California.
 13 Madrid Decl., ¶ 3; Complaint ¶¶ 6; *see also Wilson v. CitiMortgage*, No. 5:13-CV-
 14 02294-ODW SP, 2013 WL 6871822, at *2 (C.D. Cal. Dec. 17, 2013) (noting that
 15 other objective facts may further establish a plaintiff's citizenship for purposes of
 16 removal).

17 a. Zodiac: Citizen of Delaware

18 12. Defendant Zodiac, is now, and at the time of the commencement of this
 19 civil action was, a limited liability company formed under the laws of the state of
 20 Delaware. (Madrid Decl., ¶ 4.) The sole member of Zodiac is Zodiac Pool Solutions
 21 LLC, a Delaware limited liability company. (*Id.*) In addition, the sole member of
 22 Zodiac Pool Solutions LLC is ZPNA Holdings, S.A.S, a French company. (*Id.*)
 23 Since Zodiac's sole member is a citizen of Delaware, Zodiac is a citizen of
 24 Delaware. *See Johnson v. Columbia Properties Anchorage, LP*, 437 F.3d 894, 899
 25 (9th Cir. 2006) (holding that a limited liability company is a citizen of every state of
 26 which its owners or members are citizens).

27 ///

28 ///

b. FUSA: Citizen of Delaware

13. Defendant FUSA, is now, and at the time of the commencement of this civil action was, a limited liability company formed under the laws of the state of Florida. (Madrid Decl., ¶ 6.) The sole member of FUSA is Aqua Products, Inc., a Delaware corporation. (*Id.*) Since the only member of FUSA is a citizen of Delaware, FUSA is a citizen of Delaware.

14. Therefore, because Plaintiff is a citizen of California, and both Zodiac and FUSA are citizens of foreign states, diversity of citizenship exists under CAFA. *See* 28 U.S.C. § 1332(d)(2) (where the amount in controversy is satisfied, “[t]he district courts shall have original jurisdiction of any civil action . . . in which . . . any member of a class of plaintiffs is a citizen of a State different from any defendant.”).

C. The Amount in Controversy Exceeds \$5,000,000

15. CAFA authorizes the removal of class action cases in which, among the other elements described above, the amount in controversy for all class members exceeds \$5,000,000. 28 U.S.C. § 1332(d). Although Plaintiff does not specifically allege an amount of damages and/or recoverable penalties, he does allege that the amount in controversy is less than \$5,000,000.00. Thus, Defendants must show by a preponderance of the evidence that it is more likely than not that the amount in controversy exceeds \$5,000,000. *See Ibarra v. Manheim Investment, Inc.*, 775 F.3d 1193, 1197 (9th Cir. 2015) (holding that “the defendant seeking removal bears the burden to show by a preponderance of the evidence that the aggregate amount in controversy exceeds \$5 million when federal jurisdiction is challenged” and “this rule is not altered even if plaintiffs affirmatively contend in their complaint that damages do not exceed \$5 million”).

16. In determining whether the amount in controversy exceeds \$5,000,000, the Court must presume that Plaintiff will prevail on each and every one of his claims. *Kenneth Rothschild Trust v. Morgan Stanley Dean Witter*, 199 F. Supp. 2d 993, 1001 (C.D. Cal. 2002) (citing *Burns v. Windsor Ins. Co.*, 31 F.3d 1092, 1096

(11th Cir. 1994) (the amount in controversy analysis presumes that “plaintiff prevails on liability”); *Angus v. Shiley Inc.*, 989 F.2d 142, 146 (3d Cir. 1993) (“the amount in controversy is not measured by the low end of an open-ended claim, but rather by reasonable reading of the value of the rights being litigated”). Here, Defendants vigorously deny the merits of each of Plaintiff’s claims, including the amounts claimed, and the theories upon which they seek recovery; however, for the sole purpose of determining whether jurisdiction exists pursuant to CAFA, it is more likely than not that the amount in controversy for all class members exceeds \$5,000,000, exclusive of interest and costs.

17. Accepting Plaintiff’s allegations as true for the purposes of removal only, the potential recoverable damages for Plaintiff and the Putative Class for only the unpaid wages, meal period, rest period, waiting time penalties, and wage statement violation claims total \$5,270,841.00. Plaintiff also seeks an unspecified amount of attorneys’ fees in the Complaint (Prayer ¶ 26).³ For purposes of this analysis only, the amount of attorneys’ fees at issue in this matter could amount to one third of the potential recoverable damages. Notably, this calculation does not include the potential PAGA penalties sought by Plaintiff⁴ or the damages that Plaintiff and the Putative Class are seeking for unreimbursed business expenses. The calculations below detail the amount in controversy, and take into account only potential recoverable damages for unpaid wages, unpaid meal and rest periods, waiting time penalties, and penalties for wage statement violations.

³ Attorneys’ fees are properly considered when determining the amount in controversy for the purposes of removal. *See Galt G/S v. JSS Scandinavia*, 142 F.3d 1150, 1156 (9th Cir. 1998) (“where an underlying statute authorizes an award of attorneys’ fees . . . such fees may be included in the amount in controversy”).

⁴ PAGA penalties may be considered when determining the amount in controversy. *See Pagel v. Dairy Farmers of America, Inc.*, 986 F. Supp. 2d 1151, 1161 (C.D. Cal. Dec. 11, 2013); *Stafford v. Brinks, Incorporated*, 2014 WL 10320456, *9 (C.D. Cal. May 28, 2014); *Diaz v. A & R Logistics Inc.* 2015 WL 3464450 (S.D. Cal. May 29, 2015). Potential PAGA penalties are \$100 per pay period for each putative aggrieved employee for the initial violation and \$200 per pay period for each putative aggrieved employee for each subsequent violation. Cal. Lab. Code § 2699(f)(2).

1 18. The approximate average hourly rate of pay for all members of the
2 Putative Class is \$18.90. (Madrid Decl., ¶ 8.) In the aggregate, Putative Class
3 members worked approximately 32,788 total workweeks during the period from
4 May 27, 2016 to June 30, 2020. (*Id.*)

5 19. **Unpaid Wages.** Among other monetary relief, Plaintiff and the Putative
6 Class Members seek to recover unpaid regular wages on the theory that Defendants
7 had a “**uniform** policy and practice of unlawful time rounding” which resulted in
8 the underpayment of wages, including overtime. (Complaint ¶ 57.) Since Plaintiff
9 alleges that Defendants’ rounding policy was uniform, it is reasonable to assume,
10 for removal purposes only, that Defendants engaged in unlawful rounding practices
11 during each and every employee shift. *See Holcomb v. Weiser Security Services,*
12 *Inc.*, 424 F. Supp. 3d 840, 845 (C.D. Cal. Dec. 3, 2019) (finding it reasonable to
13 assume a 100% violation rate if the complaint assumes a uniform practice).
14 Therefore, a conservative estimate for removal purposes only is that Defendants’
15 rounding policy resulted in Plaintiff and members of the Putative Class having been
16 underpaid by one hour of straight time each week, which makes the amount in
17 controversy for Plaintiff’s first cause of action **\$619,693.00** (1 hour of unpaid time
18 each week x \$18.90 average hourly rate x 32,788 workweeks).

19 20. **Meal Period Violations.** Plaintiff also seeks to recover “unpaid wages
20 resulting from Defendants’ meal period violations including interest thereon,
21 reasonable attorney’s fees and costs of suit, and penalties to the fullest extent
22 permissible....” (Complaint ¶¶ 75.) The Complaint provides no indication as to the
23 number of meal periods Plaintiff claims that he and the other Putative Class
24 members were allegedly not provided per week, but does allege that “[d]uring all, or
25 portions, of the Class Periods, Defendants had a **consistent** policy which did not
26 provide Plaintiff and members of the Plaintiff Class with duty-free meal
27 periods...and failed to pay...one (1) hour of pay at their regular rate of
28 compensation for each workday a meal period was not authorized or permitted.”

(Complaint ¶ 18.) Since Plaintiff does not allege how many meal periods were missed each week, but does allege that Defendants’ purported meal break violations were “consistent,” Plaintiff’s claims could amount to five (5) meal period violations per week. However, for the purposes of removal, Defendants conservatively assume that Plaintiff and the Putative Class members suffered only three meal period violations per week based on the relevant allegations of the Complaint. Assuming Plaintiff and the Putative Class members suffered only three meal period violations per week, the amount in controversy for this claim is \$1,859,079.00 (three (3) violations per week x \$18.90 per hour x 32,788 workweeks), increasing the total amount in controversy for Plaintiff’s claims for unpaid wages and missed meal periods to at least \$2,478,772.00.

21. **Rest Period Violations.** Plaintiff also seeks “the unpaid balance of the full amount of the unpaid wages resulting from Defendants’ rest period violations including interest thereon, reasonable attorney’s fees and costs of suit, and penalties to the fullest extent permissible including those permitted pursuant to Labor Code section 226.7 and Code of Civil Procedure section 1021.5.” (Complaint ¶ 85.) Again, while the Complaint provides no indication as to the number of rest periods Plaintiff claims that he and the other Putative Class members were allegedly not provided per week, Plaintiff does allege that “[d]uring all, or portions, of the Class Periods, Defendants had a *consistent* policy which did not authorize or permit Plaintiff and members of the Plaintiff Class with duty-free rest periods...and failed to pay...one (1) hour of pay at their regular rate of compensation for each workday a rest break was not authorized or permitted.” (Complaint ¶ 19.) Again, because Plaintiff does not allege the number of rest breaks that were missed each week, but instead that Defendants’ alleged rest break violations were “consistent,” Plaintiff’s claims could include five (5) rest break violations per week. Based upon the relevant allegations of the Complaint and Defendants’ assumption that Plaintiff and members of the Putative Class suffered only three rest break violations per week, the amount

in controversy for Plaintiff's rest period claim is \$1,859,079.00 (three (3) violations per week x \$18.90 per hour x 32,788 workweeks). Accordingly, the total amount in controversy for Plaintiff's claims for unpaid wages, meal period claims, and rest period claims totals \$4,337,851.00.

22. **Waiting Time Penalties.** Statutory penalties also may be included when determining the amount in controversy. *See Brady v. Mercedes-Benz USA, Inc.*, 243 F. Supp. 2d 1004, 1009 (N.D. Cal. 2002) (penalties under California's Song-Beverly Consumer Warranty Act may be counted in determining the amount in controversy); *Clark v. Nat'l Travelers Life Ins. Co.*, 518 F.2d 1167, 1168 (6th Cir. 1975) ("It is settled that the statutory penalty and a statutory attorneys' fees can be considered in determining whether the jurisdictional amount is met."). Here, the Complaint alleges that Plaintiff and the Waiting Time Penalty Subclass members (which includes those class members whose employment ended at any time from and after April 6, 2017)⁵ are entitled to penalties pursuant to California Labor Code section 203, and seeks penalties of up to 30 days of additional wages based upon Defendants' purported failure to pay all unpaid wages at termination. (Complaint at ¶ 111.) Based on the correct Waiting Time Penalty Subclass class period beginning on May 27, 2017, there would be approximately 168 Waiting Time Penalty Subclass members. (Madrid Decl., ¶ 8.) Assuming that each member would be entitled to 30 days' wages for Defendants' purported failure to pay all unpaid wages at termination pursuant to Labor Code section 203, the amount of aggregate penalties recoverable is \$761,040.00 (168 employees x \$151 wages per day x 30 days), increasing the total amount in controversy to \$5,098,891.00. ***Thus, the total amount in controversy, calculated solely for the purposes of removal, and based only upon Plaintiff's claims for unpaid wages, meal period, rest period, and waiting time penalties exceeds the threshold jurisdictional amount for removal purposes.***

⁵ Again, this date is incorrect. The correct class period for the putative Waiting Time Penalty Subclass begins on May 27, 2017.

23. **Wage Statement Violations.** Plaintiff also seeks to recover statutory penalties pursuant to Labor Code section 226(a), which is a derivative claim based upon Defendants’ alleged failure to provide accurate itemized wage statements to each member of the Wage Statement Subclass (defined as those class members who received an inaccurate wage statement from and after April 6, 2019).⁶ (Complaint at ¶ 103.) Based on the correct Wage Statement Subclass class period beginning on May 27, 2019, there would be approximately 181 Wage Statement Subclass members. (Madrid Decl., ¶ 8.) The Complaint alleges that “[d]uring all, or portions, of the Class Period, Defendants knowingly and willfully failed to provide accurate itemized wage statements to Plaintiff and other members of the Plaintiff Class.” (Complaint at ¶ 21). If Plaintiffs and the other members of the Wage Statement Subclass were to prevail on their section 226(a) claim, they would be entitled to recover statutory penalties of \$50.00 for the initial pay period in which a violation of section 226(a) occurred and \$100.00 per employee *for each violation* in a subsequent pay period, up to a maximum of \$4,000 per employee. Cal. Lab. Code § 226(e). Assuming that each Wage Statement Subclass member suffered ten (10) wage statement violations from May 27, 2019 to the present, each subclass member would be entitled to \$950 (\$50 x 1 (initial violation) + \$100 (each subsequent violation) x 9 = \$950) in section 226(e) penalties, collectively **\$171,950.00** (\$950 x 181 employees), and the total amount in controversy is **\$5,270,841.00**—which exceeds the \$5,000,000 threshold for CAFA removal purposes.

24. Presuming, as it must for purposes of determining jurisdiction under CAFA, that Plaintiff will prevail on even a subset of the claims asserted in the Complaint, the data set forth above establishes that it is more probable than not that the amount in controversy in this action exceeds \$5,000,000.00. *In fact, the amount in controversy exceeds the \$5,000,000 threshold for purposes of CAFA removal based upon Plaintiff’s unpaid wages, meal period, rest period, waiting time*

⁶ Again, this date is incorrect. The correct class period for the putative Wage Statement Subclass begins on May 27, 2019.

1 *penalties, and wage statement violation claims alone.* As noted above, Plaintiff's
 2 attorneys' fees at issue in this matter could total one third of the potential
 3 recoverable damages, thus further demonstrating that the jurisdictional amount in
 4 controversy for purposes of CAFA removal has easily been met in this case.
 5 Therefore, the aggregate amount in controversy, exclusive of interest and costs,
 6 exceeds the jurisdictional amount in controversy of \$5,000,000.00.

7 **VI. VENUE IS PROPER**

8 25. Venue lies in the United States District Court for the Southern District
 9 of California pursuant to 28 U.S.C. sections 1441(a) and 1391(c) because the state
 10 action was filed in this district and Defendants are subject to personal jurisdiction in
 11 the Southern District of California.

12 WHEREFORE, Defendants remove the above-entitled action now pending in
 13 the Superior Court of the State of California for the County of San Diego to this
 14 Court.

15
 16 Dated: July 20, 2020

WINSTON & STRAWN LLP

17
 18 By: /s/ Tristan R. Kirk
 19 Laura R. Petroff
 20 Tristan R. Kirk
 21 Attorneys for Defendants
 ZODIAC POOL SYSTEMS LLC and
 FLUIDRA USA LLC

EXHIBIT 5

1 MATT BLUM, ESQ. sbn: 285944
2 THE LAW OFFICE OF MATT BLUM
3 550 W C STREET, SUITE 960
4 SAN DIEGO, CA 92101
5 TEL: 860-271-6273
6 FAX: 619-238-1351
7 EMAIL: MBLUMLAW@GMAIL.COM

8 ATTORNEYS FOR PLAINTIFFS

9 SUPERIOR COURT OF CALIFORNIA

10 COUNTY OF SAN DIEGO – NORTH COUNTY

11 ANTONY M. SMITH, an individual, on behalf
12 of himself, and on behalf of all persons
13 similarly situated,

14 PLAINTIFFS,

15 vs.

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

19 Defendants.

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

10/07/2020 at 02:03:13 PM

Clerk of the Superior Court
By Gregory Hornick, Deputy Clerk

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

COMPLAINT

CLASS ACTION:

1. FAILURE TO PROVIDE REQUIRED MEAL PERIODS
2. FAILURE TO PROVIDE REQUIRED REST PERIODS
3. FAILURE TO PAY OVERTIME WAGES
4. FAILURE TO PAY MINIMUM WAGES
5. FAILURE TO PAY ALL WAGES DUE TO DISCHARGED AND QUITTING EMPLOYEES
6. FAILURE TO MAINTAIN REQUIRED RECORDS
7. FAILURE TO FURNISH ACCURATE ITEMIZED WAGE STATEMENTS
8. UNFAIR AND UNLAWFUL BUSINESS PRACTICE

DEMAND FOR JURY TRIAL

Judge:

Department:

Case Filed:

CMC Date:

1 Plaintiffs ANTONY M. SMITH, et al. ("PLAINTIFFS"), individuals, demanding a jury trial,
2 on behalf of himself and other persons similarly situated, hereby alleges as follows:

3 **JURISDICTION AND VENUE**

4 1. The Superior Court of the State of California has jurisdiction in this matter
5 because PLAINTIFFS are residents of the State of California, and Defendants ZODIAC
6 POOL SYSTEMS, LLC, a Delaware limited liability company, and DOES 1 through 50
7 inclusive (collectively "DEFENDANTS"), are qualified to do business in California and
8 regularly conduct business in California. Further, no federal question is at issue because the
9 claims are based solely on California law.

10 2. Venue is proper in this judicial district and the County of San Diego, California
11 because PLAINTIFFS, and other persons similarly situated, performed work for
12 DEFENDANTS in the County of San Diego at the address of 2882 Whiptail Loop, #100,
13 Carlsbad, CA 92010, DEFENDANTS maintain offices and facilities and transact business in
14 the County of San Diego, and because DEFENDANTS' illegal payroll policies and practices
15 which are the subject of this action were applied, at least in part, to PLAINTIFFS, and other
16 persons similarly situated, in the County of San Diego.

17 **PLAINTIFFS**

18 3. PLAINTIFF ANTONY SMITH is a resident of San Diego and was employed as
19 a Sales Representative with DEFENDANTS beginning August of 2018 through August of
20 2020.

21 4. PLAINTIFFS, on behalf of themselves and other similarly situated current and
22 former non-exempt employees of DEFENDANTS in the State of California at any time during
23 the four years preceding the filing of this action, and continuing while this action is pending,
24 brings this class action to recover, among other things, wages and penalties from unpaid
25 wages earned and due, including but not limited to unpaid minimum wages, unpaid and
26 illegally calculated overtime compensation, illegal meal and rest period policies, failure to pay
27 all wages due to discharged and quitting employees, failure to provide accurate itemized wage
28

1 statements, failure to maintain required records, and interest, attorney's fees, costs, and
2 expenses.

3 5. PLAINTIFFS bring this action on behalf of themselves and the following
4 situated class of individuals ("CLASS MEMBERS"): all current and former non-exempt
5 employees of DEFENDANTS in the State of California at any time within the period
6 beginning four (4) years prior to the filing of this action and ending at the time this action
7 settles or proceeds to final judgement (the "CLASS PERIOD"). PLAINTIFFS reserve the
8 right to name additional class representatives.

9 **DEFENDANTS**

10 6. PLAINTIFFS are informed and believe, and thereon allege, that Defendant
11 ZODIAC POOL SYSTEMS, LLC, is, and at all times relevant hereto was, a Delaware limited
12 liability company organized and existing under the laws of the State of Delaware.
13 PLAINTIFFS are further informed and believe, and thereon allege, that Defendant ZODIAC
14 POOL SYSTEMS, LLC, is authorized to conduct business in the State of California, and does
15 conduct business in the State of California. Specifically, Defendant ZODIAC POOL
16 SYSTEMS, INC. maintains offices and facilities and conducts business in, and engages in
17 illegal wage and payroll practices and policies in, the County of San Diego, in the State of
18 California.

