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F I L E D
San Diego Superior Court
Central Division

JAN 10 2025

Clerk of the Superior Court
By: A. Yim, Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO**

LORENA GUTIERREZ an individual, for the
real party in interest, the State of California, and
on behalf of other current and former
employees,

Plaintiff,

v.

MDRS HOLDINGS, INC.; MDRS SPINE &
SPORT, INC.; MEASUREMENT DRIVEN
REHABILITATION SYSTEMS; and DOES 1
through 50,

Defendants.

Case No. 37-2023-00004328-CU-OE-CTL

(Assigned for All Purposes to Hon. Katherine
Bacal, Department: C-63)

**~~[PROPOSED]~~ ORDER GRANTING
PLAINTIFF'S MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT AND JUDGMENT
THEREON**

Judge: Hon. Katherine Bacal
Dept.: C-63
Date: January 10, 2025
Time: 1:30 p.m.

1 This matter has come before the Court on the Motion of Plaintiff Lorena Gutierrez for
2 Final Approval of Class Action Settlement (“Motion”). A Fairness Hearing was held on **January**
3 **10, 2025**, following the Court’s order granting Plaintiff’s motion for preliminary approval of the
4 Settlement and notice of the Settlement to the Class with an opportunity for Class Members to
5 request exclusion or object to the Settlement. The Parties now seek final approval of the Class
6 Action Settlement and PAGA Settlement.

7 **I. FINDINGS**

8 Based on the oral and written argument and evidence presented in connection with the
9 motion, the Court makes the following findings:

10 1. All terms used herein shall have the same meaning as defined in the Agreement.

11 2. This Court has jurisdiction over the subject matter of this Action, all claims alleged
12 herein, and all Parties hereto, including Plaintiff, all Class Members, and Defendants MDRS
13 HOLDINGS, INC., MDRS SPINE & SPORT, INC., and MEASUREMENT DRIVEN
14 REHABILITATION SYSTEMS (collectively “MDRS”).

15 **Preliminary Approval Of The Settlement**

16 3. On **August 16, 2024**, the Court granted preliminary approval of a class-wide
17 settlement and approved certification of a provisional settlement class for settlement purposes only.
18 The Court confirms this Order and finally approves the settlement and the certification of the
19 Settlement Class and PAGA Group for purposes of the settlement.

20 4. The Court confirms the law firms of Mashiri Law Firm, APC and The Jami Law
21 Firm P.C. as co-counsel for the Class (“Class Counsel”). The Court finds that Class Counsel have
22 the sufficient experience, knowledge, and skill to promote and safeguard the interests of the Class,
23 and no conflicts of interest. The Court therefore finds that Plaintiff’s counsel satisfies the
24 professional and ethical obligations of Class Counsel.

25 **Notice To The Class**

26 5. In compliance with the Preliminary Approval Order, Class Notice was mailed by
27 first class mail to the Class Members at their last known addresses on **September 23, 2024**. Mailing
28 of the Class Notice to their last known addresses was the best notice practicable under the

1 circumstances and was reasonably calculated to communicate actual notice of the litigation and the
2 proposed settlement to the members of the Class. The Court finds that the Class Notice provided
3 fully satisfies the requirements of California Rules of Court, rule 3.769.

4 6. The deadline for opting out or objecting was **November 7, 2024**. There was an
5 adequate interval between mailing of the notice and the response deadline to permit Class Members
6 to evaluate their options regarding the settlement and respond accordingly. 0 Class Members
7 objected. 0 Class Members requested exclusion from the settlement.

