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Attorneys for Plaintiffs Antony M. Smith, Omar Ayala

and all others similarly situated

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO – NORTH COUNTY

ANTONY M. SMITH and OMAR AYALA, Case No. 37-2020-00036431-CU-OE-NC

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.

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

CLASS AND REPRESENTATIVE ACTION

**DECLARATION OF ATTORNEY
MATTHEW M. BLUM IN SUPPORT OF
MOTION FOR FINAL APPROVAL OF
CLASS ACTION SETTLEMENT;
HOURLY BILLINGS AND COSTS
INCURRED**

Hearing Date: November 4, 2022 at 1:30 p.m.

1 **DECLARATION OF ATTORNEY MATTHEW M. BLUM**

2 I, Matthew M. Blum, hereby declare:

3 1. I am an attorney duly licensed to practice law in the State of
4 California and am principal and founder of The Law Office of Matt Blum,
5 counsel for Plaintiffs and proposed Class Representative Antony M. Smith
6 (“Plaintiffs”), on behalf of himself and all others similarly situated hourly, non-
7 exempt employees of Defendant, Zodiac Pool Systems, LLC employed any time
8 during the period from May 27, 2016 through August 2, 2021.

9 2. I am admitted to practice as an attorney before this Court. My state
10 bar number is 285944. My license is in good standing and I have never been
11 subject to discipline by the State Bar of California.

12 3. I am a 2011 graduate of California Western School of Law. I was
13 admitted to the California bar shortly thereafter in 2012. After spending
14 approximately six months performing contract work for various attorneys, I
15 started by own firm – The Law Office of Matt Blum. Since that time, I have
16 worked as a solo practitioner in the employment field. I handle every aspect of
17 my cases from client intake through trial and judgment enforcement.

18 4. Working primarily as an employment law attorney, I have achieved
19 successful outcomes for numerous clients. As a plaintiffs’ attorney, I have
20 litigated hundreds of actions for discrimination, retaliation, harassment and
21 wrongful termination under the California Fair Housing and Employment Act
22 (Cal. Gov Code § 12940 et seq), as well as hundreds of employee whistleblower
23 retaliation cases under Cal. Labor Code § 1102.5 and Cal. Health and Safety
24 Code § 6310. I have also achieved excellent results for multiple clients seeking
25 recovery for unpaid wages (including overtime), pay stub violations, meal and
26 rest period premium pay, and unreimbursed business expenses in individual
27 cases as well as in representative actions brought pursuant to the Private
28 Attorney Generals’ Act (“PAGA”) and class action matters. As a defense

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

1 attorney, I have defended hundreds of corporations in employment-related
2 matters.

3 5. Within the past several years, I have served as class counsel on
4 cases that have resulted in substantial monetary recoveries for thousands of
5 California employees. My firm is currently prosecuting (along with other
6 counsel) multiple wage and hour class and PAGA actions throughout California,
7 including but not limited to: *Martinez et al. v. Lakehouse Hotel* – 37-2021-
8 00010118 (North Division San Diego); *Macias et al. v. ABM Electrical and*
9 *Lighting Solutions, Inc.*, 37-2020-00033639 (Central Division San Diego); *Riedl*
10 *et al. v. Owl Inc. DBA Owl Transportation* – 21-CIV-02704 (San Mateo County);
11 *Trinidad et al. v. Ascot Hotel, L.P.*, 21-SMCV00575 (Santa Monica Courthouse –
12 LA County); *Place, et al. v. Mountain F. Enterprises, Inc.*, 24-2021-00294802
13 (Sacramento County Superior Court).

14 6. I have litigated cases involving the same types of issues raised in
15 this case in numerous industries, as detailed above.

16 7. I am well-versed in the facts of this case and the law that applies to
17 the claims asserted. In addition to my knowledge of applicable existing case
18 law, statutes, and regulations, I spent considerable effort during the litigation
19 researching other cases involving these issues.