19 7. The true names and capacities of DOES 1 through 50, inclusive, are unknown to
20 PLAINTIFFS at this time, and PLAINTIFFS therefore sue such DOE Defendants under
21 fictitious names. PLAINTIFFS are informed and believe, and thereon allege, that each
22 Defendant designated as a DOE is in some manner highly responsible for the occurrences
23 alleged herein, and that PLAINTIFFS and CLASS MEMBERS' injuries and damages, as
24 alleged herein, were proximately caused by the conduct of such DOE Defendants.
25 PLAINTIFFS will seek leave of the court to amend this Complaint to allege their true names
26 and capacities of such DOE Defendant when ascertained.

27 8. At all relevant times herein, PLAINTIFFS and CLASS MEMBERS were
28

1 employed by DEFENDANTS under employment agreements that were partly written, partly
2 oral, and partly implied. In perpetrating the acts and omissions alleged herein,
3 DEFENDANTS, and each of them, acted pursuant to, and in furtherance of, their policies and
4 practices of not paying PLAINTIFFS and CLASS MEMEBRS all wages earned and due,
5 through methods and schemes which include, but are not limited to, failing to pay overtime
6 premiums, failing to provide rest and meal periods, failing to properly maintain records,
7 failing to provide accurate itemized statements for each pay period, failing to properly
8 compensate PLAINTIFFS and CLASS MEMEBRS for necessary expenditures, and requiring,
9 permitting or suffering the employee to work off the clock, in violation of the California
10 Labor Code and the applicable Welfare Commission ("IWC") Order.

11 9. PLAINTIFFS are informed and believe, and thereon allege, that each and every
12 one of the acts and omissions alleged herein were performed by, and/or attributable to, all
13 DEFENDANTS, each acting as agents and/or employees, and/or under the direction and
14 control of each of the other DEFENDANTS, and that said acts and failures to act were within
15 the course and scope of said agency, employment and/or direction and control.

16 10. As a direct and proximate result of the unlawful actions of DEFENDANTS,
17 PLAINTIFFS and CLASS MEMBERS have suffered, and continue to suffer, from loss of
18 earnings in amounts as yet unascertained, but subject to proof of trial, and within the
19 jurisdiction of this Court.

20 THE CONDUCT

21 **A. Off the Clock Work**

22 11. During the CLASS PERIOD, from time to time DEFENDANTS failed and
23 continue to fail to accurately pay PLAINTIFFS and the other CLASS MEMBERS for all
24 hours worked. Specifically, DEFENDANTS' uniform practices, policies and procedures
25 applicable to PLAINTIFFS and the other CLASS MEMBERS during the CLASS PERIOD,
26 mandated that PLAINTIFFS and other CLASS MEMBERS working as call center operators
27 to work. Notwithstanding, from time-to-time, DEFENDANTS failed to pay PLAINTIFFS
28

1 and other CLASS MEMBERS necessary wages for attending required meetings and sales
2 trainings.

3 12. DEFENDANTS directed and directly benefited from the uncompensated off-the-
4 clock work performed by PLAINTIFFS and the other CLASS MEMBERS.

5 13. DEFENDANTS controlled the work schedules, duties, protocols, applications,
6 assignments and employment conditions of PLAINTIFFS and the other CLASS MEMBERS.

7 14. DEFENDANTS were able to track the amount of time PLAINTIFFS and the
8 other CLASS MEMBERS spent working; however, DEFENDANTS failed to document,
9 track, or pay PLAINTIFFS and the other CLASS MEMBERS all wages earned and owed for
10 all the work they performed, including off-the-clock work.

11 15. PLAINTIFFS and the other CLASS MEMBERS were non-exempt employees,
12 subject to the requirements of the California Labor Code.

13 16. DEFENDANTS' policies and practices deprived PLAINTIFFS and the other
14 CLASS MEMBERS of wages owed for the off-the-clock work activities and their required
15 meal periods. Because PLAINTIFFS and the other CLASS MEMBERS typically worked over
16 40 hours in a workweek, and more than eight (8) hours per day, DEFENDANTS' policies and
17 practices also deprived them of overtime pay.

18 17. DEFENDANTS knew or should have known that PLAINTIFFS and the other
19 CLASS MEMBERS' off-the-clock work was compensable under the law.

20 18. As a result, PLAINTIFFS and the other CLASS MEMBERS forfeited wages due
21 to them for all hours worked at DEFENDANTS' direction, control and benefit for the time
22 spent attending required meetings and sales trainings. DEFENDANTS' uniform policy and
23 practice to not pay PLAINTIFFS and the CLASS MEMBERS wages for all hours worked in
24 accordance with applicable law is evidenced by DEFENDANTS' business records.

25 **B. Overtime Regular Rate Violation**

26 19. During the CLASS PERIOD, from time to time DEFENDANTS failed and
27 continue to fail to accurately calculate and pay PLAINTIFFS and the other CLASS
28

1 MEMBERS for their overtime hours worked. As a result, from time to time PLAINTIFFS
2 and the other CLASS MEMBERS forfeited wages due them for working overtime without
3 compensation at the correct overtime rates. DEFENDANTS' uniform policy and practice to
4 not pay PLAINTIFFS and the other CLASS MEMBERS the correct overtime rate for all
5 overtime worked in accordance with applicable law is evidenced by DEFENDANTS'
6 business records.

7 20. State law provides that employees must be paid overtime at one-and-one-half
8 times their "regular rate of pay." PLAINTIFFS and other CLASS MEMBERS were
9 compensated at an hourly rate plus flat-sum incentive pay that was tied to specific elements of
10 an employee's performance.

11 21. The second component of PLAINTIFFS' and other CLASS MEMBERS'
12 compensation was DEFENDANTS' flat-sum non-discretionary incentive program that paid
13 PLAINTIFFS and other CLASS MEMBERS flat-sum incentive wages based on their
14 performance for DEFENDANTS. The flat-sum non-discretionary bonus program provided all
15 employees paid on an hourly basis with flat-sum bonus compensation when the employees
16 met the various performance goals set by DEFENDANTS. However, when calculating the
17 regular rate of pay, in those pay periods where PLAINTIFFS and other CLASS MEMBERS
18 worked overtime and earned this flat-sum non-discretionary bonus, DEFENDANTS failed to
19 accurately include the flat-sum non-discretionary bonus compensation as part of the
20 employees' "regular rate of pay" and/or calculated all hours worked rather than just all non-
21 overtime hours worked. Management and supervisors described the incentive/bonus program
22 to potential and new employees as part of the compensation package. As a matter of law, the
23 incentive compensation received by PLAINTIFFS and the other CLASS MEMBERS must be
24 included in the "regular rate of pay." The failure to do so has resulted in a systematic
25 underpayment of overtime compensation to PLAINTIFFS and the other CLASS MEMBERS
26 by DEFENDANTS.

27 22. In violation of the applicable sections of the California Labor Code and the
28

1 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as
2 a matter of company policy, practice and procedure, intentionally and knowingly failed to
3 compensate PLAINTIFFS and the other CLASS MEMBERS at the correct rate of pay for all
4 overtime worked. This uniform policy and practice of DEFENDANTS is intended to
5 purposefully avoid the payment of the correct overtime compensation as required by
6 California law which allowed DEFENDANTS to illegally profit and gain an unfair advantage
7 over competitors who complied with the law. To the extent equitable tolling operates to toll
8 claims by PLAINTIFFS and the other CLASS MEMBERS against DEFENDANTS, the
9 CLASS PERIOD should be adjusted accordingly.

10 **C. Paid Missed Meal and Rest Period Premiums - Regular Rate Violation**

11 23. During the CLASS PERIOD, DEFENDANTS, from time to time, failed and
12 continue to fail to accurately calculate and pay PLAINTIFFS and the other CLASS
13 MEMBERS their missed meal and rest period premiums. As a result, PLAINTIFFS and the
14 other CLASS MEMBERS forfeited wages due them for their missed meal and rest periods
15 without compensation at the correct missed meal and rest period rates. DEFENDANTS'
16 uniform policy and practice to not pay PLAINTIFFS and the other CLASS MEMBERS the
17 correct rate for all missed meal and rest period premium payment in accordance with
18 applicable law is evidenced by DEFENDANTS' business records.

19 24. State law provides that employees must be paid premium hour of pay at the
20 employee's "regular rate" of pay for each workday that the meal or rest period is not provided.
21 PLAINTIFFS and the other CLASS MEMBERS were compensated at an hourly rate plus a
22 flat-sum incentive pay that was tied to specific elements of an employee's performance.

23 25. The second component of PLAINTIFFS and the other CLASS MEMBERS'
24 compensation was DEFENDANTS' flat-sum non-discretionary incentive program that paid
25 PLAINTIFFS and the other CLASS MEMBERS flat-sum incentive wages based on their
26 performance for DEFENDANTS. The non-discretionary flat-sum incentive program provided
27 all employees paid on an hourly basis with flat-sum incentive compensation when the
28

1 employees met the various performance goals set by DEFENDANTS. However, when
2 calculating the regular rate of pay in order to pay missed rest and meal period premiums to
3 PLAINTIFFS and the other CLASS MEMBERS, DEFENDANTS failed to include the flat-
4 sum incentive compensation as part of the employees' "regular rate of pay" for purposes of
5 calculating missed rest and meal period premiums. Management and supervisors described
6 the flat-sum incentive program to potential and new employees as part of the compensation
7 package. As a matter of law, the incentive compensation received by PLAINTIFFS and the
8 other CLASS MEMBERS must be included in the "regular rate of pay." The failure to do so
9 has resulted in a systematic underpayment of premium pay for missed meal and rest periods to
10 PLAINTIFFS and the other CLASS MEMBERS by DEFENDANTS.

11 26. In violation of the applicable sections of the California Labor Code and the
12 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as
13 a matter of company policy, practice and procedure, intentionally and knowingly failed to
14 compensate PLAINTIFFS and the other CLASS MEMBERS at the correct rate of pay for all
15 missed meal and rest period premiums. This uniform policy and practice of DEFENDANTS is
16 intended to purposefully avoid the payment of the correct missed meal and rest period
17 premium compensation as required by California law which allowed DEFENDANTS to
18 illegally profit and gain an unfair advantage over competitors who complied with the law. To
19 the extent equitable tolling operates to toll claims by the CLASS MEMBERS against
20 DEFENDANTS, the CLASS PERIOD should be adjusted accordingly.

21 **D. Missed Meal and Rest Period Violation**

22 27. As a result of their rigorous work schedules, PLAINTIFFS and the other CLASS
23 MEMBERS were also from time to time unable to take off duty meal breaks and were not
24 fully relieved of duty for meal periods. PLAINTIFFS and the other CLASS MEMBERS were
25 required to perform work as ordered by DEFENDANTS for more than five (5) hours during a
26 shift without receiving an off-duty meal break. Further, DEFENDANTS failed to provide
27 PLAINTIFFS and the other CLASS MEMBERS with a second off-duty meal period from
28

1 time to time in which these employees were required by DEFENDANTS to work ten (10)
2 hours of work. PLAINTIFFS and the other CLASS MEMBERS therefore forfeited meal
3 breaks without additional compensation and in accordance with DEFENDANTS' strict
4 corporate policy and practice.

5 28. During the CLASS PERIOD, PLAINTIFFS and the other CLASS MEMBERS
6 were also required, from time to time, to work in excess of four (4) hours without being
7 provided ten (10) minute rest periods. Further, these employees were denied their first rest
8 periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours,
9 a first and second rest period of at least ten (10) minutes for some shifts worked of between
10 six (6) and eight (8) hours, and a first, second and third rest period of at least ten (10) minutes
11 for some shifts worked of ten (10) hours or more. PLAINTIFFS and the other CLASS
12 MEMBERS were also not provided with one-hour wages in lieu thereof. As a result of their
13 rigorous work schedules, PLAINTIFFS and the other CLASS MEMBERS were periodically
14 denied their proper rest periods by DEFENDANTS and DEFENDANTS' managers.

15 **E. Inaccurate Itemized Wage Statements**

16 29. When PLAINTIFFS and the other CLASS MEMBERS worked overtime in the
17 same pay period they earned incentive wages and/or missed meal and rest breaks,
18 DEFENDANTS also failed to provide PLAINTIFFS and the other CLASS MEMBERS with
19 complete and accurate wage statements which failed to show, among other things, the name
20 and address of the legal entity that is the employer, the correct overtime rate for overtime
21 worked, including, work performed in excess of eight (8) hours in a workday and/or forty (40)
22 hours in any workweek, and the correct penalty payments for missed meal and rest periods.
23 Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her employees
24 with an accurate itemized wage statement in writing showing, among other things, gross
25 wages earned and all applicable hourly rates in effect during the pay period and the
26 corresponding amount of time worked at each hourly rate. Aside, from the violations listed
27 above in this paragraph, DEFENDANTS failed to issue to PLAINTIFFS and the other
28

1 CLASS MEMBERS itemized wage statements list that lists all the requirements under
2 California Labor Code 226 *et seq.* As a result, from time to time DEFENDANTS provided
3 PLAINTIFFS and the other CLASS MEMBERS with wage statements which violated Cal.
4 Lab. Code § 226.

5 30. By reason of the aforementioned uniform conduct applicable to PLAINTIFFS
6 and the other CLASS MEMBERS, DEFENDANTS committed acts of unfair competition in
7 violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*
8 (the "UCL"), by engaging, *inter alia*, in a company-wide policy and procedure which failed
9 to, *inter alia*, record and compensate PLAINTIFFS and the other CLASS MEMBERS for all
10 hours worked, accurately calculate and record the correct overtime rate for the overtime
11 worked by PLAINTIFFS and the other CLASS MEMBERS in those pay periods where
12 PLAINTIFFS and the other CLASS MEMBERS earned a flat sum non-discretionary bonus.
13 The proper calculation of these employees' overtime hour rates is the DEFENDANTS'
14 burden. As a result of DEFENDANTS' intentional disregard of the obligation to meet this
15 burden, DEFENDANTS failed to properly calculate and/or pay all required overtime
16 compensation for work performed by the CLASS MEMBERS and violated the California
17 Labor Code and regulations promulgated thereunder as herein alleged.

18 31. Specifically, as to PLAINTIFFS and the other CLASS MEMBERS' pay,
19 DEFENDANTS provided compensation to them in the form of two components. One
20 component of PLAINTIFFS and the other CLASS MEMBERS' compensation was a base
21 hourly wage. The second component of PLAINTIFFS and the other CLASS MEMBERS'
22 compensation were non-discretionary incentive wages. DEFENDANTS paid the incentive
23 wages, so long as PLAINTIFFS and the other CLASS MEMBERS met certain predefined
24 performance requirements.

25 32. PLAINTIFFS and the other CLASS MEMBERS met DEFENDANTS'
26 predefined eligibility performance requirements in various pay periods throughout his
27 employment with DEFENDANTS and DEFENDANTS paid PLAINTIFFS and the other
28

1 CLASS MEMBERS the incentive wages. However, when calculating the regular rate of pay,
2 in those pay periods where PLAINTIFFS and the other CLASS MEMBERS worked overtime
3 and earned this flat-sum non-discretionary bonus, DEFENDANTS failed to accurately include
4 the flat-sum non-discretionary bonus compensation as part of the employees' "regular rate of
5 pay" and/or calculated all hours worked rather than just all non-overtime hours worked and
6 thereby underpaid PLAINTIFFS and the other CLASS MEMBERS for overtime worked
7 throughout their employment with DEFENDANTS. The incentive compensation paid by
8 DEFENDANTS constituted wages within the meaning of the California Labor Code and
9 thereby should have been part of PLAINTIFFS and the other CLASS MEMBERS' "regular
10 rate of pay." PLAINTIFFS and the other CLASS MEMBERS were also from time to time
11 unable to take off duty meal and rest breaks and was not fully relieved of duty for their meal
12 periods. PLAINTIFFS and the other CLASS MEMBERS were required to perform work as
13 ordered by DEFENDANTS for more than five (5) hours during a shift without receiving an
14 off-duty meal break. Further, DEFENDANTS failed to provide PLAINTIFFS and the other
15 CLASS MEMBERS with a second off-duty meal period from time to time in which he was
16 required by DEFENDANTS to work ten (10) hours of work. PLAINTIFFS and the other
17 CLASS MEMBERS therefore forfeited meal and rest breaks without additional compensation
18 and in accordance with DEFENDANTS' strict corporate policy and practice.
19 DEFENDANTS also provided PLAINTIFFS and the other CLASS MEMBERS with a
20 paystub that failed to accurately display PLAINTIFF's correct rates of overtime pay and
21 payments for missed meal and rest periods for certain pay periods in violation of Cal. Lab.
22 Code § 226(a). To date, DEFENDANTS has not fully paid PLAINTIFFS and the other
23 CLASS MEMBERS the overtime compensation still owed to them. The amount in
24 controversy for PLAINTIFFS individually does not exceed the sum or value of \$75,000.

25 CLASS ACTION DESIGNATION

26 33. PLAINTIFF brings this case as a class action pursuant to California Code of
27 Civil Procedure § 382 on behalf of all Field Technicians who have worked for DEFENDANT
28

1 in California ("CLASS MEMBERS") at any time within the period beginning four (4) years
2 prior to the filing of this action and ending at the time this action settles or proceeds to final
3 judgement (the "CLASS PERIOD").

4 34. PLAINTIFF and other class members have uniformly been deprived of wages
5 and penalties from unpaid wages earned and due, including but not limited to unpaid minimum
6 wages, unpaid and miscalculated overtime compensation, miscalculated meal and rest period
7 premiums, illegal meal and rest period policies, failure to pay all wages due to discharged and
8 quitting employees, failure to provide accurate itemized wage statements, failure to maintain
9 required records, and interest, attorney's fees, costs, and expenses.

10 35. The members of the class are so numerous that joinder of all class members is
11 impractical.

12 36. Common questions of law and fact regarding DEFENDANT's conduct with
13 respect to the miscalculation of overtime wages paid to Field Technicians, miscalculated
14 missed meal and rest period premiums, and failing to provide legally compliant meal and rest
15 periods, failure to provide accurate itemized wage statements accurate, and failure ensure they
16 are paid at least minimum wage and overtime, exist as to all members of the class and
17 predominate over any questions affecting solely any individual members of the class. Among
18 the questions of law and fact common to the class are:

19 a. Whether DEFENDANT's flat-sum incentive compensation program is
20 non-discretionary;

21 b. Whether DEFENDANT miscalculated the regular rate of pay in those pay
22 periods where PLAINTIFF and other CLASS MEMBERS worked overtime and earned
23 a flat-sum bonus;

24 c. Whether DEFENDANT miscalculated the regular rate of pay for missed
25 meal and rest period premiums in those pay periods where PLAINTIFF and other
26 CLASS MEMBERS earned a flat-sum bonus and earned a meal or rest period premium
27 payment from DEFENDANT;
28

1 d. Whether DEFENDANT'S meal and rest period policies are legally
2 compliant;

3 e. Whether DEFENDANT failed to provide accurate itemized wage
4 statements to PLAINTIFF and the CLASS MEMBERS;

5 f. Whether class members have been required to follow uniform procedures
6 and policies regarding their work for DEFENDANT;

7 37. PLAINTIFF is a class member who suffered damages as a result of
8 DEFENDANT's conduct and actions alleged herein.

9 38. PLAINTIFF's claims are typical of the claims of the class, and PLAINTIFF has
10 the same interests as the other members of the class.