8 7. The Court finds that the Class Members have been provided proper and adequate
9 notice, meeting the requirements of due process. The Court finds, based on the evidence submitted,
10 that the Class Notice and related documents, as well as the methodology used to implement the
11 Settlement, including providing notice to Class Members, (a) complied with this Court's
12 Preliminary Approval Order, (b) constituted the best practicable notice under the circumstances,
13 (c) constituted notice that was reasonably calculated, under the circumstances, to apprise Class
14 Members of the pendency of the Action and the proposed Settlement, their right to participate in
15 the Settlement, to opt out of the Settlement, to object to the Settlement and to appear at the Fairness
16 Hearing, and (d) met all applicable requirements of due process, the Code of Civil Procedure and
17 other applicable authorities.

18 8. The Court finds that adequate time has been provided for Class Members to respond
19 to the Class Notice, including by opting out of the Settlement or objecting to the Settlement or to
20 Plaintiff's Motion for Approval of Attorneys' Fees and Costs.

21 **Fairness Of The Settlement**

22 9. The Agreement provides for a Gross Settlement Amount of Six Hundred and
23 Seventy-Five Thousand Dollars (\$675,000.00). The Agreement is entitled to a presumption of
24 fairness. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.)

25 10. The Court finds that the Settlement, the terms of which are set forth in the Class and
26 PAGA Action Settlement Agreement and Release ("Agreement"), is fair, reasonable, and adequate
27 as to the settling Parties, including the Settlement Class Members, and is in the best interests of all
28 those affected by the Settlement. The Court finds that the Settlement was the result of vigorously

1 contested litigation and good-faith arm's-length negotiations, and is reasonable based on the risks,
2 expense, and complexity of the Action and the likelihood of success in it. The Court hereby grants
3 final approval of the Parties' Settlement, as set forth in the Agreement, and enters Judgment
4 accordingly. The Parties are directed to perform the terms of the Agreement and to report to the
5 Court when that performance has been completed.

6 11. The Court has already determined solely for purposes of this Settlement, by way of
7 its Preliminary Approval Order, that the Settlement Class satisfies the applicable standards for
8 certification under the Code of Civil Procedure. The Settlement Class, which will be bound by this
9 Final Approval Order and Judgment, include all Class Members who did not submit a timely and
10 valid Request for Exclusion. For purposes of the Settlement and this Final Approval Order and
11 Judgment, the Settlement Class shall be represented by Plaintiff and shall include Plaintiff and all
12 individuals employed by MDRS as hourly non-exempt employees in California during the period
13 four (4) years preceding January 15, 2024 who fall within the scope of the claims alleged in this
14 Action, excluding those who have timely opted out.

15 12. The percentage of objectors and requests for exclusion is zero. 0 objections were
16 received. 0 requests for exclusion were received.

17 13. The participation rate is high. 823 Class Members will be participating in the
18 Settlement and will be issued settlement payments.

19 14. The Agreement is finally approved as fair, adequate, and reasonable and in the best
20 interests of the Class Members.

21 15. Settlement Class Members shall be paid their respective shares of the Net Settlement
22 Sum as provided in the Agreement.

23 16. The portion of the PAGA Settlement Amount to be paid to the California Labor &
24 Workforce Development Agency ("LWDA") and the portion of the PAGA Settlement Amount to
25 be paid to PAGA Group Members shall be paid as provided in the Agreement. The LWDA and all
26 PAGA Group Members will be bound by this Final Approval Order and Judgment.

1 17. All Withholdings and Taxes owed on the Settlement Awards, as calculated by the
2 Settlement Administrator, shall be paid and reported to the appropriate taxing authorities as set
3 forth in the Agreement.

4 **Attorneys' Fees and Litigation Expenses**

5 18. The Agreement provides for an award of up to 1/3 of the Gross Settlement Amount,
6 or no more than \$225,000.00, to Class Counsel as the attorneys' fees payment in this Action, subject
7 to the Court's approval. The Agreement also provides for an award of Class Counsel's reasonable
8 actual litigation expenses (of no more than \$20,000) incurred as the Class Counsel Litigation
9 Expenses Payment.