20 8. Specifically, my firm was retained by Antony M. Smith to represent
21 him in a wage and hour claim against his employer Zodiac Pool Systems, LLC.,
22 (“Zodiac” or “Defendant”). I spent considerable time conferring with Mr. Smith
23 and assessing the viability of a lawsuit, including researching other pending
24 cases against Zodiac, conducting extensive legal research regarding claims to be
25 asserted, reviewing time cards, reviewing company policies, and researching
26 issues involving rounding. I then drafted and filed the class action lawsuit on his
27 behalf, which was filed in this court. On October 7, 2020, Plaintiff Smith filed a
28 class action complaint in the San Diego County Superior Court – North County

1 Division, Case No. 37-2020-00036431-CU-OE-NC naming Zodiac as the
2 Defendant, (“Smith Action”). Following the filing, we agreed to coordinate with
3 the the law firm of Cohelan Khoury & Singer to assist with the prosecution of
4 this case, as they had had a case alleging similar allegations and claims against
5 Zodiac pending in the United States District Court for the Southern District. I
6 assisted in coordinating with defense counsel for purposes of getting all of the
7 parties together for a single mediation.

8 9. Plaintiffs conducted significant investigation of the facts and law
9 both before and after the Action was filed. On July 17, 2020, prior to removal,
10 Plaintiff Omar Ayala served written discovery on Zodiac that included special
11 interrogatories, requests for production of documents, requests for admissions
12 and form interrogatories. Following removal, and on September 14, 2020, Ayala
13 served Zodiac with the same discovery. On October 2, 2020 the Parties
14 exchanged their initial disclosures pursuant to Fed.R.Civ.P. Rule 26(a)(1)
15 identifying witnesses and relevant documents. Following meet and confer
16 discussions regarding the outstanding discovery, the Parties conferred about the
17 possibility of a Class-wide resolution and agreed to attend mediation. To that
18 end, Plaintiffs’ Counsel requested Zodiac produce the relevant data and
19 information to allow Plaintiffs to prepare for a meaningful and informed session
20 at mediation.

21 10. Subject to a stipulated protective order governing the disclosure and
22 exchange of confidential information, on February 8, 2021 Zodiac produced its
23 policies and procedures for the relevant time period for meal periods and rest
24 breaks, its timekeeping and rounding system, and paid sick leave policies and
25 procedures. Zodiac also produced its employee handbook and manual, and for
26 the period through February 8, 2021: (1) the total number of Class Members
27 (323); (2) total number of separated Class Members (175); (3) total number of
28 wage statements issued to Class Members (3,917); (4) total number of pay

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1 periods [bi-weekly], (4,618); (5) total number of work weeks (34,020); (6)
2 average hourly rate of pay (\$19.56); and (7) the total amount of meal period
3 premiums paid (\$30,200.99). Zodiac provided Microsoft excel spreadsheets
4 containing over 30,868 lines of data that included time punch details for 12,550
5 shifts worked by Plaintiffs and 33 randomly selected Class Members. Plaintiffs'
6 Counsel also informally interviewed multiple Class Members regarding their
7 experiences with taking compliant meal and rest breaks, rounding of work time,
8 impact on their wages, and use of their cell phones for work. Shortly prior to
9 mediation, Zodiac updated the Class's number of weeks worked and number of
10 PAGA Pay Periods that were extrapolated through to the date of mediation.

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

15 12. On May 4, 2021, the Parties attended mediation with the Hon.
16 Michael Latin (Ret.), an experienced wage and hour mediator facilitating the
17 serious, informed, arms'-length and lengthy negotiations. The Parties were not
18 able to reach agreement by the end of the day, however, by May 6, 2021
19 agreement was reached as to the material terms of the proposed Settlement, and a
20 memorandum of understanding was executed. In the weeks which followed, the
21 Parties continued to negotiate at arms'-length the balance of terms of the
22 Stipulation of Class and Representative Action Settlement and Release of Claims
23 and its exhibits. Once global settlement was reached, a first amended complaint
24 was filed in this department which included the Ayala action. Following
25 consolidation in the state court action, the federal court Ayala action was stayed.
26 The parties have thus moved for approval of the global settlement through this
27 department.

28 13. I have attended all status conference hearings in this matter before
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Settlement

1 this court. I have reviewed and approved all motions in this case including the
2 motion for preliminary approval and motion for final approval. I have spoken to
3 numerous class members with respect to the pending settlement. I have also
4 coordinated with the settlement administration company. I have been the primary
5 point of contact with Mr. Smith and plan to assist with any contact with putative
6 class members following dissemination of the class notice.

7 14. My firm will continue to dedicate the necessary resources, both in
8 terms of money and time, to properly, aggressively, and efficiently prosecute this
9 case on behalf of the putative class.