11 39. PLAINTIFF will fairly and adequately represent and protect the interests of the
12 class. PLAINTIFF has retained able counsel experienced in class action litigation. The interests
13 of PLAINTIFF are coincident with, and not antagonistic to, the interests of the other class
14 members.

15 40. The questions of law and fact common to the members of the class predominate
16 over any questions affecting only individual members, including legal and factual issues
17 relating to liability and damages.

18 41. A class action is superior to other available methods for the fair and efficient
19 adjudication of this controversy because joinder of all class members is impractical. Moreover,
20 since the damages suffered by individual members of the class may be relatively small, the
21 expense and burden of individual litigation makes it practically impossible for the members of
22 the class individually to redress the wrongs done to them. The class is readily definable and
23 prosecution of this action as a class action will eliminate the possibility of repetitive litigation.
24 There will be no difficulty in the management of this action as a class action.

25 ///

26 ///

27 ///

1 **FIRST CAUSE OF ACTION**

2 **Failure to Provide Required Meal Periods**

3 **[Cal. Labor Code §§ 226.7, 510, 512, 1194, 1197; IWC Wage Order No. 5-2001, § 11]**

4 **(By PLAINTIFFS and the CLASS MEMBERS against all DEFENDANTS)**

5 42. PLAINTIFFS incorporate herein by specific references, as though fully set forth,
6 the allegations in the preceding paragraphs.

7 43. During the CLASS PERIOD, as part of DEFENDANTS' illegal payroll policies
8 and practices to deprive their non-exempt employees all wages earned and due,
9 DEFENDANTS required, permitted or otherwise suffered PLAINTIFFS and CLASS
10 MEMEBRS to take less than 30-minute meal periods, or to work through them, and have failed
11 to otherwise provide the required meal periods to PLAINTIFFS and CLASS MEMEBRS
12 pursuant to California Labor Code § 226.7, 512 and IWC Order No. 5-2001, § 11.

13 44. DEFENDANTS further violated California Labor Code §§ 226.7 and IWC Wage
14 Order No. 5-2001, § 11 by failing to compensate PLAINTIFFS and CLASS MEMBERS who
15 were not provided with a meal period, in accordance with the applicable wage order, one
16 additional hour of compensation at each employee's regular rate of pay for each workday that a
17 meal period was not provided.

18 45. DEFENDANTS further violated California Labor Code §§ 226.7, 510, 1194,
19 1197, and IWC Wage Order No. 5-2001 by failing to compensate PLAINTIFFS and CLASS
20 MEMBERS for all hours worked during their meal periods.

21 46. As a proximate result of the aforementioned violations, PLAINTIFFS and
22 CLASS MEMBERS have been damaged in an amount according to proof at trial, and seek all
23 wages earned and due, interest, penalties, expenses, and costs of suit.
24
25
26
27
28

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

2

3

4

5
6

7
8
9
0
1

2
3
4
5
6

7
8
9

0

1

2

3

4
5

6
7

1 overtime, which is calculated at one and one-half (1 ½) times the regular rate of pay for all
2 hours worked in excess of eight (8) hours per day and/or forty (40) hours per week, and for the
3 first eight (8) hours on the seventh consecutive workday, with double time for all hours worked
4 in excess of twelve (12) hours in any workday and for all hours worked in excess of eight (8)
5 hours on the seventh consecutive day of work in any workweek.

6 53. PLAINTIFFS and CLASS MEMBERS are current and former non-exempt
7 employees entitled to the protections of California Labor Code §§ 510, 1194, and IWC Wage
8 Order No. 5-2001. During the CLASS PERIOD, DEFENDANTS failed to compensate
9 PLAINTIFFS and CLASS MEMBERS for all overtime hours worked as required under the
10 forgoing provisions of the California Labor Code and IWC Wage Order by, among other
11 things: failing to pay overtime at one and one-half (1 ½) or double the regular rate of pay as
12 provided by California Labor Code §§ 510, 1194, and IWC Wage Order No. 5-2001, § 3;
13 requiring, permitting or suffering PLAINTIFFS and CLASS MEMBERS to work off the clock;
14 requiring, permitting or suffering PLAINTIFFS and CLASS MEMBERS to work through meal
15 and rest breaks; illegally and inaccurately recording time in which PLAINTIFFS and CLASS
16 MEMBERS worked; failing to properly maintain PLAINTIFFS' and CLASS MEMBERS'
17 records; failing to provide accurate itemized wage statements to PLAINTIFFS for each pay
18 period; and other methods to be discovered. During the CLASS PERIOD, DEFENDANTS
19 failed to compensate PLAINTIFFS and CLASS MEMBERS for all overtime hours worked and
20 to pay the amount of overtime wages due as required by the California Labor Code and IWC
21 Wage Order by failing and refusing to include all compensation, including commissions and
22 bonuses earned, due and owing and/or paid, in the regular rate of pay from which overtime
23 wages were calculated and paid. During the CLASS PERIOD, DEFENDANTS failed to
24 compensate PLAINTIFFS and CLASS MEMBERS for all overtime hours worked and to pay
25 the amount of overtime wages due as required by the California Labor Code and IWC Wage
26 Order by incorrectly calculating the regular rate of pay from which overtime wages were
27 calculated and paid.

1 54. In violations of California Law, DEFENDANTS have knowingly and willfully
2 refused to perform their obligations to compensate PLAINTIFFS and CLASS MEMBERS for
3 all wages earned and all hours worked. As a proximate result, PLAINTIFFS and CLASS
4 MEMBERS have suffered, and continue to suffer, substantial losses related to the use and
5 enjoyment of such wages, lost interest on such wages, and expenses and attorney's fees in
6 seeking to compel DEFENDANTS to fully perform their obligations under state law, all to
7 their respective damages in amounts according to proof at time of trial, and within the
8 jurisdiction of this Court.

9 55. DEFENDANTS' conduct described herein violates California Labor Code §§
10 510, 1194, 1198 and IWC Wage Order No. 5-2001, § 3. Therefore, pursuant to California
11 Labor Code §§ 200, 203, 226, 558, 1194, 1197.1, and other applicable provisions under the
12 California Labor Code and IWC Wage Orders, PLAINTIFFS and CLASS MEMBERS are
13 entitled to recover the unpaid balance of wages owed to them by DEFENDANTS, plus interest,
14 penalties, attorney's fees, expenses, and costs of suit.

15 **FOURTH CAUSE OF ACTION**

16 **Failure to Pay Minimum Wages**

17 **[Cal. Labor Code §§ 1194, 1197; IWC Wage Order No. 5-2001, § 4]**

18 **(By PLAINTIFFS and the CLASS MEMBERS against all DEFENDANTS)**

19 56. PLAINTIFFS incorporate herein by specific reference, as though fully set forth,
20 the allegations in the preceding paragraphs.

21 57. Pursuant to California Labor Code §§ 1194, 1197, and IWC Wage Order No. 5-
22 2001, § 4, payment to an employee of less than the applicable minimum wage for all hours
23 worked in a payroll period is unlawful.

24 58. During the CLASS PERIOD, DEFENDANTS failed to pay PLAINTIFFS and
25 CLASS MEMBERS minimum wages for all hours worked by, among other things: requiring,
26 permitting, or suffering PLAINTIFFS and CLASS MEMBERS to work off the clock;
27 requiring, permitting or suffering PLAINTIFFS and CLASS MEMBERS to work through meal
28

1 and rest breaks; illegally and inaccurately recording time in which PLAINTIFFS and CLASS
2 MEMBERS worked; failing to properly maintain PLAINTIFFS' and CLASS MEMBERS'
3 records; failing to provide accurate itemized wage statements to PLAINTIFFS for each pay
4 period; and other methods to be discovered.

5 59. DEFENDANTS' conduct described herein violates California Labor Code §§
6 1194, 1197, and IWC Wage Order No. 5-2001, § 4. As a proximate result of the
7 aforementioned violations, PLAINTIFFS and CLASS MEMBERS have been damaged in an
8 amount according to proof at trial. Therefore, pursuant to California Labor Code §§ 200, 203,
9 226, 558, 1194, 1197.1, and other applicable provisions under the California Labor Code and
10 IWC Wage Orders, PLAINTIFFS and CLASS MEMBERS are entitled to recover the unpaid
11 balance of wages owed to the them by DEFENDANTS, plus interest, penalties, attorney's fees,
12 expenses, and costs of suit.

13 **FIFTH CAUSE OF ACTION**

14 **Failure to Pay All Wages Due to Discharged and Quitting Employees**

15 **[Cal. Labor Code §§ 201, 202, 203]**

16 **(By PLAINTIFFS and the CLASS MEMBERS against all DEFENDANTS)**

17 60. PLAINTIFFS incorporate herein by specific reference, as though fully set forth,
18 the allegations in the preceding paragraphs.

19 61. Pursuant to California Labor Code § 201, 202, and 203, DEFENDANTS are
20 required to pay all earned and unpaid wages to an employee who is discharged. California
21 Labor Code § 201 mandates that if an employer discharges an employee, the employee's wages
22 accrued and unpaid at the time of discharge are due and payable immediately.

23 62. Furthermore, pursuant to California Labor Code § 202, DEFENDANTS are
24 required to pay all accrued wages due to an employee no later than 72 hours after the employee
25 quits his or her employment, unless the employee provided 72 hours previous notice of his or
26 her intention to quit, in which case the employee is entitled to his or her wages at the time of
27 quitting.

1 63. California Labor Code § 203 provides that if an employer willfully fails to pay,
2 in accordance with California Labor Code §§ 201 and 202, any wage of an employee who is
3 discharged or who quits, the employer is liable for waiting time penalties in the form of
4 continued compensation to the employee at the same rate for up to 30 workdays.

5 64. During the CLASS PERIOD, DEFENDANTS have willfully failed to pay
6 accrued wages and other compensation to PLAINTIFFS and CLASS MEMBERS in
7 accordance with California Labor Code §§ 201 and 202.

8 65. As a result, PLAINTIFFS and CLASS MEMBERS are entitled to all available
9 statutory penalties, including the waiting time penalties provided in California Labor Code §
10 203, together with interest thereon, as well as other available remedies.

11 66. As a proximate result of DEFENDANTS' unlawful actions and omissions,
12 PLAINTIFFS and CLASS MEMBERS have been deprived of compensation in an amount
13 according to proof at the time of trial, but in excess of the jurisdiction of this Court, and are
14 entitled to recovery of such amounts, plus interest thereon, and attorneys' fees and costs,
15 pursuant to California Labor Code §§ 1194 and 2699.

16 **SIXTH CAUSE OF ACTION**

17 **Failure to Maintain Required Records**

18 **[Cal. Labor Code §§ 226; IWC Wage Order No. 5-2001, § 7]**

19 **(By PLAINTIFFS and the CLASS MEMBERS against all DEFENDANTS)**

20 67. PLAINTIFFS incorporate herein by specific reference, as though fully set forth,
21 the allegations in the preceding paragraphs.

22 68. During the CLASS PERIOD, as part of DEFENDANTS' illegal payroll policies
23 and practices to deprive PLAINTIFFS and CLASS MEMBERS of all wages earned and due,
24 DEFENDANTS knowingly and intentionally failed to maintain records as required under
25 California Labor Code §§ 226, 1174, and IWC Wage Order No. 5-2001, § 7, including but not
26 limited to, the following records: total daily hours worked by each employee; applicable rates
27 of pay; all deductions; meal periods; time records showing when each employee begins and
28

1 ends each work period; and accurate itemized statements.

2 69. As a proximate result of DEFENDANTS' unlawful actions and omissions,
3 PLAINTIFFS and CLASS MEMBERS have been damaged in an amount according to proof at
4 trial, and are entitled to all wages earned and due, plus interest thereon. Additionally,
5 PLAINTIFFS and CLASS MEMBERS are entitled to all available statutory penalties,
6 including but not limited to civil penalties pursuant to California Labor Code §§ 226(e), 226.3,
7 and 1174.5, and an award of costs, expenses, and reasonable attorney's fees, including but not
8 limited to those provided in California Labor Code § 226(e), as well as other available
9 remedies.

10 **SEVENTH CAUSE OF ACTION**

11 **Failure to Furnish Accurate Itemized Wage Statements**

12 **[Cal. Labor Code §§ 226, 1174; IWC Wage Order No. 5-2001, § 7]**

13 **(By PLAINTIFFS and the CLASS MEMBERS against all DEFENDANTS)**

14 70. PLAINTIFFS incorporate herein by specific reference, as though fully set forth,
15 the allegations in the preceding paragraphs.

16 71. During the CLASS PERIOD, DEFENDANTS routinely failed to provide
17 PLAINTIFFS and CLASS MEMBERS with timely, accurate and itemized wage statements in
18 writing showing each employee's gross wages and earned, total hours worked, all deductions
19 made, net wages earned, the name and address of the legal entity or entities employing
20 PLAINTIFFS and CLASS MEMBERS, and all applicable hourly rates in effect during each
21 pay period and the corresponding number of hours worked at each hourly rate, in violation of
22 California Labor Code § 226 and IWC Wage Order No. 5-2001, § 7.

23 72. During the CLASS PERIOD, DEFENDANTS knowingly and intentionally
24 failed to provide PLAINTIFFS and CLASS MEMBERS with timely, accurate, and itemized
25 wage statements in accordance with California Labor Code § 226(a).

26 73. As a proximate result of DEFENDANTS' unlawful actions and omissions,
27 PLAINTIFFS and CLASS MEMBERS have been damaged in an amount according to proof at
28

1 trial, and seek all wages earned and due, plus interest thereon. Additionally, PLAINTIFFS and
2 CLASS MEMBERS are entitled to all available statutory penalties, including, but not limited
3 to civil penalties pursuant to California Labor Code §§ 226(e), 226.3, and 1174.5, and an
4 award of costs, expenses, and reasonable attorney's fees, including but not limited to those
5 provided in California Labor Code § 226(e), as well as other available remedies.

6 **EIGHTH CAUSE OF ACTION**

7 **Unfair and Unlawful Business Practices**

8 **[Cal. Bus. & Prof. Code §§ 17200 et seq.]**

9 **(By PLAINTIFFS and the CLASS MEMBERS against all DEFENDANTS)**

10 74. PLAINTIFFS incorporate herein by specific reference, as though fully set forth,
11 the allegations in the preceding paragraphs.

12 75. Each and every one of DEFENDANT's acts and omissions in violation of the
13 California Labor Code and/or the applicable IWC Wage Order as alleged herein, including but
14 not limited to DEFENDANT's failure and refusal to provide required meal periods,
15 DEFENDANT's failure and refusal to provide required rest breaks, DEFENDANT's failure
16 and refusal to pay overtime compensation, including all compensation earned in the regular
17 rate of pay from which overtime wages were calculated and paid, DEFENDANTS' failure and
18 refusal to pay minimum wages, DEFENDANT's failure and refusal to pay all wages due to
19 discharged or quitting employees, DEFENDANTS's failure and refusal to furnish accurate
20 itemized wage statements; DEFENDANT's failure and refusal to maintain required records,
21 DEFENDANT's failure and refusal to indemnify PLAINTIFFS and CLASS MEMBERS for
22 necessary expenditures and/or losses incurring in discharging their duties, constitutes an unfair
23 and unlawful business practice under California Business and Professions Code § 17200 et seq.

24 76. DEFENDANTS' violations of California wage and hour laws constitute a
25 business practice because DEFENDANT's aforementioned acts and omissions were done
26 repeatedly over a significant period of time, and in a systematic manner, to the detriment of
27 PLAINTIFFS and CLASS MEMBERS.

77. DEFENDANTS have avoided payment of wages, overtime wages, meal periods, rest periods, and other benefits as required by the California Labor Code, the California Code of Regulations, and the applicable IWC Wage Order. Further, DEFENDANTS have failed to record, report, and pay the correct sums of assessment to the state authorities under the California Labor Code and other applicable regulations.

78. As a result of DEFENDANTS' unfair and unlawful business practices, DEFENDANTS have reaped unfair and illegal profits during the CLASS PERIOD at the expense of PLAINTIFFS, CLASS MEMBERS, and members of the public. DEFENDANTS should be made to disgorge their ill-gotten gains and to restore them to PLAINTIFFS and the CLASS MEMBERS.

79. DEFENDANTS' unfair and unlawful business practices entitle PLAINTIFFS and CLASS MEMBERS to seek preliminary and permanent injunctive relief, including but not limited to orders that DEFENDANTS account for, disgorge, and restore to PLAINTIFFS and CLASS MEMBERS the wages and other compensation unlawfully withheld from them. PLAINTIFFS and CLASS MEMBERS are entitled to restitution of all monies to be disgorged from DEFENDANTS in an amount according to proof at the time of trial, but in excess of the jurisdiction of this Court.

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFFS, individually and on behalf of all other persons similarly situated, respectfully pray for relief against DEFENDANTS and DOES 1 through 50, inclusive, and each of them, as follows:

1. For compensatory damages in an amount to be ascertained at trial;
2. For restitution of all monies due to PLAINTIFFS and CLASS MEMBERS, as well as disgorged profits from DEFENDANTS' unfair and unlawful business practices;
3. For meal and rest period compensation pursuant to California Labor Code § 226.7 and IWC Wage Order No. 5-2001;
4. For liquidated damages pursuant to California Labor Code §§ 1194.2 and

1 1197.1;

2 5. For preliminary and permanent injunctive relief enjoining DEFENDANTS from
3 violating the relevant provisions of the California Labor Code and the IWC Wage Orders, and
4 from engaging in the unlawful business practices complained herein;

5 6. For waiting time penalties pursuant to California Labor Code § 203;

6 7. For statutory and civil penalties according to proof, including but not limited to
7 all penalties authorized by the California Labor Code §§ 226(e) and §§ 2698-2699.5;

8 8. For interest on the unpaid wages at 10% per annum pursuant to California Labor
9 Code §§ 218.6, 1194, California Civil Code §§ 3287, 3288, and/or any other applicable
10 provision providing for pre-judgment interest;

11 9. For reasonable attorney's fees and costs pursuant to California Labor Code §§
12 1194, 2699, California Civil Code § 1021.5, and any other applicable provisions providing for
13 attorneys' fees and costs;

14 10. For declaratory relief;

15 11. For an order requiring and certifying the First, Second, Third, Fourth, Fifth, Sixth,
16 Seventh, and Eighth Causes of Action as a class action;

17 12. For an order appointing PLAINTIFFS as class representatives, and
18 PLAINTIFFS' counsel as class counsel; and

19 13. For such further relief that the Court may deem just and proper.

20
21 Dated: October 7, 2020

Respectfully Submitted,
The Law Office of Matt Blum

22
23 By: 
24 Matt Blum, Esq.
Attorneys for PLAINTIFFS

25 **DEMAND FOR JURY TRIAL**

26 PLAINTIFFS demand a jury trial on all issues triable to a jury.
27
28

EXHIBIT 6

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

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

LAW OFFICES OF SAHAG MAJARIAN II

Sahag Majarian, II (SBN 146621)

sahagii@aol.com

18250 Ventura Blvd.

Tarzana, CA 91356

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

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

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION FOR:**

1. Failure to provide required meal periods
2. Failure to provide required rest periods
3. Failure to pay overtime wages
4. Failure to pay minimum wages
5. Failure to pay all wages due to
discharged and quitting employees
6. Failure to maintain required records
7. Failure to furnish accurate itemized wage
statements
8. Failure to reimburse business expenses
9. unfair and unlawful business practices

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

10/01/2021 at 12:34:00 PM

Clerk of the Superior Court
By Carlos Terriguez, Deputy Clerk

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- 10. PAGA civil penalties for failure to pay all minimum, regular, and overtime wages
- 11. PAGA civil penalties for failure to provide required meal periods
- 12. PAGA civil penalties for failure to provide required rest periods
- 13. PAGA civil penalties for failure to reimburse business expenses
- 14. PAGA civil penalties for failure to provide accurate wage statements
- 15. PAGA civil penalties for failure to timely pay wages due at separation from employment
- 16. PAGA civil penalties for failure to timely pay wages due during employment
- 17. PAGA civil penalties for failure to maintain accurate records

DEMAND FOR JURY TRIAL

1 Plaintiffs ANTONY M. SMITH and OMAR AYALA (“PLAINTIFFS”), individuals,
2 demanding a jury trial, on behalf of themselves and other persons similarly situated, hereby
3 allege as follows:

4 **JURISDICTION AND VENUE**

5 1. The Superior Court of the State of California has jurisdiction in this matter
6 because PLAINTIFFS are residents of the State of California, and Defendant ZODIAC POOL
7 SYSTEMS, LLC, a Delaware limited liability company, and DOES 1 through 50 inclusive
8 (collectively “DEFENDANTS”), are qualified to do business in California and regularly
9 conduct business in California. Further, no federal question is at issue because the claims are
10 based solely on California law.

11 2. Venue is proper in this judicial district and the County of San Diego, California
12 because PLAINTIFFS, and other persons similarly situated, performed work for
13 DEFENDANTS in the County of San Diego at the address of 2882 Whiptail Loop, #100,
14 Carlsbad, California 92010. DEFENDANTS maintain offices and facilities and transact
15 business in the County of San Diego, and because DEFENDANTS’ illegal payroll policies and
16 practices which are the subject of this action were applied, at least in part to PLAINTIFFS, and
17 all other persons similarly situated, in the County of San Diego.

18 **INTRODUCTION**

19 3. PLAINTIFFS bring this class action pursuant to California Code of Civil
20 Procedure section 382 and a representative action under California’s Private Attorneys General
21 Act of 2004 (“PAGA”), Labor Code sections 2698, *et seq.*, on behalf of themselves and all
22 other current and former non-exempt employees of DEFENDANTS within the State of
23 California during the four years prior to the filing of this Complaint. PLAINTIFFS bring this
24 action for DEFENDANTS’ failure to: pay non-exempt employees all wages, including regular
25 and/or minimum wages for all hours worked and premium wages for overtime hours worked;
26 inform of and provide off-duty meal and rest periods; reimburse business expenses; provide
27 accurate itemized wage statements; and timely pay all wages due upon separation of
28 employment. In addition, PLAINTIFFS bring this action for unfair competition under Business
and Professions Code sections 17200, *et seq.*

4. PLAINTIFF OMAR AYALA notified the Labor and Workforce Development Agency (“LWDA”) of these claims. The LWDA did not intervene, and DEFENDANTS did not attempt to cure within 65 days of that notice. PLAINTIFF OMAR AYALA seeks civil penalties as a representative of the State of California, for all Aggrieved Employees as provided by the PAGA, for the period one year and 65 days from the date of filing for PAGA penalties (“PAGA PERIOD”)

5. A true and correct copy of the March 20, 2020 LWDA notification, and proof of submission showing compliance with Labor Code section 2699.3 are attached as Exhibit 1.

PLAINTIFFS

6. PLAINTIFF ANTONY SMITH is a resident of San Diego and was employed as a Sales Representative with DEFENDANTS beginning August of 2018 through August of 2020.

7. PLAINTIFF OMAR AYALA is a resident of Orange County and was employed as an Assembler, Tester, and Builder in a non-exempt, hourly-paid position with DEFENDANTS from approximately March 2013 through October 2019. PLAINTIFF OMAR AYALA worked in DEFENDANTS' Carlsbad, California location within San Diego County, California as well as in Rancho Santa Margarita, California.

8. PLAINTIFFS, on behalf of themselves and all other similarly situated and current and former non-exempt employees of DEFENDANTS in the State of California at any time during the four years preceding the filing of this action, and continuing while this action is pending, brings this class action to recover, among other things, wages and penalties from unpaid wages earned and due, including but not limited to unpaid minimum wages, unpaid and illegally calculated overtime compensation, illegal meal and rest period policies, failure to pay all wages due to discharged and quitting employees, failure to provide accurate itemized wage statements, failure to maintain required records, failure to reimburse business expenses, and interest, attorney's fees, costs, and expenses.

9. PLAINTIFFS bring this action on behalf of themselves and the following similarly-situated class of individuals (“CLASS MEMBERS”): all current and former non-

1 exempt employees of DEFENDANTS in the State of California at any time within the period
2 beginning four (4) years prior to May 27, 2020 which is the original date of filing of the action
3 entitled *Omar Ayala v. Zodiac Pool Systems LLC*, Case No. 37-2020-00017229-CU-OE-CTL,
4 (which was subsequently removed to the Southern District of California and is currently
5 pending in that court as Case No. 20CV1381-H (MSB)) and ending at the time this action
6 settles or proceeds to final judgement (the "CLASS PERIOD"). PLAINTIFFS reserve the right
7 to name additional class representatives.

8 **DEFENDANTS**

9 10. PLAINTIFFS are informed and believe, and thereon allege, that Defendant
10 ZODIAC POOL SYSTEMS, LLC, is, and at all times relevant hereto was, a Delaware limited
11 liability company organized and existing under the laws of the State of Delaware.
12 PLAINTIFFS are further informed and believe, and thereon allege, that Defendant ZODIAC
13 POOL SYSTEMS, LLC, is authorized to conduct business in the State of California, and does
14 conduct business in the State of California. Specifically, Defendant ZODIAC POOL
15 SYSTEMS, INC. maintains offices and facilities and conducts business in, and engages in
16 illegal wage and payroll practices and policies in the County of San Diego, State of California.

17 11. The true names and capacities of DOES 1 through 50, inclusive, are unknown to
18 PLAINTIFFS at this time, and PLAINTIFFS therefore sue such DOE Defendants under
19 fictitious names. PLAINTIFFS are informed and believe, and thereon allege, that each
20 Defendant designated as a DOE is in some manner highly responsible for the occurrences
21 alleged herein, and that PLAINTIFFS' and CLASS MEMBERS' injuries and damages, as
22 alleged herein, were proximately caused by the conduct of such DOE Defendants.
23 PLAINTIFFS will seek leave of the court to amend this Complaint to allege their true names
24 and capacities when ascertained.

25 12. At all relevant times herein, PLAINTIFFS and CLASS MEMBERS were
26 employed by DEFENDANTS under employment agreements that were partly written, partly
27 oral, and partly implied. In perpetrating the acts and omissions alleged herein, DEFENDANTS,
28 and each of them, acted pursuant to, and in furtherance of, their policies and practices of not

1 paying PLAINTIFFS and CLASS MEMEBRS all wages earned and due, through methods and
2 schemes which include, but are not limited to, failing to pay minimum wages and overtime
3 premiums, failing to provide rest and meal periods, failing to properly maintain records, failing
4 to provide accurate itemized statements for each pay period, failing to properly compensate or
5 reimburse PLAINTIFFS and CLASS MEMBERS for necessary business expenditures, and
6 requiring, permitting, or suffering the employee to work off the clock, in violation of the
7 California Labor Code and the applicable Industrial Welfare Commission (“IWC”) Order.

8 13. PLAINTIFFS are informed and believe, and thereon allege, that each and every
9 one of the acts and omissions alleged herein were performed by, and/or attributable to, all
10 DEFENDANTS, each acting as agents and/or employees, and/or under the direction and
11 control of each of the other DEFENDANTS, and that said acts and failures to act were within
12 the course and scope of said agency, employment and/or direction and control.

13 14. As a direct and proximate result of the unlawful actions of DEFENDANTS,
14 PLAINTIFFS and CLASS MEMBERS have suffered, and continue to suffer, from loss of
15 earnings in amounts as yet unascertained, but subject to proof of trial, and within the
16 jurisdiction of this Court.

17 **THE CONDUCT**

18 **A. Off-the-Clock Work**

19 15. PLAINTIFFS and the other CLASS MEMBERS were non-exempt employees,
20 subject to the requirements of the California Labor Code.

21 16. During the CLASS PERIOD, from time to time, DEFENDANTS failed and
22 continue to fail to accurately pay PLAINTIFFS and the other CLASS MEMBERS for all hours
23 worked. Specifically, DEFENDANTS’ uniform practices, policies, and procedures applicable
24 to PLAINTIFFS and the other CLASS MEMBERS during the CLASS PERIOD, required
25 PLAINTIFFS and others similarly situated to attend meetings, gatherings and other company
26 related requirements without pay.

27 17. DEFENDANTS directed and directly benefited from the uncompensated off-
28 the-clock work performed by PLAINTIFFS and the other CLASS MEMBERS.

1 18. DEFENDANTS controlled the work schedules, duties, protocols, applications,
2 assignments, and employment conditions of PLAINTIFFS and the other CLASS MEMBERS.

3 19. DEFENDANTS were able to track the amount of time PLAINTIFFS and the
4 other CLASS MEMBERS spent working; however, DEFENDANTS failed to document, track,
5 or pay PLAINTIFFS and the other CLASS MEMBERS all wages earned and owed for all the
6 work they performed, including off-the-clock work.

7 20. DEFENDANTS' policies and practices deprived PLAINTIFFS and the other
8 CLASS MEMBERS of wages owed for the off-the-clock work activities and their required
9 meal periods. Because PLAINTIFFS and the other CLASS MEMBERS typically worked over
10 40 hours in a workweek, and more than eight (8) hours per day, DEFENDANTS' policies and
11 practices also deprived them of overtime pay.

12 21. DEFENDANTS knew or should have known that PLAINTIFFS and the other
13 CLASS MEMBERS' off-the-clock work was compensable under the law.

14 22. As a result, PLAINTIFFS and the other CLASS MEMBERS forfeited wages
15 due to them for all hours worked at DEFENDANTS' direction, control and benefit for the time
16 spent attending required meetings. DEFENDANTS' uniform policy and practice to not pay
17 PLAINTIFFS and the CLASS MEMBERS wages for all hours worked in accordance with
18 applicable law is evidenced by DEFENDANTS' business records.

19 **B. Unlawful Time Rounding**

20 23. During all, or portions, of the CLASS PERIOD, DEFENDANTS subjected all
21 non-exempt hourly employees, including PLAINTIFFS, to a uniform policy and practice of
22 unlawful time rounding, resulting in the underpayment of wages, including minimum, regular,
23 and overtime wages, on a systematic basis. This rounding policy was not neutral on its face or
24 in application and resulted in a cumulative loss of time and wages to PLAINTIFFS AND
25 CLASS MEMBERS. Despite being readily capable and able to use precise timeclock entries
26 for all "hours worked," DEFENDANTS disregarded actual time worked and issued pay checks
27 and wage statements that systematically reflected rounded time as a basis to underpay their
28 employees. DEFENDANTS' rounding policy resulted in underpayment for all straight-time

1 and overtime worked (including double-time hours). DEFENDANTS' rounding policy
2 operated unilaterally to the benefit of Defendants and to detriment of PLAINTIFFS and
3 CLASS MEMBERS.

4 **C. Overtime Regular Rate Violation**

5 24. During the CLASS PERIOD, from time to time, DEFENDANTS failed and
6 continue to fail to accurately calculate and pay PLAINTIFFS and the other CLASS
7 MEMBERS for their overtime hours worked. As a result, from time to time, PLAINTIFFS and
8 the other CLASS MEMBERS forfeited wages due them for working overtime without
9 compensation at the correct overtime rates. DEFENDANTS' uniform policy and practice to not
10 pay PLAINTIFFS and the other CLASS MEMBERS the correct overtime rate for all overtime
11 worked in accordance with applicable law is evidenced by DEFENDANTS' business records.

12 25. State law provides that employees must be paid overtime at one-and-one-half
13 times their "regular rate of pay." PLAINTIFFS and other CLASS MEMBERS were
14 compensated at an hourly rate plus flat-sum incentive pay tied to specific elements of an
15 employee's performance.

16 26. The second component of PLAINTIFFS' and other CLASS MEMBERS'
17 compensation was DEFENDANTS' flat-sum non-discretionary incentive program that paid
18 PLAINTIFFS and other CLASS MEMBERS flat-sum incentive wages based on their
19 performance for DEFENDANTS. The flat-sum non-discretionary bonus program provided all
20 employees paid on an hourly basis with flat-sum bonus compensation when the employees met
21 the various performance goals set by DEFENDANTS. However, when calculating the regular
22 rate of pay, in those pay periods where PLAINTIFFS and other CLASS MEMBERS worked
23 overtime and earned this flat-sum non-discretionary bonus, DEFENDANTS failed to accurately
24 include the flat-sum non-discretionary bonus compensation as part of the employees' "regular
25 rate of pay" and/or calculated all hours worked rather than just all non-overtime hours worked.
26 Management and supervisors described the incentive/bonus program to potential and new
27 employees as part of the compensation package. As a matter of law, the incentive compensation
28 received by PLAINTIFFS and the other CLASS MEMBERS must be included in the "regular

1 rate of pay.” The failure to do so has resulted in a systematic underpayment of overtime
2 compensation to PLAINTIFFS and the other CLASS MEMBERS by DEFENDANTS.

3 27. In violation of the applicable sections of the California Labor Code and the
4 requirements of the applicable IWC Wage Order, DEFENDANTS as a matter of company
5 policy, practice, and procedure, intentionally and knowingly failed to compensate
6 PLAINTIFFS and the other CLASS MEMBERS at the correct rate of pay for all overtime
7 worked. This uniform policy and practice of DEFENDANTS is intended to purposefully avoid
8 the payment of the correct overtime compensation as required by California law which allowed
9 DEFENDANTS to illegally profit and gain an unfair advantage over competitors who complied
10 with the law. To the extent equitable tolling operates to toll claims by PLAINTIFFS and the
11 other CLASS MEMBERS against DEFENDANTS, the CLASS PERIOD should be adjusted
12 accordingly.

13 **D. Paid Missed Meal and Rest Period Premiums - Regular Rate Violation**

14 28. During the CLASS PERIOD, DEFENDANTS, from time to time, failed and
15 continue to fail to accurately calculate and pay PLAINTIFFS and the other CLASS
16 MEMBERS their missed meal and rest period premiums. As a result, PLAINTIFFS and the
17 other CLASS MEMBERS forfeited wages due them for their missed meal and rest periods
18 without compensation at the correct missed meal and rest period rates. DEFENDANTS’
19 uniform policy and practice to not pay PLAINTIFFS and the other CLASS MEMBERS the
20 correct rate for all missed meal and rest period premium payment in accordance with applicable
21 law is evidenced by DEFENDANTS’ business records.

22 29. State law provides that employees must be paid a premium hour of pay at the
23 employee’s “regular rate of pay” for each workday that the meal or rest period is not provided.
24 PLAINTIFFS and the other CLASS MEMBERS were compensated at an hourly rate plus a
25 flat-sum incentive pay that was tied to specific elements of an employee’s performance.

26 30. The second component of PLAINTIFFS and the other CLASS MEMBERS’
27 compensation was DEFENDANTS’ flat-sum non-discretionary incentive program that paid
28 PLAINTIFFS and the other CLASS MEMBERS flat-sum incentive wages based on their

1 performance for DEFENDANTS. The non-discretionary flat-sum incentive program provided
2 all employees paid on an hourly basis with flat-sum incentive compensation when the
3 employees met the various performance goals set by DEFENDANTS. However, when
4 calculating the regular rate of pay for purposes of paying missed rest and meal period
5 premiums to PLAINTIFFS and the other CLASS MEMBERS, DEFENDANTS failed to
6 include the flat-sum incentive compensation as part of the employees' "regular rate of pay".
7 Management and supervisors described the flat-sum incentive program to potential and new
8 employees as part of the compensation package. As a matter of law, the incentive compensation
9 received by PLAINTIFFS and the other CLASS MEMBERS must be included in the "regular
10 rate of pay." The failure to do so has resulted in a systematic underpayment of premium pay for
11 missed meal and rest periods to PLAINTIFFS and the other CLASS MEMBERS by
12 DEFENDANTS.

13 31. In violation of the applicable sections of the California Labor Code and the
14 requirements of the IWC Wage Order, DEFENDANTS as a matter of company policy,
15 practice, and procedure, intentionally and knowingly failed to compensate PLAINTIFFS and
16 the other CLASS MEMBERS at the correct rate of pay for all missed meal and rest period
17 premiums. This uniform policy and practice of DEFENDANTS is intended to purposefully
18 avoid the payment of the correct missed meal and rest period premium compensation as
19 required by California law which allowed DEFENDANTS to illegally profit and gain an unfair
20 advantage over competitors who complied with the law. To the extent equitable tolling operates
21 to toll claims by the CLASS MEMBERS against DEFENDANTS, the CLASS PERIOD should
22 be adjusted accordingly.

23 **E. Missed Meal and Rest Period Violations**

24 32. As a result of their rigorous work schedules, PLAINTIFFS and the other CLASS
25 MEMBERS were also from time to time unable to take off-duty meal breaks and were not fully
26 relieved of duty for meal periods. PLAINTIFFS and the other CLASS MEMBERS were
27 required to perform work as ordered by DEFENDANTS for more than five (5) hours during a
28 shift without receiving an off-duty meal break. Further, DEFENDANTS failed to provide

1 PLAINTIFFS and the other CLASS MEMBERS with a second off-duty meal period from time
2 to time in which these employees were required by DEFENDANTS to work ten (10) hours of
3 work. PLAINTIFFS and the other CLASS MEMBERS therefore forfeited meal breaks without
4 additional compensation and in accordance with DEFENDANTS' strict corporate policy and
5 practice.

6 33. During the CLASS PERIOD, DEFENDANTS rounded PLAINTIFFS' and other
7 CLASS MEMBERS' meal period time punches in violation of California law. Despite
8 purporting not to round meal period punches, it is clear that these time punches were rounded
9 to the quarter hour because employees were always paid for hours ending in .00, .25, .50, or
10 .75. If shift start and end times were rounded, but meal periods were not, the hours worked
11 would end in other decimal amounts on all days on which a meal period was not exactly 30
12 minutes, that resulted in time rounding that benefited Defendants to the detriment of Plaintiffs
13 and members of the proposed Plaintiff Class.

14 34. During the CLASS PERIOD, PLAINTIFFS and the other CLASS MEMBERS
15 were also required, from time to time, to work in excess of four (4) hours without being
16 provided a ten (10) minute rest period. Further, these employees were denied their first rest
17 period of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours, a
18 first and second rest period of at least ten (10) minutes for some shifts worked of between six
19 (6) and eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for
20 some shifts worked of ten (10) hours or more. PLAINTIFFS and the other CLASS MEMBERS
21 were also not provided with premium pay of one hour's wage in lieu thereof. As a result of
22 their rigorous work schedules, PLAINTIFFS and the other CLASS MEMBERS were
23 periodically denied their proper rest periods by DEFENDANTS and DEFENDANTS'
24 managers.