10 15. Plaintiffs' Counsel are seeking a fee award in an amount up to
11 33.33% (1/3) of the gross settlement fund. I believe that this request is fair and
12 reasonable in light of the excellent result achieved, and the fact that all work was
13 expended by counsel with no guarantee of recovery (on a contingency basis), and
14 at the expense of other cases that could have been taken on.

15 16. Under the Settlement Agreement, Plaintiff's Counsel will be
16 recovering litigation expenses, which represents the combined amount of costs
17 that were incurred by Plaintiff's Counsel. The litigation expenses incurred by my
18 firm total \$1,560.00 and are broken down as follows:

- 19 • \$1,435.00 complex civil case filing fee
- 20 • \$125 service of process fee (See *Exhibit 1* for cost summary)

21 17. The accompanying billing statement for my firm is attached as
22 *Exhibit 1*, which sets forth a total of \$37,485 in attorney's fees incurred over
23 a total of 71.4 hours of work.

24 18. My hourly rate for this case is \$525 per hour. My rate is in line
25 with the prevailing rates of attorneys in the local legal community for similar
26 work and, if this were a commercial matter, these are the charges that would be
27 made and presented to the client. The reasonableness of my hourly rates is
28 confirmed by comparing this rate with the rates of comparable counsel practicing

1 complex and class litigation as detailed in the National Law Journal Billing
2 Survey. See e.g. *Zest IP Holdings, LLC v. Implant Direct MFG., LLC*, 2014
3 U.S. Dist. LEXIS 167563 (S.D. Cal. 2014) (finding that “Mayer Brown's \$775
4 average billing rate for partners” and “Mayer Brown's \$543 average associate
5 billing rate” are reasonable rates when compared within 21 other firms practicing
6 in the Southern District of California.) This survey is useful to show that Class
7 Counsel’s rates are in line with the comparable rates of the defense counsel that
8 opposes these types of class claims, such as Mayer Brown. In another example,
9 Sheppard Mullin Richter & Hampton, who is opposing counsel in many cases
10 prosecuted by Class Counsel charges rates as high as \$875 for partners and \$535
11 for associates. Similarly, Paul Hastings, another opposing counsel in these types
12 of cases, charges between \$900 and \$750 for partners and \$755 and \$335 for
13 associates. Thus, the rates charged by myself as lead counsel for comparable
14 work are less than these examples, and are therefore undoubtedly reasonable.

15
16 I declare under penalty of perjury under the laws of the State of California
17 that the foregoing is true and correct and that this Declaration was executed on
18 October 4, 2022, in San Diego, California.

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Matthew M. Blum, Esq.
Attorney for Plaintiff

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EXHIBIT 1

Declaration of Attorney Matthew M. Blum in Support of Motion for Final Approval of
Settlement

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

The Law Office of Matt Blum
550 West C Street
Suite 960
San Diego, CA 92101
United States
860-271-6273

The Law Office of Matt Blum

Antony Smith
The Law Office of Matt Blum

Balance \$39,045.00
Invoice # 00073
Invoice Date October 4, 2022
Payment Terms
Due Date

Smith v. Zodiac Pool Systems, LLC

Time Entries

Date	EE	Activity	Description	Rate	Hours	Line Total
08/07/2020	MB	Introductory meeting with client, review of limited time records, intake form, created case file		\$525.00	2.4	\$1,260.00
08/12/2020	MB	Made request for full case file. Further review of client documents		\$525.00	1.5	\$787.50
09/08/2020	MB	emails with client		\$525.00	0.3	\$157.50
09/09/2020	MB	Review of full case file, time records, company policies, handbook, research of relevant case law RE rounding		\$525.00	2.2	\$1,155.00
09/15/2020	MB	Began drafting class action complaint for damages		\$525.00	3.7	\$1,942.50
09/24/2020	MB	finalized drafting class action complaint for damages		\$525.00	4.9	\$2,572.50
09/29/2020	MB	further review of client final, final review of complaint		\$525.00	1.4	\$735.00
10/07/2020	MB	Filed class action complaint for damages, civil case cover sheet, summons		\$525.00	1.5	\$787.50