25 **F. Inaccurate Itemized Wage Statements**

26 35. When PLAINTIFFS and the other CLASS MEMBERS worked overtime in the
27 same pay period they earned incentive wages and/or missed meal and rest breaks.
28 DEFENDANTS also failed to provide PLAINTIFFS and the other CLASS MEMBERS with

1 complete and accurate wage statements which failed to show, among other things, the name
2 and address of the legal entity that is the employer, the correct overtime rate for overtime
3 worked, including, work performed in excess of eight (8) hours in a workday and/or forty (40)
4 hours in any workweek, and the correct premium payment for missed meal and rest periods.
5 California Labor Code section 226 provides that every employer shall furnish each of his or her
6 employees with an accurate itemized wage statement in writing showing, among other things,
7 gross wages earned and all applicable hourly rates in effect during the pay period and the
8 corresponding amount of time worked at each hourly rate. Aside, from the violations listed
9 above in this paragraph, DEFENDANTS failed to issue to PLAINTIFFS and the other CLASS
10 MEMBERS itemized wage statements list that lists all the requirements under California Labor
11 Code sections 226, *et seq.* As a result, from time to time DEFENDANTS provided
12 PLAINTIFFS and the other CLASS MEMBERS with wage statements which violated
13 California Labor Code section 226.

14 **G. Unfair Competition Law**

15 36. By reason of the aforementioned uniform conduct applicable to PLAINTIFFS
16 and the other CLASS MEMBERS, DEFENDANTS committed acts of unfair competition in
17 violation of the California Unfair Competition Law (the “UCL”), Cal. Bus. & Prof. Code
18 sections 17200, *et seq.*, by engaging, *inter alia*, in a company-wide policy and procedure which
19 failed to, *inter alia*, record and compensate PLAINTIFFS and the other CLASS MEMBERS
20 for all hours worked, accurately calculate and record the correct overtime rate for the overtime
21 worked by PLAINTIFFS and the other CLASS MEMBERS in those pay periods where
22 PLAINTIFFS and the other CLASS MEMBERS earned a flat sum non-discretionary bonus.
23 The proper calculation of these employees’ overtime hour rates is the DEFENDANTS’ burden.
24 As a result of DEFENDANTS’ intentional disregard of the obligation to meet this burden,
25 DEFENDANTS failed to properly calculate and/or pay all required overtime compensation for
26 work performed by the CLASS MEMBERS and violated the California Labor Code and
27 regulations promulgated thereunder as herein alleged.

28 37. Specifically, as to PLAINTIFFS and the other CLASS MEMBERS’ pay,

1 DEFENDANTS provided compensation to them in the form of two components. One
2 component of PLAINTIFFS and the other CLASS MEMBERS' compensation was a base
3 hourly wage. The second component of PLAINTIFFS and the other CLASS MEMBERS'
4 compensation were non-discretionary incentive wages. DEFENDANTS paid the incentive
5 wages, so long as PLAINTIFFS and the other CLASS MEMBERS met certain predefined
6 performance requirements.

7 38. PLAINTIFFS and the other CLASS MEMBERS met DEFENDANTS'
8 predefined eligibility performance requirements in various pay periods throughout his
9 employment with DEFENDANTS and DEFENDANTS paid PLAINTIFFS and the other
10 CLASS MEMBERS the incentive wages. However, when calculating the regular rate of pay, in
11 those pay periods where PLAINTIFFS and the other CLASS MEMBERS worked overtime and
12 earned this flat-sum non-discretionary bonus, DEFENDANTS failed to accurately include the
13 flat-sum non-discretionary bonus compensation as part of the employees' "regular rate of pay"
14 and/or calculated all hours worked rather than just all non-overtime hours worked and thereby
15 underpaid PLAINTIFFS and the other CLASS MEMBERS for overtime worked throughout
16 their employment with DEFENDANTS. The incentive compensation paid by DEFENDANTS
17 constituted wages within the meaning of the California Labor Code and thereby should have
18 been part of PLAINTIFFS and the other CLASS MEMBERS' "regular rate of pay."
19 PLAINTIFFS and the other CLASS MEMBERS were also from time to time unable to take off
20 duty meal and rest breaks and was not fully relieved of duty for their meal periods.
21 PLAINTIFFS and the other CLASS MEMBERS were required to perform work as ordered by
22 DEFENDANTS for more than five (5) hours during a shift without receiving an off-duty meal
23 break. Further, DEFENDANTS failed to provide PLAINTIFFS and the other CLASS
24 MEMBERS with a second off-duty meal period from time to time in which they were required
25 by DEFENDANTS to work ten (10) hours of work. PLAINTIFFS and the other CLASS
26 MEMBERS therefore forfeited meal and rest breaks without additional compensation and in
27 accordance with DEFENDANTS' strict corporate policy and practice. DEFENDANTS also
28 provided PLAINTIFFS and the other CLASS MEMBERS with a paystub that failed to

1 accurately display PLAINTIFFS' correct rates of overtime pay and payments for missed meal
2 and rest periods for certain pay periods in violation of Cal. Lab. Code section 226(a). To date,
3 DEFENDANTS has not fully paid PLAINTIFFS and the other CLASS MEMBERS the
4 overtime compensation still owed to them. The amount in controversy for PLAINTIFFS
5 individually does not exceed the sum or value of \$75,000.

6 **H. Unreimbursed Business Expenses**

7 39. During all, or portions, of the CLASS PERIOD, DEFENDANTS had a
8 consistent policy of failing to reimburse PLAINTIFFS and other CLASS MEMBERS for all
9 necessary business expenses incurred by the requirement to use personal cell phones for work-
10 related purposes in violation of California Labor Code section 2802.

11 **CLASS ACTION DESIGNATION**

12 40. PLAINTIFFS bring this case as a class action pursuant to California Code of
13 Civil Procedure section 382 on behalf of all current and former non-exempt employees of
14 DEFENDANTS, including all Sales Representatives, Field Technicians and all Assemblers,
15 Testers, and Builders, who have worked for DEFENDANTS in California ("CLASS
16 MEMBERS" or "members of the proposed Plaintiff Class") at any time within the period
17 beginning four (4) years prior to the filing of this action and ending at the time this action
18 settles or proceeds to final judgement (the "CLASS PERIOD").

19 41. PLAINTIFFS seek to certify a subclass of employees defined as:

20 **Unpaid Wages Subclass**

21 All members of the proposed Class who worked over eight (8) hours of
22 work in one day or forty (40) hours in one week.

22 42. PLAINTIFFS seek to certify a subclass of employees defined as:

23 **First Meal Period Subclass**

24 All members of the proposed Class who worked one or more
25 work periods in excess of five (5) hours.

25 43. PLAINTIFFS seek to certify a subclass of employees defined as:

26 **Second Meal Period Subclass**

27 All members of the proposed Class who worked one or more
28 work periods in excess of ten (10) hours.

28 44. PLAINTIFFS seek to certify a subclass of employees defined as:

Rest Period Subclass

All members of the proposed Class who worked one or more work periods in excess of three and a half (3 ½) hours.

45. PLAINTIFFS seek to certify a subclass of employees defined as:

Third Rest Period Subclass

All members of the proposed Class who worked one or more work periods in excess of ten (10) hours.

46. PLAINTIFFS seek to certify a subclass of employees defined as:

Unreimbursed Business Expense Subclass

All members of the proposed Class who used their personal cell phone during the course of their employment with DEFENDANTS.

47. PLAINTIFFS seek to certify a subclass of employees defined as:

Wage Statement Subclass

All members of the proposed Class who, within one year of the filing of the Complaint, received one or more itemized wage statements from DEFENDANTS.

48. PLAINTIFFS seek to certify a subclass of employees defined as:

Waiting Time Penalty Subclass

All members of the proposed Class whose employment ended within 3 years of the filing of the Complaint.

49. PLAINTIFFS seek to certify a subclass of employees defined as:

UCL Subclass

All members of the proposed Class who were subject to DEFENDANTS' pay practices relating to failure to pay all wages, failure to pay meal and rest period premium compensation, failure to reimburse business expenses, and failure to timely pay all wages due during and at separation from employment.

50. PLAINTIFFS and other CLASS MEMBERS have uniformly been deprived of wages and penalties from unpaid wages earned and due, including but not limited to unpaid minimum wages, unpaid and miscalculated overtime compensation, miscalculated meal and rest period premiums, illegal meal and rest period policies, failure to pay all wages due to discharged and quitting employees, failure to provide accurate itemized wage statements, failure to maintain required records, failure to reimburse business expenses, and interest, attorney's fees, costs, and expenses.

1 51. The members of the Class are so numerous that joinder of all Class Members is
2 impractical.

3 52. Common questions of law and fact regarding DEFENDANT's conduct with
4 respect to the miscalculation of overtime wages paid to non-exempt employees, including Sales
5 Representatives, Field Technicians and Assemblers, Testers, and Builders, miscalculated
6 missed meal and rest period premiums, and failing to provide legally compliant meal and rest
7 periods, failure to provide accurate itemized wage statements , failure to reimburse business
8 expenses, and failure ensure they are paid at least minimum wage and overtime, exist as to all
9 CLASS MEMBERS and predominate over any questions affecting solely any individual
10 members of the Class. Among the questions of law and fact common to the Class are:

11 a. Whether DEFENDANTS' flat-sum incentive compensation program is
12 non-discretionary;

13 b. Whether DEFENDANTS miscalculated the regular rate of pay in those
14 pay periods where PLAINTIFFS and other CLASS MEMBERS worked overtime and earned a
15 flat-sum bonus;

16 c. Whether DEFENDANTS miscalculated the regular rate of pay for
17 missed meal and rest period premiums in those pay periods where PLAINTIFFS and other
18 CLASS MEMBERS earned a flat-sum bonus and earned a meal or rest period premium
19 payment from DEFENDANTS;

20 d. Whether DEFENDANTS' meal and rest period policies are legally
21 compliant;

22 e. Whether DEFENDANTS failed to provide accurate itemized wage
23 statements to PLAINTIFFS and the CLASS MEMBERS;

24 f. Whether DEFENDANTS failed to reimburse PLAINTIFFS' and CLASS
25 MEMBERS' necessary business expenses; and

26 g. Whether CLASS MEMBERS have been required to follow uniform
27 procedures and policies regarding their work for DEFENDANTS;
28

1 53. PLAINTIFFS are CLASS MEMBERS who suffered damages as a result of
2 DEFENDANTS' conduct and actions alleged herein.

3 54. PLAINTIFFS' claims are typical of the claims of the Class, and PLAINTIFFS
4 have the same interests as the other CLASS MEMBERS.

5 55. PLAINTIFFS will fairly and adequately represent and protect the interests of the
6 Class. PLAINTIFFS have retained able counsel experienced in class action litigation. The
7 interests of PLAINTIFFS are coincident with, and not antagonistic to, the interests of the other
8 CLASS MEMBERS.

9 56. The questions of law and fact common to the CLASS MEMBERS predominate
10 over any questions affecting only individual members, including legal and factual issues
11 relating to liability and damages.

12 57. A class action is superior to other available methods for the fair and efficient
13 adjudication of this controversy because joinder of all CLASS MEMBERS is impractical.
14 Moreover, since the damages suffered by individual CLASS MEMBERS may be relatively
15 small, the expense and burden of individual litigation makes it practically impossible for
16 CLASS MEMBERS individually to redress the wrongs done to them. The Class is readily
17 definable and prosecution of this action as a class action will eliminate the possibility of
18 repetitive litigation. There will be no difficulty in the management of this action as a class
19 action.

20 **FIRST CAUSE OF ACTION**

21 **Failure to Provide Required Meal Periods**

22 **[Cal. Labor Code §§ 226.7, 510, 512, 1194, 1197; IWC Wage Order No. 5-2001, § 11]**

23 **(By PLAINTIFFS and the CLASS MEMBERS against all DEFENDANTS)**

24 58. PLAINTIFFS incorporate herein by specific references, as though fully set forth,
25 the allegations in the preceding paragraphs.

26 59. During the CLASS PERIOD, as part of DEFENDANTS' illegal payroll policies
27 and practices to deprive their non-exempt employees all wages earned and due,
28 DEFENDANTS required, permitted, or otherwise suffered PLAINTIFFS and CLASS

MEMEBRS to take less than 30-minute meal periods, or to work through them, and have failed to otherwise provide the required meal periods to PLAINTIFFS and CLASS MEMBERS pursuant to California Labor Code sections 226.7, 512 and IWC Order No. 5-2001, section 11, including due to unlawful time rounding of meal period clock times.

60. DEFENDANTS further violated California Labor Code sections 226.7 and IWC Wage Order No. 5-2001, section 11 by failing to compensate PLAINTIFFS and CLASS MEMBERS who were not provided with a meal period, in accordance with the applicable wage order, one additional hour of compensation at each employee's regular rate of pay for each workday that a meal period was not provided.

61. DEFENDANTS further violated California Labor Code sections 226.7, 510, 1194, 1197, and IWC Wage Order No. 5-2001 by failing to compensate PLAINTIFFS and CLASS MEMBERS for all hours worked during their meal periods.

62. As a proximate result of the aforementioned violations, PLAINTIFFS and CLASS MEMBERS have been damaged in an amount according to proof at trial, and seek all wages earned and due, interest, penalties, expenses, and costs of suit.

SECOND CAUSE OF ACTION

Failure to Provide Required Rest Periods

[Cal. Labor Code §§ 226.7, 512; IWC Wage Order No. 5-2001, § 12]

(By PLAINTIFFS and the CLASS MEMBERS against all DEFENDANTS)

63. PLAINTIFFS incorporate herein by specific reference, as though fully set forth, the allegations in the preceding paragraphs.

64. At all times relevant herein, as part of DEFENDANTS' illegal payroll policies and practices to deprive their non-exempt employees all wages earned and due, DEFENDANTS failed to provide rest periods to PLAINTIFFS and CLASS MEMBERS as required under California Labor Code sections 226.7 and 512, and IWC Wage Order No. 5-2001, section 12.

65. DEFENDANTS further violated California Labor Code section 226.7 and IWC Wage Order No. 5-2001, section 12 by failing to pay PLAINTIFFS and CLASS MEMBERS

1 who were not provided with a rest period, in accordance with the applicable wage order, one
2 additional hour of compensation at each employee's regular rate of pay for each workday that a
3 rest period was not provided.

4 66. As a proximate result of the aforementioned violations, PLAINTIFFS and
5 CLASS MEMBERS have been damaged in an amount according to proof at trial, and seek all
6 wages earned and due, interest, penalties, expenses, and costs of suit.

7 **THIRD CAUSE OF ACTION**

8 **Failure to Pay Overtime Wages**

9 **[Cal. Labor Code §§ 510, 1194, 1198; IWC Wage Order No. 5-2001, § 3]**

10 **(By PLAINTIFFS and the CLASS MEMBERS against all DEFENDANTS)**

11 67. PLAINTIFFS incorporate herein by specific reference, as though fully set forth,
12 the allegations in the preceding paragraphs.

13 68. Pursuant to California Labor Code sections 510, 1194, and Wage Order No. 5-
14 2001, section 3, DEFENDANTS are required to compensate PLAINTIFFS and CLASS
15 MEMBERS for all overtime, which is calculated at one and one-half (1½) times the regular rate
16 of pay for all hours worked in excess of eight (8) hours per day and/or forty (40) hours per
17 week, and for the first eight (8) hours on the seventh consecutive workday, with double time for
18 all hours worked in excess of twelve (12) hours in any workday and for all hours worked in
19 excess of eight (8) hours on the seventh consecutive day of work in any workweek.

20 69. PLAINTIFFS and CLASS MEMBERS are current and former non-exempt
21 employees entitled to the protections of California Labor Code sections 510, 1194, and IWC
22 Wage Order No. 5-2001. During the CLASS PERIOD, DEFENDANTS failed to compensate
23 PLAINTIFFS and CLASS MEMBERS for all overtime hours worked as required under the
24 forgoing provisions of the California Labor Code and IWC Wage Order by, among other
25 things: failing to pay overtime at one and one-half (1 ½) or double the regular rate of pay as
26 provided by California Labor Code sections 510, 1194, and IWC Wage Order No. 5-2001,
27 section 3; requiring, permitting or suffering PLAINTIFFS and CLASS MEMBERS to work off
28 the clock; requiring, permitting or suffering PLAINTIFFS and CLASS MEMBERS to work

1 through meal and rest breaks; illegally and inaccurately recording time in which PLAINTIFFS
2 and CLASS MEMBERS worked; failing to properly maintain PLAINTIFFS' and CLASS
3 MEMBERS' records; failing to provide accurate itemized wage statements to PLAINTIFFS for
4 each pay period; and other methods to be discovered. During the CLASS PERIOD,
5 DEFENDANTS failed to compensate PLAINTIFFS and CLASS MEMBERS for all overtime
6 hours worked and to pay the amount of overtime wages due as required by the California Labor
7 Code and IWC Wage Order by failing and refusing to include all compensation, including
8 commissions and bonuses earned, due and owing and/or paid, in the regular rate of pay from
9 which overtime wages were calculated and paid. During the CLASS PERIOD, DEFENDANTS
10 failed to compensate PLAINTIFFS and CLASS MEMBERS for all overtime hours worked and
11 to pay the amount of overtime wages due as required by the California Labor Code and IWC
12 Wage Order by incorrectly calculating the regular rate of pay from which overtime wages were
13 calculated and paid.

14 70. In violations of California Law, DEFENDANTS have knowingly and willfully
15 refused to perform their obligations to compensate PLAINTIFFS and CLASS MEMBERS for
16 all wages earned and all hours worked. As a proximate result, PLAINTIFFS and CLASS
17 MEMBERS have suffered, and continue to suffer, substantial losses related to the use and
18 enjoyment of such wages, lost interest on such wages, and expenses and attorney's fees in
19 seeking to compel DEFENDANTS to fully perform their obligations under state law, all to
20 their respective damages in amounts according to proof at time of trial, and within the
21 jurisdiction of this Court.

22 71. DEFENDANTS' conduct described herein violates California Labor Code
23 sections 510, 1194, 1198 and IWC Wage Order No. 5-2001, section 3. Therefore, pursuant to
24 California Labor Code sections 200, 203, 226, 558, 1194, 1197.1, and other applicable
25 provisions under the California Labor Code and IWC Wage Orders, PLAINTIFFS and CLASS
26 MEMBERS are entitled to recover the unpaid balance of wages owed to them by
27 DEFENDANTS, plus interest, penalties, attorney's fees, expenses, and costs of suit.
28

1
2 **FOURTH CAUSE OF ACTION**

3 **Failure to Pay Minimum Wages**

4 **[Cal. Labor Code §§ 1194, 1197; IWC Wage Order No. 5-2001, § 4]**

5 **(By PLAINTIFFS and the CLASS MEMBERS against all DEFENDANTS)**

6 72. PLAINTIFFS incorporate herein by specific reference, as though fully set forth,
7 the allegations in the preceding paragraphs.

8 73. Pursuant to California Labor Code sections 1194, 1197, and IWC Wage Order
9 No. 5-2001, section 4, payment to an employee of less than the applicable minimum wage for
10 all hours worked in a payroll period is unlawful.

11 74. During the CLASS PERIOD, DEFENDANTS failed to pay PLAINTIFFS and
12 CLASS MEMBERS minimum wages for all hours worked by, among other things: requiring,
13 permitting, or suffering PLAINTIFFS and CLASS MEMBERS to work off the clock;
14 requiring, permitting, or suffering PLAINTIFFS and CLASS MEMBERS to work through
15 meal and rest breaks; illegally and inaccurately recording time in which PLAINTIFFS and
16 CLASS MEMBERS worked; failing to properly maintain PLAINTIFFS' and CLASS
17 MEMBERS' records; failing to provide accurate itemized wage statements to PLAINTIFFS for
18 each pay period; unlawfully rounding PLAINTIFFS' and CLASS MEMBERS' time worked,
19 resulting in CLASS MEMBERS not being paid for all time worked; and other methods to be
20 discovered.

21 75. DEFENDANTS' conduct described herein violates California Labor Code
22 sections 1194, 1197, and IWC Wage Order No. 5-2001, section 4. As a proximate result of the
23 aforementioned violations, PLAINTIFFS and CLASS MEMBERS have been damaged in an
24 amount according to proof at trial. Therefore, pursuant to California Labor Code sections 200,
25 203, 226, 558, 1194, 1197.1, and other applicable provisions under the California Labor Code
26 and IWC Wage Orders, PLAINTIFFS and CLASS MEMBERS are entitled to recover the
27 unpaid balance of wages owed to the them by DEFENDANTS, plus interest, penalties,
28 attorney's fees, expenses, and costs of suit.

1
2 **FIFTH CAUSE OF ACTION**

3 **Failure to Pay All Wages Due to Discharged and Quitting Employees**

4 **[Cal. Labor Code §§ 201, 202, 203]**

5 **(By PLAINTIFFS and the CLASS MEMBERS against all DEFENDANTS)**

6 76. PLAINTIFFS incorporate herein by specific reference, as though fully set forth,
7 the allegations in the preceding paragraphs.

8 77. Pursuant to California Labor Code sections 201, 202, and 203, DEFENDANTS
9 are required to pay all earned and unpaid wages to an employee who is discharged. California
10 Labor Code section 201 mandates that if an employer discharges an employee, the employee's
11 wages accrued and unpaid at the time of discharge are due and payable immediately.

12 78. Furthermore, pursuant to California Labor Code section 202, DEFENDANTS
13 are required to pay all accrued wages due to an employee no later than 72 hours after the
14 employee quits his or her employment, unless the employee provided 72 hours previous notice
15 of his or her intention to quit, in which case the employee is entitled to his or her wages at the
16 time of quitting.

17 79. California Labor Code section 203 provides that if an employer willfully fails to
18 pay, in accordance with California Labor Code sections 201 and 202, any wage of an employee
19 who is discharged or who quits, the employer is liable for waiting time penalties in the form of
20 continued compensation to the employee at the same rate for up to 30 workdays.

21 80. During the CLASS PERIOD, DEFENDANTS have willfully failed to pay
22 accrued wages and other compensation to PLAINTIFFS and CLASS MEMBERS in
23 accordance with California Labor Code sections 201 and 202.

24 81. As a result, PLAINTIFFS and CLASS MEMBERS are entitled to all available
25 statutory penalties, including the waiting time penalties provided in California Labor Code
26 section 203, together with interest thereon, as well as other available remedies.

27 82. As a proximate result of DEFENDANTS' unlawful actions and omissions,
28 PLAINTIFFS and CLASS MEMBERS have been deprived of compensation in an amount

1 according to proof at the time of trial, but in excess of the jurisdiction of this Court, and are
2 entitled to recovery of such amounts, plus interest thereon, and attorneys' fees and costs,
3 pursuant to California Labor Code sections 1194 and 2699.

4 **SIXTH CAUSE OF ACTION**

5 **Failure to Maintain Required Records**

6 **[Cal. Labor Code §§ 226; IWC Wage Order No. 5-2001, § 7]**

7 **(By PLAINTIFFS and the CLASS MEMBERS against all DEFENDANTS)**

8 83. PLAINTIFFS incorporate herein by specific reference, as though fully set forth,
9 the allegations in the preceding paragraphs.

10 84. During the CLASS PERIOD, as part of DEFENDANTS' illegal payroll policies
11 and practices to deprive PLAINTIFFS and CLASS MEMBERS of all wages earned and due,
12 DEFENDANTS knowingly and intentionally failed to maintain records as required under
13 California Labor Code sections 226, 1174, and IWC Wage Order No. 5-2001, section 7,
14 including but not limited to, the following records: total daily hours worked by each employee;
15 applicable rates of pay; all deductions; meal periods; time records showing when each
16 employee begins and ends each work period; and accurate itemized statements.

17 85. As a proximate result of DEFENDANTS' unlawful actions and omissions,
18 PLAINTIFFS and CLASS MEMBERS have been damaged in an amount according to proof at
19 trial, and are entitled to all wages earned and due, plus interest thereon. Additionally,
20 PLAINTIFFS and CLASS MEMBERS are entitled to all available statutory penalties,
21 including but not limited to civil penalties pursuant to California Labor Code sections 226(e),
22 226.3, and 1174.5, and an award of costs, expenses, and reasonable attorney's fees, including
23 but not limited to those provided in California Labor Code section 226(e), as well as other
24 available remedies.

25 **SEVENTH CAUSE OF ACTION**

26 **Failure to Furnish Accurate Itemized Wage Statements**

27 **[Cal. Labor Code §§ 226, 1174; IWC Wage Order No. 5-2001, § 7]**

28 **(By PLAINTIFFS and the CLASS MEMBERS against all DEFENDANTS)**

1 86. PLAINTIFFS incorporate herein by specific reference, as though fully set forth,
2 the allegations in the preceding paragraphs.

3 87. During the CLASS PERIOD, DEFENDANTS routinely failed to provide
4 PLAINTIFFS and CLASS MEMBERS with timely, accurate, and itemized wage statements in
5 writing showing each employee's gross wages and earned, total hours worked, all deductions
6 made, net wages earned, the name and address of the legal entity or entities employing
7 PLAINTIFFS and CLASS MEMBERS, and all applicable hourly rates in effect during each
8 pay period and the corresponding number of hours worked at each hourly rate, in violation of
9 California Labor Code section 226 and IWC Wage Order No. 5-2001, section 7.

10 88. During the CLASS PERIOD, DEFENDANTS knowingly and intentionally
11 failed to provide PLAINTIFFS and CLASS MEMBERS with timely, accurate, and itemized
12 wage statements in accordance with California Labor Code section 226(a).

13 89. As a proximate result of DEFENDANTS' unlawful actions and omissions,
14 PLAINTIFFS and CLASS MEMBERS have been damaged in an amount according to proof at
15 trial, and seek all wages earned and due, plus interest thereon. Additionally, PLAINTIFFS and
16 CLASS MEMBERS are entitled to all available statutory penalties, including, but not limited to
17 civil penalties pursuant to California Labor Code sections 226(e), 226.3, and 1174.5, and an
18 award of costs, expenses, and reasonable attorney's fees, including but not limited to those
19 provided in California Labor Code section 226(e), as well as other available remedies.

20 **EIGHTH CAUSE OF ACTION**

21 **Failure to Reimburse Business Expenses**

22 **[Cal. Labor Code §§ 2800, 2802 and 2804]**

23 **(By PLAINTIFFS and the CLASS MEMBERS against all DEFENDANTS)**

24 90. PLAINTIFFS incorporate herein by specific reference, as though fully set forth,
25 the allegations in the preceding paragraphs.

26 91. Labor Code section 2800 provides, in pertinent part, "[a]n employer shall in all
27 cases indemnify his employee for losses caused by the employer's want of ordinary care."
28

1 92. Labor Code section 2802 provides, in pertinent part, “[a]n employer shall
2 indemnify his or her employee for all necessary expenditures or losses incurred by the
3 employee in direct consequence of the discharge of his or her duties...”

4 93. Further, Labor Code section 2802 provides, in pertinent part: “(c)...the term
5 ‘necessary expenditures or losses’ shall include all reasonable costs, including but not limited
6 to, attorney’s fees incurred by the employee enforcing the rights granted by this section.”

7 94. California Labor Code section 2804 mandates that this statutory right cannot be
8 waived.

9 95. During the CLASS PERIOD, DEFENDANTS were required to indemnify and
10 reimburse PLAINTIFFS and CLASS MEMBERS for all expenditures or losses caused by the
11 employer’s want of ordinary care and/or incurred in direct consequent of the discharge of their
12 duties, but failed to do so.

13 96. For example, PLAINTIFFS and CLASS MEMBERS were required to use their
14 personal cellphones for business-related purposes, including without limitation, to coordinate
15 with clients and other employees, in violation of Labor Code sections 2800 and 2802.

16 97. As a direct and proximate result, PLAINTIFFS and CLASS MEMBERS have
17 suffered, and continue to suffer, substantial losses, related to the use and enjoyment of such
18 monies to be reimbursed, lost interest on such monies, and expenses and attorney’s fees in
19 seeking to compel DEFENDANTS to fully perform their obligations under California law, all
20 to their damage in amounts according to proof at the time of trial.

21 98. Accordingly, PLAINTIFFS and CLASS MEMBERS are entitled to recover, and
22 hereby seek, an amount equal to incurred necessary expenditures, pre- and post-judgment
23 interest, applicable penalties, attorneys’ fees and costs, and any further equitable relief this
24 Court may deem just and proper. See Cal. Lab. Code § 2802; see also, Cal. Civ. Proc. Code §
25 1021.5.

26 99. PLAINTIFFS, on behalf of themselves and members of the Unreimbursed
27 Business Expense Subclass, request relief as described below.
28

1 **NINTH CAUSE OF ACTION**

2 **Unfair and Unlawful Business Practices**

3 **[Cal. Bus. & Prof. Code §§ 17200 et seq.]**

4 **(By PLAINTIFFS and the CLASS MEMBERS against all DEFENDANTS)**

5 100. PLAINTIFFS incorporate herein by specific reference, as though fully set forth,
6 the allegations in the preceding paragraphs.

7 101. Each and every one of DEFENDANTS' acts and omissions in violation of the
8 California Labor Code and/or the applicable IWC Wage Order as alleged herein, including but
9 not limited to DEFENDANTS' failure and refusal to provide required meal periods,
10 DEFENDANTS' failure and refusal to provide required rest breaks, DEFENDANTS' failure
11 and refusal to pay overtime compensation, including all compensation earned in the regular rate
12 of pay from which overtime wages were calculated and paid, DEFENDANTS' failure and
13 refusal to pay minimum wages, DEFENDANTS' failure and refusal to pay all wages due to
14 discharged or quitting employees, DEFENDANTS' failure and refusal to furnish accurate
15 itemized wage statements; DEFENDANTS' failure and refusal to maintain required records,
16 DEFENDANTS' failure and refusal to indemnify and reimburse PLAINTIFFS and CLASS
17 MEMBERS for necessary business expenditures and/or losses incurred in discharging their
18 duties, constitutes an unfair and unlawful business practice under California Business and
19 Professions Code sections 17200, *et seq.*

20 102. DEFENDANTS' violations of California wage and hour laws constitute a
21 business practice because DEFENDANTS' aforementioned acts and omissions were done
22 repeatedly over a significant period of time, and in a systematic manner, to the detriment of
23 PLAINTIFFS and CLASS MEMBERS.

24 103. DEFENDANTS have avoided payment of wages, overtime wages, meal periods,
25 rest periods, and other benefits as required by the California Labor Code, the California Code
26 of Regulations, and the applicable IWC Wage Order. Further, DEFENDANTS have failed to
27 record, report, and pay the correct sums of assessment to the state authorities under the
28 California Labor Code and other applicable regulations.

104. As a result of DEFENDANTS' unfair and unlawful business practices, DEFENDANTS have reaped unfair and illegal profits during the CLASS PERIOD at the expense of PLAINTIFFS, CLASS MEMBERS, and members of the public. DEFENDANTS should be made to disgorge their ill-gotten gains and to restore them to PLAINTIFFS and the CLASS MEMBERS.

105. DEFENDANTS' unfair and unlawful business practices entitle PLAINTIFFS and CLASS MEMBERS to seek preliminary and permanent injunctive relief, including but not limited to orders that DEFENDANTS account for, disgorge, and restore to PLAINTIFFS and CLASS MEMBERS the wages and other compensation unlawfully withheld from them. PLAINTIFFS and CLASS MEMBERS are entitled to restitution of all monies to be disgorged from DEFENDANTS in an amount according to proof at the time of trial, but in excess of the jurisdiction of this Court.

TENTH CAUSE OF ACTION

PAGA Civil Penalties for Failure to Pay Minimum, Regular, and Overtime Wages

[Cal. Labor Code §§ 2698, *et seq.*]

**(By PLAINTIFF AYALA and the AGGRIEVED EMPLOYEES against all
DEFENDANTS)**

106. PLAINTIFF OMAR AYALA incorporates herein by specific reference, as though fully set forth, the allegations in the preceding paragraphs.

107. Labor Code section 1194(a) provides: “(a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.”

108. Labor Code section 1197 states: “The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than minimum wage so fixed is unlawful.”

109. Labor Code section 510 codifies the right to overtime compensation at one and

1 one-half (1½) times the regular hourly rate for hours worked in excess of eight (8) hours in a
2 day or forty (40) hours in a week and for the first eight (8) hours worked on the seventh
3 consecutive day of work, and overtime compensation at twice the regular hourly rate for hours
4 worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the
5 seventh day of work in a workweek.

6 110. Labor Code section 2699(a) provides: “Notwithstanding any other provision of
7 law, any provision of this code that provides for a civil penalty to be assessed and collected by
8 the Labor and Workforce Development Agency or any of its departments, divisions,
9 commissions, boards, agencies, or employees, for a violation of this code, may, as an
10 alternative, be recovered through a civil action brought by an aggrieved employee on behalf of
11 himself or herself and other current or former employees pursuant to the procedures specified
12 in Section 2699.3.”

13 111. Labor Code section 2699(f)(2) states: “For all provisions of this code except
14 those for which a civil penalty is specifically provided, there is established a civil penalty for a
15 violation of these provisions, as follows... (2) If, at the time of the alleged violation, the person
16 employs one or more employees, the civil penalty is one hundred dollars (\$100) for each
17 aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for
18 each aggrieved employee per pay period for each subsequent violation.” Labor Code §
19 2699(f)(2).

20 112. Labor Code section 2699.5 provides, in pertinent part, that “provisions of
21 subdivision (a) of Section 2699.3 apply to any alleged violation of the following provisions:
22 [Labor Code §§] ...510, 1194, 1194.1” and allow for recovery of civil penalties pursuant to the
23 PAGA.

24 113. During all or a substantial part of the PAGA PERIOD, DEFENDANTS failed to
25 pay minimum, regular, and overtime wages for all work hours.

26 114. As a result of DEFENDANTS’ failure to pay minimum, regular, and overtime
27 wages for all hours worked, DEFENDANTS, and each of them, are liable for civil penalties
28 within the applicable limitations period of Labor Code section 2699(f)(2) for violations of

1 Labor Code sections 510, 1194, and 1194.2, in the amount of \$100 for each aggrieved
2 employee per pay period for the initial violation and \$200 for each subsequent violation, for
3 DEFENDANTS' failure to pay PLAINTIFF OMAR AYALA and other Aggrieved Employee
4 minimum, regular, or overtime wages.

5 115. DEFENDANTS' conduct also violates the applicable Wage Order(s) by failing
6 to pay minimum and overtime wages to employees.

7 116. PLAINTIFF OMAR AYALA will seek civil penalties of \$50 for the initial pay
8 period an employee was underpaid, and \$100 for each subsequent violation. Penalty funds
9 recovered will be distributed in accordance with the PAGA, with 75% paid to the LWDA, on
10 behalf of the State of California, and 25% paid to the Aggrieved Employees.

11 **ELEVENTH CAUSE OF ACTION**

12 **PAGA Civil Penalties for Failure to Provide Meal Periods**

13 **[Cal. Lab. Code §§ 2698, *et seq.*]**

14 **(By PLAINTIFF AYALA and the AGGRIEVED EMPLOYEES against all**
15 **DEFENDANTS)**

16 117. PLAINTIFF OMAR AYALA incorporates herein by specific reference, as
17 though fully set forth, the allegations in the preceding paragraphs.

18 118. Labor Code section 226.7(b)(c) provides: "An employer shall not require an
19 employee to work during a meal period mandated pursuant to an applicable statute, or
20 applicable regulation, standard, or order of the Industrial Welfare Commission, the
21 Occupational Safety and Health Standards Board, or the Division of Occupational Safety and
22 Health."

23 119. Labor Code section 226.7(c) provides: "If an employer fails to provide an
24 employee a meal period in accordance with a state law...the employer shall pay the employee
25 one additional hour of pay at the employee's regular rate of compensation for each workday
26 that the meal or rest or recovery period is not provided."

27 120. During the PAGA PERIOD, PLANTIFF OMAR AYALA and other Aggrieved
28 Employees were not provided with legally compliant, off-duty meal periods.

121. By failing to provide off-duty and uninterrupted meal periods of at least thirty (30) minutes for shifts of five (5) hours or more, which began before the end of the fifth hour of work, and failing to pay employees one hour of pay at their regular rate of pay for each workday a meal period was not provided, DEFENDANTS willfully violated Labor Code sections 226.7, 512, and 558(a)(3), and the applicable Wage Order(s).

122. Labor Code section 2699(f)(2) provides for civil penalties for violations of the Labor Code for which there is no corresponding civil penalty, including Labor Code sections 226.7 and 512. The civil penalty is \$100 for the initial violation and \$200 for each subsequent violation for each underpaid employee. Labor Code § 2699(f)(2).

123. Plaintiff OMAR AYALA, as a representative of the general public, seeks to recover all Labor Code section 2699(f)(2) civil penalties for each Labor Code sections 226.7 or 512(a) violation, according to proof, as to those penalties otherwise only available in public agency enforcement actions. Penalty funds recovered will be distributed in accordance with the PAGA, with 75% paid to the LWDA on behalf of the State of California, and 25% paid to the Aggrieved Employees.

TWELFTH CAUSE OF ACTION

PAGA Civil Penalties for Failure to Provide Rest Periods

[Cal. Lab. Code §§ 2698, *et seq.*]

**(By PLAINTIFF AYALA and the AGGRIEVED EMPLOYEES against all
DEFENDANTS)**

124. PLAINTIFF OMAR AYALA incorporates herein by specific reference, as though fully set forth, the allegations in the preceding paragraphs.

125. During the PAGA PERIOD, PLAINTIFF OMAR AYALA and other Aggrieved Employees were not provided legally compliant, duty-free rest periods.

126. By failing to authorize and permit rest periods of at least ten (10) minutes for every four (4) hours or major fraction thereof worked per day, and by failing to provide premium wages at the regular rate of pay when these periods were not permitted or authorized, DEFENDANTS willfully violated Labor Code section 226.7 and the applicable Wage Order(s).

127. Labor Code section 2699(f)(2) provides for civil penalties for violations of the Labor Code for which there is no corresponding civil penalty, including Labor Code section 226.7. The civil penalty is \$100 for the initial violation and \$200 for each subsequent violation for each underpaid employee. Labor Code § 2699(f)(2).

128. PLAINTIFF OMAR AYALA, as a representative of the general public, seeks to recover all Labor Code section 2699(f)(2) civil penalties for each Labor Code section 226.7 violation, according to proof, as to those penalties otherwise only available in public agency enforcement actions. Penalty funds recovered will be distributed in accordance with the PAGA, with 75% paid to the LWDA on behalf of the State of California, and 25% paid to Aggrieved Employees.

THIRTEENTH CAUSE OF ACTION

PAGA Civil Penalties for Failure to Reimburse Business Expenses

[Cal. Lab. Code §§ 2698, *et seq.*]

**(By PLAINTIFF AYALA and the AGGRIEVED EMPLOYEES against all
DEFENDANTS)**

129. PLAINTIFF OMAR AYALA incorporates herein by specific reference, as though fully set forth, the allegations in the preceding paragraphs.

130. California Labor Code section 2802 provides: “An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, obedience to the directions of the employer...[].”

131. For purposes of this section, the term “necessary expenditures or losses” shall include all reasonable costs, including, but not limited to, attorney’s fees incurred by the employee enforcing the rights granted by this section.