10/12/2020	MB	phone call and emails with client		\$525.00	0.3	\$157.50
11/02/2020	MB	emails with client		\$525.00	0.4	\$210.00
11/16/2020	MB	Phone call with client		\$525.00	0.4	\$210.00
01/05/2021	MB	Phone call with client		\$525.00	0.5	\$262.50
01/22/2021	MB	Multiple emails and calls with attorney Michael Singer of Cohelan Khoury & Singer RE consolidation of class cases		\$525.00	2.7	\$1,417.50
02/02/2021	MB	Reviewed and executed JPA		\$525.00	1.0	\$525.00
02/10/2021	MB	review of Zodiac data production, handbook, class member work weeks, punch details, evidence of meal period premiums, and wage statements		\$525.00	2.6	\$1,365.00
02/23/2021	MB	Review of client file, gathered information for mediation		\$525.00	2.8	\$1,470.00
02/24/2021	MB	Reviewed evidence from Ayala case, comparison to client file and evidence, comparison of claims, comparison of Ayala complaint, research into additional causes of action in Smith matter		\$525.00	3.5	\$1,837.50
04/05/2021	MB	reviewed data request for re-scheduled mediation, reviewed client file and gathered responsive evidence		\$525.00	3.1	\$1,627.50
05/03/2021	MB	reviewed joint mediation brief, made additional changes RE Plaintiff Smith and additional evidence in support thereof		\$525.00	1.4	\$735.00
05/03/2021	MB	pre-mediation phone call with co-counsel		\$525.00	1.7	\$892.50
05/04/2021	MB	Attended Full Day Mediation		\$525.00	8.5	\$4,462.50

07/21/2021	MB	Reviewed MOU, made edits		\$525.00	0.9	\$472.50
08/02/2021	MB	Reviewed and edited proposed First Amended Complaint to add in Ayala matter in state court		\$525.00	1.8	\$945.00
08/18/2021	MB	obtained client signature on MOU, reviewed with client		\$525.00	0.7	\$367.50
10/14/2021	MB	review of proposed long form settlement agreement, proposed edits		\$525.00	0.9	\$472.50
11/19/2021	MB	reviewed long form settlement agreement with client, obtained signature		\$525.00	0.7	\$367.50
01/11/2022	MB	reviewed preliminary motion for settlement approval, made edits		\$525.00	1.1	\$577.50
01/12/2022	MB	Drafted declaration in support of motion for preliminary approval		\$525.00	3.4	\$1,785.00
02/28/2022	MB	Reviewed filing of motion for preliminary approval including six supporting declarations, proposed order, points and authorities, joint stip		\$525.00	3.1	\$1,627.50
03/15/2022	MB	phone call with class member		\$525.00	0.3	\$157.50
05/02/2022	MB	Review of expert data calculation prior to mediation		\$525.00	1.1	\$577.50
05/18/2022	MB	phone call with class member		\$525.00	0.5	\$200.00
05/28/2022	MB	Reviewed joint motion to move dates in USDC		\$525.00	0.3	\$157.50
06/08/2022	MB	correspondence with settlement administration company		\$525.00	0.6	\$315.00
06/10/2022	MB	Preliminary Approval hearing - reviewed tentative ruling, phone call with clerk RE hearing date for final approval		\$525.00	0.9	\$472.50

06/16/2022	MB	review of Simpluris client file and data template		\$525.00	0.6	\$315.00
06/22/2022	MB	phone call and emails with client		\$525.00	0.4	\$210.00
06/24/2022	MB	phone call with class member		\$525.00	0.4	\$210.00
07/05/2022	MB	phone call with class member		\$525.00	0.3	\$157.50
09/08/2022	MB	phone call with class member		\$525.00	0.3	\$157.50
09/12/2022	MB	emails with client		\$525.00	0.5	\$262.50
09/27/2022	MB	Declaration in Support of Final Motion for Approval		\$525.00	2.2	\$1,155.00
09/30/2022	MB	edited declaration in support of final approval		\$525.00	2.1	\$1,102.50
10/07/2022	MB	review of final motion for approval (anticipated)		\$525.00	1.5	\$787.50

Totals: **71.4** **\$37,485.00**

Expenses

Date	EE	Activity	Description	Cost	Quantity	Line Total
10/07/2020	MB	Civil Case Filing Fee plus Additional Complex Case Fee		\$1,435.00	1.0	\$1,435.00
10/26/2022	MB	Service of Process Fee		\$125.00	1.0	\$125.00

Expense Total: **\$1,560.00**

Time Entry Sub-Total:	\$37,485.00
Expense Sub-Total:	\$1,560.00
Sub-Total:	\$39,045.00
Total:	\$39,045.00
Amount Paid:	\$0.00
Balance Due:	\$39,045.00