132. California Labor Code section 2804 mandates this statutory right cannot be waived.

133. Labor Code section 2699(f)(2) states: “For all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a

1 violation of these provisions, as follows... (2) If, at the time of the alleged violation, the person
2 employs one or more employees, the civil penalty is one hundred dollars (\$100) for each
3 aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for
4 each aggrieved employee per pay period for each subsequent violation.”

5 134. Aggrieved employees are entitled to pursue civil penalties under the PAGA for
6 violations of Labor Code section 2802. Labor Code § 2699.5.

7 135. Because there is no established civil penalty for violations of Section 2802,
8 Labor Code section 2699(f)(2) provides the appropriate civil penalty, as DEFENDANTS
9 employed more than one person during the statutory period, and still employ more than one
10 person.

11 136. DEFENDANTS violated the above statutes throughout the applicable statutory
12 period by failing to fully reimburse PLAINTIFF OMAR AYALA and other Aggrieved
13 Employees for necessary expenditures incurred in direct consequence of discharging their
14 duties, including failing to reimburse for all expenses incurred by PLAINTIFF OMAR
15 AYALA and Aggrieved Employees for the use of personal cell phones for business-related
16 purposes.

17 137. PLAINTIFF OMAR AYALA, as a representative of the general public, seeks to
18 recover all Labor Code section 2699(f)(2) civil penalties for each Labor Code section 2802
19 violation, according to proof, as to those penalties otherwise only available in public agency
20 enforcement actions. Penalty funds recovered will be distributed in accordance with the PAGA,
21 with 75% paid to the LWDA on behalf of the State of California, and 25% paid to the
22 Aggrieved Employees.

23 **FOURTEENTH CAUSE OF ACTION**

24 **PAGA Civil Penalties for Failure to Provide Accurate Itemized Wage Statements**

25 **[Cal. Lab. Code §§ 2698, *et seq.*]**

26 **(By PLAINTIFF AYALA and the AGGRIEVED EMPLOYEES against all**
27 **DEFENDANTS)**

28 138. PLAINTIFF OMAR AYALA incorporates herein by specific reference, as

1 though fully set forth, the allegations in the preceding paragraphs.

2 139. Labor Code section 226(a) provides: “Every employer shall, semimonthly or at
3 the time of each payment of wages, furnish each of his or her employees... an accurate
4 itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the
5 employee, (5) net wages earned... ..and (9) all applicable hourly rates in effect during the
6 pay period and the corresponding number of hours worked at each hourly rate by the
7 employee...”

8 140. Due to DEFENDANTS’ failure to pay for all hours worked and all meal and rest
9 period premiums as required by the Labor Code, the wages and hours worked listed on each
10 wage statement provided to PLAINTIFF OMAR AYALA and other Aggrieved Employees
11 were misstated and violated Sections 226(a)(1), (2), (5), and (9). Defendants’ actions were
12 intentional and willful.

13 141. PLAINTIFF OMAR AYALA has satisfied all prerequisites to serve as a
14 representative of the general public to enforce California’s labor laws, and the penalty
15 provisions identified in Labor Code section 226.3.

16 142. PLAINTIFF OMAR AYALA, as a representative of the people of the State of
17 California, seeks all penalties otherwise capable of being collected by the Division of Labor
18 Standards Enforcement (“DLSE”). Labor Code section 2699.5 provides that Section 2699.3(a)
19 applies to an alleged violation of Labor Code section 226.

20 143. Labor Code section 226.3 provides for civil penalties for violations of Section
21 226. The civil penalty is \$250 for the initial violation and \$1,000 for each subsequent violation.

22 144. PLAINTIFF OMAR AYALA, as a representative of the general public, seek to
23 recover all Labor Code section 2699(f)(2) civil penalties for each Labor Code section 226
24 violation, according to proof, as to those penalties otherwise only available in public agency
25 enforcement actions. Penalty funds recovered will be distributed in accordance with the PAGA,
26 with 75% paid to the LWDA on behalf of the State of California, and 25% paid to the
27 Aggrieved Employees.

1 **FIFTHTEENTH CAUSE OF ACTION**

2 **PAGA Civil Penalties for Failure to Timely Pay Wages Due Upon**

3 **Separation From Employment**

4 **[Cal. Lab. Code §§ 2698, et seq.]**

5 **(By PLAINTIFF AYALA and the AGGRIEVED EMPLOYEES against all**
6 **DEFENDANTS)**

7 145. PLAINTIFF OMAR AYALA incorporates herein by specific reference, as
8 though fully set forth, the allegations in the preceding paragraphs.

9 146. Labor Code sections 201-203 require employers to pay wages earned by
10 employees within strict time requirements. Defendants had a policy, practice, and procedure of
11 willfully failing to pay the earned wages of Defendants' former employees. If an employer
12 willfully fails to timely and fully pay all final wages the employer must, as a penalty, continue
13 to pay an employee's wages for 30 days, or until the back wages are paid in full.

14 147. DEFENDANTS failed to pay PLAINTIFF OMAR AYALA and other
15 Aggrieved Employees who ended their employment with the DEFENDANTS all wages,
16 including minimum, regular, and overtime, and meal and rest period premium wages, as
17 required by Labor Code sections 201-203.

18 148. Labor Code section 256 states: "The Labor Commissioner shall impose a civil
19 penalty in an amount not exceeding 30 day's pay as waiting time under the terms of Section
20 203."

21 149. Labor Code section 2699(f)(2) provides for civil penalties for violations of the
22 Labor Code for which there is no corresponding civil penalty, including Labor Code section
23 203. The civil penalty is \$100 for the initial violation and \$200 for each subsequent violation
24 for each underpaid employee. Labor Code § 2699(f)(2).

25 150. PLAINTIFF OMAR AYALA, as a representative of the general public, seeks to
26 recover all Labor Code section 2699(f)(2) civil penalties for each Labor Code section 201-203
27 violation, according to proof, as to those penalties otherwise only available in public agency
28 enforcement actions. Penalty funds recovered will be distributed in accordance with the PAGA,

1 with 75% paid to the LWDA on behalf of the State of California, and 25% paid to the
2 Aggrieved Employees.

3 **SIXTEENTH CAUSE OF ACTION**

4 **PAGA Civil Penalties for Failure to Timely Pay Wages Due During Employment**

5 **[Cal. Lab. Code §§ 2698, *et seq.*]**

6 **(By PLAINTIFF AYALA and the AGGRIEVED EMPLOYEES against all**
7 **DEFENDANTS)**

8 151. PLAINTIFF OMAR AYALA incorporates herein by specific reference, as
9 though fully set forth, the allegations in the preceding paragraphs.

10 152. Labor Code section 204(a) requires employers to pay wages earned by
11 employees within strict time requirements. DEFENDANTS had a policy, practice, and
12 procedure of willfully failing to pay the earned wages of DEFENDANTS' employees twice
13 during each calendar month, on days designated in advance by the employer as the regular
14 paydays.

15 153. Labor Code section 210(a) provides: "In addition to, and entirely independent
16 and apart from, any other penalty provided in this article, every person who fails to pay the
17 wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 204.11, 205,
18 205.5, and 1197.5, shall be subject to a penalty as follows: (1) For any initial violation, one
19 hundred dollars (\$100) for each failure to pay each employee; (2) For each subsequent
20 violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to
21 pay each employee, plus 25 percent of the amount unlawfully withheld."

22 154. DEFENDANTS failed to pay PLAINTIFF OMAR AYALA and other
23 Aggrieved Employees all minimum, regular, and overtime wages and all meal and rest period
24 premium wages during their employment, as required by Labor Code section 204.

25 155. Labor Code section 2699(f)(2) provides for civil penalties for violations of the
26 Labor Code for which there is no corresponding civil penalty. The civil penalty is \$100 for the
27 initial violation and \$200 for each subsequent violation for each underpaid employee. Labor
28 Code § 2699(f)(2).

1 156. PLAINTIFF OMAR AYALA, as a representative of the general public, seeks to
2 recover all civil penalties under Labor Code section 2699(f)(2) and/or section 210 for each and
3 every violation of Labor Code section 204(a), in an amount according to proof, as to those
4 penalties that are otherwise only available in public agency enforcement actions. Penalty funds
5 recovered will be distributed in accordance with the PAGA, with 75% of the penalties paid to
6 the LWDA on behalf of the State of California, and 25% paid to the Aggrieved Employees.

7 **SEVENTEENTH CAUSE OF ACTION**

8 **PAGA Civil Penalties for Failure to Maintain Accurate Records**

9 **[Cal. Lab. Code §§ 2698, *et seq.*]**

10 **(By PLAINTIFF AYALA and the AGGRIEVED EMPLOYEES against all**
11 **DEFENDANTS)**

12 157. PLAINTIFF OMAR AYALA incorporates herein by specific reference, as
13 though fully set forth, the allegations in the preceding paragraphs.

14 158. Labor Code section 1174(d) requires, every person employing labor in
15 California to “[k]eep, at a central location in the state or at the plants or establishments at which
16 employees are employed, payroll records showing the hours worked daily by and the wages
17 paid to, and the number of piece-rate units earned by and any applicable piece rate paid to,
18 employees employed at the respective plants or establishments. These records shall be kept in
19 accordance with rules established for this purpose by the commission, but in any case shall be
20 kept on file for not less than three years. An employer shall not prohibit an employee from
21 maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units
22 earned.”

23 159. DEFENDANTS failed to maintain accurate records by failing to record all hours
24 worked and the wages owed to PLAINTIFF OMAR AYALA and other Aggrieved Employees.
25 DEFENDANTS failed to keep accurate records of accurate minimum and overtime wages paid
26 and hours worked, including hours worked during meal periods.

27 160. Labor Code section 2699(f)(2) provides for civil penalties for violations of the
28 Labor Code for which there is no corresponding civil penalty, including Labor Code section

1 1174(d). The civil penalty is \$100 for the initial violation and \$200 for each subsequent
2 violation for each underpaid employee. Labor Code § 2699(f)(2).

3 161. PLAINTIFF OMAR AYALA, as a representative of the general public, seeks to
4 recover all Labor Code section 2699(f)(2) civil penalties for each Labor Code section 1174
5 violation, according to proof, as to those penalties otherwise only available in public agency
6 enforcement actions. Penalty funds recovered will be distributed in accordance with the PAGA,
7 with 75% paid to the LWDA on behalf of the State of California, and 25% paid to the
8 Aggrieved Employees.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, PLAINTIFFS, individually and on behalf of all other persons similarly
11 situated, respectfully pray for relief against DEFENDANTS and DOES 1 through 50, inclusive,
12 and each of them, as follows:

- 13 1. For compensatory damages in an amount to be ascertained at trial;
- 14 2. For restitution of all monies due to PLAINTIFFS and CLASS MEMBERS, as
15 well as disgorged profits from DEFENDANTS' unfair and unlawful business practices;
- 16 3. For meal and rest period compensation pursuant to California Labor Code
17 section 226.7 and IWC Wage Order No. 5-2001;
- 18 4. For liquidated damages pursuant to California Labor Code sections 1194.2 and
19 1197.1;
- 20 5. For preliminary and permanent injunctive relief enjoining DEFENDANTS from
21 violating the relevant provisions of the California Labor Code and the IWC Wage Orders, and
22 from engaging in the unlawful business practices complained herein;
- 23 6. For waiting time penalties pursuant to California Labor Code section 203;
- 24 7. For statutory and civil penalties according to proof, including but not limited to
25 all penalties authorized by the California Labor Code sections 226(e) and 2698-2699.5;
- 26 8. For reimbursement of expenses incurred arising from the use of personal cell
27 phones at the direction of and for the benefit of DEFENDANTS to be distributed to CLASS
28 MEMBERS in a fair and equitable manner, in an amount according to proof;

1 9. For maintenance of this claim as a Representative Action under the PAGA, and
2 providing PLAINTIFF OMAR AYALA and his counsel with all enforcement capability as if
3 this action has been instituted by the Department of Labor Standards enforcement (“DLSE”);

4 10. For recovery of all civil penalties as permitted by Labor Code section 2699, for
5 unpaid minimum, regular, and overtime wages owed pursuant to Labor Code section 1194,
6 according to proof;

7 11. For recovery of civil penalties as permitted by Labor Code section 2699, for
8 unpaid meal period premiums earned pursuant to Labor Code section 226.7, according to proof;

9 12. For recovery of civil penalties as permitted by Labor Code section 2699 for
10 unpaid rest period premiums earned pursuant to Labor Code section 226.7, according to proof;

11 13. For recovery of civil penalties as permitted by Labor Code section 2699 for
12 unreimbursed business expenses pursuant to Labor Code section 2802, according to proof;

13 14. For recovery of civil penalties as permitted by Labor Code section 2699, for
14 inaccurate itemized wage statements pursuant to Labor Code sections 226 and 226.3, according
15 to proof;

16 15. For recovery of civil penalties pursuant to Labor Code section 2699 where a
17 statutory civil penalty is not provided, for failing to comply with Labor Code sections 201-203;

18 16. For recovery of civil penalties pursuant to Labor Code section 256 in an amount
19 not exceeding 30 days’ pay as a waiting time penalty under the terms of section 203;

20 17. For recovery of civil penalties pursuant to Labor Code section 2699(f)(2) and/or
21 section 210 for failing to timely pay all wage due pursuant to Labor Code section 204(a);

22 18. For Pre-Judgment and Post-Judgment interest, to the extent permitted by law as
23 to any restitution recovery;

24 19. For interest on the unpaid wages at 10% per annum pursuant to California Labor
25 Code sections 218.6, 1194, 2802, California Civil Code sections 3287, 3288, and/or any other
26 applicable provision providing for pre-judgment interest;

1 20. For reasonable attorney's fees and costs pursuant to California Labor Code
2 sections 218.5, 226, 226(h), 1194, 2699, California Civil Code section 1021.5, and any other
3 applicable provisions providing for attorneys' fees and costs;

4 21. For declaratory relief;

5 22. For an order requiring and certifying the First, Second, Third, Fourth, Fifth,
6 Sixth, Seventh, Eighth and Ninth Causes of Action as a class action;

7 23. For an order appointing PLAINTIFFS as class representatives, and
8 PLAINTIFFS' counsel as class counsel; and

9 24. For such further relief that the Court may deem just and proper.

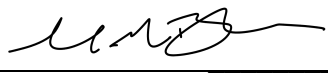
10 **DEMAND FOR JURY TRIAL**

11 PLAINTIFFS demand a jury trial on all issues triable to a jury.

12 Respectfully Submitted,

13 THE LAW OFFICE OF MATT BLUM

14
15 Dated: September 1, 2021

16 By: 
17 Matt Blum
18 Attorney for Plaintiffs Antony M. Smith
19 And Omar Ayala

20 COHELAN KHOURY & SINGER

21 Dated: 9/22/2021

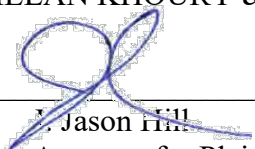
22 By: 
23 J. Jason Hill
24 Attorney for Plaintiffs Antony M. Smith
25 And Omar Ayala
26
27
28

EXHIBIT 1

COHELAN KHOURY & SINGER

A PARTNERSHIP OF PROFESSIONAL LAW CORPORATIONS

TIMOTHY D. COHELAN, APLC*
ISAM C. KHOURY, APC
DIANA M. KHOURY, APC
MICHAEL D. SINGER, APLC •

(*Also admitted in the District of Columbia)
(•Also admitted in Colorado)

ATTORNEYS AT LAW

605 "C" STREET, SUITE 200
SAN DIEGO, CALIFORNIA 92101-5305

Telephone: (619) 595-3001

Facsimile: (619) 595-3000

www.ckslaw.com

JEFF GERACI
J. JASON HILL†
MARTA MANUS
KRISTINA DE LA ROSA

(† Also admitted in Illinois)

March 20, 2020

NOTICE VIA ONLINE SUBMISSION

California Labor and Workforce Development Agency (LWDA)

VIA CERTIFIED U.S. MAIL WITH RETURN RECEIPT

Zodiac Pool Systems, LLC
2882 Whiptail Loop East # 100
Carlsbad, CA 92010

Fluidra USA, LLC
c/o Ted Kampe
27647 W. Redwood Way
Castaic, CA 91384

Zodiac Pool Solutions, LLC
2882 Whiptail Loop East # 100
Carlsbad, CA 92010

Zodiac Pool Systems, LLC
Zodiac Pool Solutions, LLC
c/o CSC-Lawyers Incorporating Service
2710 Gateway Oaks Dr., Suite 150N
Sacramento, CA 95833

Re: Notice pursuant to California Labor Code sections 2698, *et seq.*, the Private Attorneys General Act ("PAGA"), sent by Omar Ayala on behalf of himself and all other non-exempt employees of Zodiac Pool Systems, LLC, Zodiac Pool Solutions, LLC and Fluidra USA, LLC in the State of California, as an individual and as proposed a Representative of the State of California

Dear PAGA Administrator and Zodiac Pool Systems, LLC, Zodiac Pool Solutions, LLC, and Fluidra USA, LLC:

This letter shall serve as Omar Ayala's (hereafter "Claimant") Notice pursuant to the California Private Attorneys General Act of 2004 ("PAGA"), California Labor Code sections 2698, *et seq.* regarding his claims against Zodiac Pool Systems, LLC, Zodiac Pool Solutions, LLC (collectively "Zodiac"), and Fluidra USA, LLC, (collectively referred to herein as "the Employers"). Claimant submits this notice on behalf of himself and all current and former non-exempt employees employed by the Employers in California during the one year preceding the date of this notice suffered one or more of the violations described herein (collectively referred to as "aggrieved employees").

If the LWDA does not intend to investigate the allege violations, Claimant intends to file a representative action for PAGA *civil penalties* on behalf of himself and all other aggrieved employees of the Employers, seeking civil penalties on behalf of himself and all other aggrieved non-exempt employees in the State of California. A copy of this notice is being sent to the Employers by certified mail at the addresses above.

California LWDA
Zodiac Pool Systems, LLC
Zodiac Pool Solutions, LLC
Fluidra USA, LLC
Re: Omar Ayala
March 20, 2020
Page | 2

Claimant and other non-exempt employees were subject to the same policies and practices alleged herein which impermissibly denied aggrieved employees their rights pursuant to the California Labor Code and caused violation of the Labor Code as set forth below.

FACTUAL STATEMENT

Claimant worked for the Employers as a non-exempt employee in the job position(s) of “Assembler, Tester, and Builder” beginning in approximately March 2013 when Claimant was hired by Grand Effects, Inc. On October 2, 2017, Zodiac Pools Systems LLC acquired Grand Effects, Inc. Zodiac Pool Systems LLC is a subsidiary of Zodiac Pool Solutions, LLC. In July 2018, Zodiac Pool Systems, LLC merged with Fluidra USA, LLC. The Employers are a global provider of equipment and solutions for in-ground residential swimming pools and spas. Claimant’s employment ended in approximately October 2019.

At all relevant times at least one year prior to the date of this Notice, the Employers subjected Claimant and non-exempt employees to policies and practices which caused the violations of the Labor Code as described herein. Claimant now seeks civil penalties individually and on behalf of other non-exempt employees (“aggrieved employees”) based on the alleged violations of the California Labor Code and applicable IWC Wage Order, including civil penalties pursuant to Labor Code section 558(a), *excluding underpaid wages per ZB, N.A. v. Superior Court* (2019) 8 Cal. 5th 175, 252 Cal. Rptr. 3d 228, 448 P.3d 239. Claimant’s claims are set forth in further detail below.

For reasons set forth herein, Claimant alleges the following violations of the California Labor Code and the applicable IWC Wage Order(s) on behalf of himself and all other non-exempt employees employed by the Employers in California.

FAILURE TO PAY MINIMUM, REGULAR, AND OVERTIME WAGES

(Labor Code §§ 218, 510, 1194, 1197, 1197.1, 1198, and 1199(c) and the “Minimum Wages” and “Hours and Days of Work” Sections of the Applicable Wage Order)

At all times during his employment and at least one year prior to the date of this Notice, Claimant was subjected to a uniform policy and practice of unlawful time rounding. That is, the Employers did not pay Claimant and other aggrieved employees precisely for all hours worked and rounded his and other aggrieved employees’ hours worked to the nearest quarter of an hour, which over time, unlawfully favored the Employers and resulted in time lost to the employees, including Claimant. This rounding policy was not neutral on its face or in application and resulted in a cumulative loss of time to the employees. The Employers had the ability to pay for the precise hours worked but opted instead to utilize the rounding policy with no apparent benefit other than to benefit the Employers and deprive employees of payment for all hours worked. Strict rules regarding punctuality and rules favoring meal periods of less than thirty minutes further affected the rounding policy to result in more favorable results to the Employers. As a result, Claimant and other employees were not paid all minimum and regular wages for all hours worked. When the employees worked overtime, the rounding policy also resulted in the failure to

pay all overtime wages for all overtime hours worked. Furthermore, on information and belief, Claimant and other aggrieved employees were paid non-discretionary bonus if they met their sales quotas, which the Employers failed to factor into the regular rate of pay for purposes of calculating the accurate overtime rate of pay due and owed for overtime hours worked.

Labor Code section 510 provides in pertinent part: “Eight hours of labor constitutes a day’s work. Any work in excess of 8 hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.”

Labor Code section 1194(a) states: “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.”

Labor Code section 1198 provides: “The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

Labor Code section 1199, which is a statute listed for which PAGA default civil penalties are recoverable pursuant to Labor Code sections 2699.5 and 2699(f)(2), provides that:

“Every employer or other person acting either individually or as an officer, agent, or employee of another person is guilty of a misdemeanor and is punishable by a fine of not less than one hundred dollars (\$100) or by imprisonment for not less than 30 days, or by both, who does any of the following:

- (a) Requires or causes any employee to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission.
- (b) Pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission.
- (c) Violates or refuses or neglects to comply with any provision of this chapter or any order or ruling of the commission.”

Labor Code section 1197 states: “The minimum wage for employees fixed by the commission or by any applicable state or local law, is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful. This section does not change the applicability of local minimum wage laws to any entity.”

Labor Code section 1197.1 states: “Any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203. For any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid. For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed.”

Pursuant to the “Hours & Days of Work” Section of the applicable Wage Order, an employer may not pay non-exempt employees less than the applicable overtime rate for all overtime hours worked.

Pursuant to the “Minimum Wages” and “Hours & Days of Work” Sections of the applicable Wage Order, an employer may not pay employees less than the applicable minimum wage for all hours worked and provides that an employer may not pay non-exempt employees less than the applicable overtime rate for all overtime hours worked.

The Employers violated Labor Code sections 218, 510, 1194, 1197, 1198, and the “Minimum Wages” and “Hours and Days of Work” Sections of the Applicable Wage Order because it did not pay Claimant and other aggrieved current and former employees all minimum, regular, and overtime wages for all hours worked as a result of its unlawful rounding system and failure to accurately calculate the overtime rate of pay during pay periods when/if a non-discretionary bonus was paid.

Accordingly, Claimant now seeks *civil penalties* pursuant to the PAGA on behalf of himself and other aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

FAILURE TO PROVIDE MEAL AND REST PERIODS

(Labor Code §§ 226.7, 512, and 1198, and the “Meal Period” and “Rest Period” Sections of the applicable IWC Wage Order)

Labor Code section 512(a) states in pertinent part: “[A]n employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes” Labor Code section 226.7(a) states that “no employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.”

The “Rest Period” Section of applicable IWC Wage Order states: “Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.” If an employer fails to provide an employee a rest period in accordance with the applicable provision of the order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation of each workday that the rest period is not provided.

Labor Code section 226.7(c) states: “[I]f an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the IWC, the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each work day that the meal or rest period is not provided.”

The Employers failed to provide Claimant and other aggrieved employees with legally compliant meal and rest periods on eligible workdays. The Employers regularly failed to provide a duty-free and uninterrupted meal period before the end of the fifth hour of work and failed to provide a second meal period on shifts of more than 10 hours, as required under California law. Furthermore, the meal periods provided to Claimant and other aggrieved employees were often short insofar as they were not at least 30 minutes in length, as required under California law. On information and belief, Claimant and other aggrieved employees did not waive their right to receive meal periods, including second meal periods and third rest periods on eligible shifts. During Claimant’s employment, the Employers failed to provide Claimant and other aggrieved employees with legally compliant off-duty meal periods and duty-free rest periods as required by Labor Code sections 226.7 and 512, and sections 11 and 12 of the applicable IWC Wage Order. Furthermore, the Employers failed to pay one (1) hour of pay at the employee’s *regular rate* of compensation for each workday that the meal and/or rest period was not provided, in accordance with California law.

Accordingly, Claimant now seeks *civil penalties* pursuant to the PAGA on behalf of himself and other aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

FAILURE TO REIMBURSE BUSINESS-RELATED EXPENSES
(Labor Code §§ 2802 and 2804, and the “Tools and Equipment” section of the applicable IWC Wage Order)

Labor Code section 2802(a) provides that “[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.”

Labor Code section 2802(c) states that “[f]or purposes of [2802], the term ‘necessary expenditures or losses’ shall include all reasonable costs, including, but not limited to attorney’s

fees incurred by the employee enforcing the rights granted by [2802].”

Section 9(b) of the applicable IWC Wage Order states in pertinent part: “When tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer.”

Labor Code section 2802 prohibits employers, such as the Employers, from shifting their cost of doing business onto the employee. California Labor Code section 2802 states that employers must “indemnify” an employee for “all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer.” This means that if the expense in question is “necessary” for performance of the job, the employer must reimburse the employee 100% of the cost. An expense is considered “necessary” if it directly results from the employee’s performance of his or her work duties. An expense is also “necessary” if it occurs because the employee is following the directions given by the employer.

“Any contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled to under the laws of this State.” Cal. Labor Code § 2804.

The Employers failed to comply with Labor Code section 2802 and the applicable IWC Wage Order by failing to reimburse Claimant and other aggrieved employees for necessary business-related expenses incurred in direct consequence of the discharge of his or her duties, including for the use of personal cell phones for work-related purposes.

Accordingly, Claimant now seeks *civil penalties* pursuant to the PAGA on behalf of himself and other aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

FAILURE TO PAY ALL VACATION WAGES
(Labor Code §§ 218.5, 218.6, 227.3, and 2698, *et seq.*)

California Labor Code section 227.3 states, in pertinent part: “Whenever a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in accordance with such contract of employment or employer policy respecting eligibility or time served; provided, however, that an employment contract or employer policy shall not provide for forfeiture of vested vacation time upon termination. The Labor Commissioner or a designated representative, in the resolution of any dispute with regard to vested vacation time, shall apply the principles of equity and fairness.”

On information and belief, the Employers failed to comply with Labor Code section 227.3 by failing to pay all vacation wages due and earned to Claimant and all other aggrieved

California LWDA
Zodiac Pool Systems, LLC
Zodiac Pool Solutions, LLC
Fluidra USA, LLC
Re: Omar Ayala
March 20, 2020
Page | 7

employees. By failing to accurately pay for all hours worked, the Employers failed to accurately calculate vacation wages earned, and therefore, failed to pay all vacation wages due upon termination of employment.

Accordingly, Claimant now seeks *civil penalties* pursuant to the PAGA on behalf of himself and other aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

FAILURE TO PROVIDE PAID SICK LEAVE
(Labor Code §§ 246, 248.5)

Labor Code section 246 grants the right to employees to paid sick days. Specifically, Cal. Labor Code section 246(b) states that:

“(1) An employee shall accrue paid sick days at the rate of not less than one hour per every 30 hours worked, beginning at the commencement of employment or the operative date of this article, whichever is later, subject to the use and accrual limitations set forth in this section.

(2) An employee who is exempt from overtime requirements as an administrative, executive, or professional employee under a wage order of the Industrial Welfare Commission is deemed to work 40 hours per workweek for the purposes of this section, unless the employee’s normal workweek is less than 40 hours, in which case the employee shall accrue paid sick days based upon that normal workweek.

(3) An employer may use a different accrual method, other than providing one hour per every 30 hours worked, provided that the accrual is on a regular basis so that an employee has no less than 24 hours of accrued sick leave or paid time off by the 120th calendar day of employment or each calendar year, or in each 12-month period.

(4) An employer may satisfy the accrual requirements of this section by providing not less than 24 hours or three days of paid sick leave that is available to the employee to use by the completion of his or her 120th calendar day of employment.”

Labor Code section 246(i) further requires that an employer provide employees written notice setting forth the amount of paid sick leave available either on an employee’s wage statement pursuant to Section 226 or in a separate writing on the designated pay date.

On information and belief, the Employers failed to comply with Labor Code sections 246 and 248.5 by failing to provide all paid sick leave due and earned and failing to set forth in a written notice the accurate amount of paid sick leave Claimant and other aggrieved employees accrued. By failing to accurately record all hours actually worked and failing to pay for all hours worked, the Employers failed to provide all paid sick leave in accordance with California law,

which requires that paid sick days accrue at the rate of not less than one hour per every 30 hours worked.

Accordingly, Claimant now seeks *civil penalties* pursuant to the PAGA on behalf of himself and other aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(Labor Code §§ 226(a), 226.3, 1198, 2699, and the “Records” Section of the applicable IWC Wage Order)

Labor Code section 226(a) states in pertinent part that every employer shall provide an accurate itemized statement in writing with respect to each one of its employees showing: 1) gross wages earned; 2) total hours worked by an employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission; (3) the number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item; (5) net wages earned; (6) the inclusive dates of the period for which the employee is paid; (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number; (8) the name and address of the legal entity that is the employer...; and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

Furthermore, Labor Code section 226(e)(2)(A) states: “An employee is deemed to suffer injury for purposes of this subdivision if the Employer fails to provide a wage statement.”

Labor Code section 226.3 imposes an additional civil penalty on the Employers of \$250.00 per employee per violation of Labor Code section 226(a) in an initial citation and \$1,000.00 per employee for each violation in a subsequent citation. In addition, Labor Code section 226(e) imposes a penalty of the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of \$4,000, and Claimant is entitled to an award of costs and reasonable attorney’s fees.

Due to the Employers’ failure to pay all wages due at all times during Claimant’s employment, including minimum, regular, or overtime for all hours worked in excess of 8 hours in a given workday, due in part to the Employers’ unlawful rounding practice, the Employers violated Labor Code section 226 by failing to provide accurate itemized wage statements to Claimant and other aggrieved employees. The wage statements issued by the Employers fail to inform of the accurate number of hours worked, accurate total wages due and earned, accurate vacation wages earned, and accurate number of paid sick days.

Accordingly, Claimant now seeks *civil penalties* pursuant to the PAGA on behalf of himself and other aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

FAILURE TO MAINTAIN ACCURATE RECORDS

(Labor Code § 1174 and the “Records” Section of the applicable IWC Wage Order)

Labor Code section 1174(d) states: “Every person employing labor in this state shall: Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than three years.”

Labor Code section 1174.5 states “Any person employing labor who willfully fails to maintain accurate and complete records required by subdivision (d) of Section 1174, shall be subject to a civil penalty of five hundred dollars.”

IWC Wage Order 4-2001, section 7 obligates an employer to keep accurate information by underpaying minimum wages, regular wages, and overtime, and not recording accurate meal periods. IWC Wage Order 4-2001, section 7(A)(3) states in pertinent part: “Every employer shall keep accurate information with respect to each employee including the following: ... (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded.”

The Employers failed to maintain accurate records showing the accurate number of hours worked and accurate wages owed. Accordingly, Claimant now seeks *civil penalties* pursuant to the PAGA on behalf of himself and other aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

**FAILURE TO TIMELY PAY WAGES DUE DURING AND UPON TERMINATION OF
EMPLOYMENT**

(Labor Code §§ 201, 202, 203, 204, 256, 1198, and 2699)

Labor Code section 201 states: “If an Employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” Labor Code section 202 states “If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.”

Labor Code section 203(a) states, in relevant part: “If an Employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall

California LWDA
Zodiac Pool Systems, LLC
Zodiac Pool Solutions, LLC
Fluidra USA, LLC
Re: Omar Ayala
March 20, 2020
Page | 10

continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days. An employee who secretes or absents himself or herself to avoid payment to his or her, or who refuses to receive the payment when fully tendered to his or her, including any penalty then accrued under this section, is not entitled to any benefit under this section for the time during which he or she so avoids payment.”

Labor Code section 204(a) states, in pertinent part: “All wages . . . earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays.” The “Minimum Wages” Section of the applicable Wage Order further states “every employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period.”

Labor Code section 256 states: “The Labor Commissioner shall impose a civil penalty in an amount not exceeding 30 days of pay as waiting time under the terms of Section 203.”

As detailed above, the Employers failed to pay Claimant and other aggrieved employees all wages that were due and owing to them including meal and rest period premiums, and regular, minimum, overtime, and vacation wages within the required time during their employment and upon their separation of employment, in violation of the Labor Code and the applicable IWC Wage Order because of the violations alleged herein. As a result, the Employers violated the above sections of the Labor Code.

Accordingly, Claimant now seeks *civil penalties* pursuant to the PAGA on behalf of himself and other aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

CIVIL PENALTIES FOR VIOLATION OF
THE LABOR CODE AND IWC WAGE ORDERS
(Labor Code §§ 558, 558.1, and 1197.1)

Labor Code section 558 subjects any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of Part 2, Chapter 1, of the Labor Code or any provision regulating hours and days of work in any IWC Wage Order to a civil penalty in the amount of \$50 for any initial violation for each pay period in which an employee is underpaid in addition to an amount sufficient to recover underpaid wages, and \$100 for each subsequent violation in addition to an amount sufficient to recover underpaid wages, which shall be paid to each affected employee.

Labor Code section 558.1(a) states: “Any Employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the

California LWDA
Zodiac Pool Systems, LLC
Zodiac Pool Solutions, LLC
Fluidra USA, LLC
Re: Omar Ayala
March 20, 2020
Page | 11

Employer for such violation.” Labor Code section 558.1 expressly defines “employer or other person acting on behalf of an employer” to include a “natural person who is an owner, director, officer, or managing agent of the employer.”

Labor Code section 1197.1 states that any employer or other person acting either individually or as an officer, agent or employee of another person, which pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission shall be subject to a civil penalty and restitution of wages payable to the employee in an amount of \$100 for the initial violation for each pay period in which an employee underpaid in addition to an amount sufficient to recover underpaid wages, and \$250 for each subsequent violation in addition to an amount sufficient to recover underpaid wages, which shall be paid to each affected employee.

As set forth above, the Employers underpaid Claimant and other aggrieved employees by failing to provide them with compliant meal and rest periods or compensation in lieu thereof and failed to pay regular, minimum, overtime, and vacation wages as required by Labor Code sections 226.7, 510, 512 and sections 3 and 11 of the applicable IWC Wage Order. As a result, the Employers are liable for *civil penalties* under Labor Code section 558.

Accordingly, Claimant will pursue civil penalty or other lawful remedies for himself and other current and former non-exempt employees, including recovery of attorney’s fees, costs, and civil penalties to the extent allowed by law. However, pursuant to the recent California Supreme Court decision in *ZB, N.A. v. Superior Court* (2019) 8 Cal. 5th 175, 252 Cal. Rptr. 3d 228, 448 P.3d 239, Claimant does not seek underpaid wages as part of any anticipated PAGA action.

DUTIES OF EMPLOYER

(Labor Code §§ 1174, 1174.5, 1175, and 1198, and the Applicable Wage Order)

Labor Code section 1174 describes certain duties of every employer in this state. Subsection (d) of this labor code section requires that payroll records show the hours worked daily by employees and the corresponding wages to be paid for the hours worked. The Employers violated this requirement by their failure to accurately record employee hours worked and/or paid including wages owed for rounded time and meal and rest period premiums. Labor Code section 1174.5 imposes a civil penalty of \$500 for an employer’s failure to maintain accurate and complete records. This civil penalty is addition to the civil penalty of \$100 per pay period, per aggrieved employee that would be imposed pursuant to Labor Code section 2699 for a violation of Labor Code section 1174(d). Furthermore, Claimant and all other aggrieved current and former employees are entitled to collect 25% of the penalty imposed pursuant to Section 2699.

The Employers failed to accurately record all hours worked by Claimant and other aggrieved employees and failed to record all accurate wages to be paid.

California LWDA
Zodiac Pool Systems, LLC
Zodiac Pool Solutions, LLC
Fluidra USA, LLC
Re: Omar Ayala
March 20, 2020
Page | 12

Claimant will pursue all remedies on behalf of himself and other current and former employees, including recovery of attorney's fees, costs, damages and penalties to the extent allowed by law.

ATTORNEY'S FEES, COSTS, INTEREST AND PENALTIES

(Labor Code §§ 218.6, 226(e), 1194, 1194.2, and 2699, *et seq.*)

Labor Code sections 218.6, 226(e), 1194, 1194.2, and 2699, *et seq.* give employees the right to recover in a civil action the unpaid balance of the full amount of minimum wages, regular wages, overtime compensation, damages, liquidated damages, and penalties, including interest thereon, reasonable attorney's fees, and costs of suit.

Pursuant to Labor Code sections 2699, *et seq.*, aggrieved employees are entitled to collect 25% of the penalty assessment and 100% of the underpaid wages. Accordingly, the Employers are liable for these items in addition to the unpaid wages. Claimant has already incurred in actual damages, costs and attorney's fees and will continue to incur costs as a result of the Employers' unlawful actions.

CONCLUSION

Claimant requests the Labor and Workforce Development Agency ("LWDA") initiate enforcement for the violations described above. If the LWDA does not pursue enforcement, Claimant will pursue claims for civil penalties and will seek all remedies available for violations of the Labor Code and the applicable Industrial Welfare Commission Wage Orders, including all available penalties set forth in Labor Code section 2699(f).

Sincerely,
COHELAN KHOURY & SINGER



Marta Manus, Esq.

cc:
Via Email only
Sahag Majarian, Esq.
Law Offices of Sahag Majarian II
18250 Ventura Blvd.
Tarzana, CA 91356
sahagii@aol.com

Amber Worden

From: noreply@salesforce.com on behalf of LWDA DO NOT REPLY
<lwdadonotreply@dir.ca.gov>
Sent: Friday, March 20, 2020 3:39 PM
To: Amber Worden
Subject: [External] Thank you for submission of your PAGA Case.

3/20/2020

LWDA Case No. LWDA-CM-779415-20
Law Firm : Cohelan Khoury & Singer
Plaintiff Name : Omar Ayala
Employer: Zodiac Pool Systems, LLC

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: https://urldefense.proofpoint.com/v2/url?u=http-3A__labor.ca.gov_Private-5FAttorneys-5FGeneral-5FAct.htm&d=DwICAw&c=euGZstcaTDllvimEN8b7jXrwqOf-v5A_CdpgnVfiiMM&r=1sYpYEGF76QN6w9hehxsqElpMNt5gOV6_IRPmxDj0Ew&m=smOlVV-IBzYELDEN7KmEX-Ilam1Z57yoTfVVZ3zWKNk&s=pTXJaTiBTDXkAgdwTvt_ysnG-2RdQr8hdSP8fb1dWyU&e=

EXHIBIT 7