10 19. An award of \$225,000.00 for the Class Counsel Fees Payment is reasonable in light
11 of the contingent nature of Class Counsel's fee, the hours worked by Class Counsel, and the results
12 achieved by Class Counsel. The requested attorneys' fee award represents 1/3 of the common fund,
13 which is reasonable and within the range of fee awards in common fund cases, and is supported by
14 Class Counsel's lodestar. In the course of this litigation, Class Counsel incurred \$5,167.77 in
15 litigation costs including in the form of court filing fees and mediation fees. The Court approves
16 the Class Counsel Litigation Expenses Payment as reimbursement to Class Counsel for these costs,
17 pursuant to the terms of the Agreement.

18 20. The unopposed application of Class Counsel for attorneys' fees and costs is hereby
19 granted. The sum of **\$225,000** in attorneys' fees and costs not to exceed the sum of **\$5,167.77** shall
20 be paid to Class Counsel, with payment to be made as provided for in the Agreement. Except as
21 expressly set forth in this Final Approval Order and Judgment, the Parties shall bear their own
22 attorneys' fees and costs.

23 **Settlement Administration Expenses**

24 21. The Agreement provides for Settlement Administration Expenses to be paid in an
25 amount not to exceed \$15,000. The Declaration of the Settlement Administrator provides that the
26 actual claims administration expenses were **\$13,257.48**. The amount of this payment is reasonable
27 in light of the work performed by the Settlement Administrator including, sending the Notice,
28 processing opt outs, distributing settlement payments, and preparing tax documents. This amount

1 includes all costs and fees incurred to date, as well as estimated costs and fees involved in
2 completing the administration of the Settlement.

3 II. ORDERS

4 Based on the foregoing findings, and good cause appearing, IT IS HEREBY ORDERED,
5 ADJUDGED AND DECREED:

6 1. The Settlement Class is certified for the purposes of settlement only. The Settlement
7 Class is hereby defined as all current and former non-exempt employees employed by Defendants
8 in California who worked at any time during the period four (4) years preceding January 15, 2024.
9 The Class Settlement Period is defined as the period of time four (4) years preceding January 15,
10 2024.

11 2. The PAGA Group is certified for the purposes of settlement only. The PAGA Group
12 is hereby defined as all current and former non-exempt employees who are or were previously
13 employed during the period of November 22, 2021 to January 15, 2024. The PAGA Group Period
14 is defined as the period of November 22, 2021 to January 15, 2024.

15 3. Excluded from the Settlement Class are those 0 individuals who submitted a valid
16 and timely request for exclusion. Every person in the Class who did not opt out is a Participating
17 Class Member.

18 4. The Agreement is hereby approved as fair, reasonable, adequate, and in the best
19 interest of the Class.

20 5. The Parties are ordered to effectuate the Settlement in accordance with this Order
21 and the terms of the Agreement.

22 6. Class Counsel are awarded attorneys' fees in the amount of \$225,000 and litigation
23 expenses in the amount of \$5,167.77.

24 7. The payment of \$13,257.48 to the Settlement Administrator, Phoenix Class Action
25 Administration Solutions, for Settlement Administration Expenses is approved.

26 8. The PAGA component of the settlement allocating \$40,000 to resolve the PAGA
27 claim alleged in the Action is also hereby approved as fair, reasonable, and adequate. The PAGA
28

1 Payment shall allocate a 75% share to the LWDA (\$30,000), with the remainder to be distributed
2 among PAGA Group Members on a pro-rata basis based on their workweeks.

3 9. The Settlement Administrator is directed to make the payments set forth herein, in
4 accordance with the terms and conditions of the Agreement.

5 10. By no later than _____, the Settlement Administrator shall file a report
6 setting forth (1) the total amount of money actually paid to Settlement Class Members and PAGA
7 Group Members, (2) the portion of the PAGA Settlement Amount paid to the LWDA, and (3) the
8 portion of the LWDA Payment paid to the LWDA. (Code Civ. Proc., § 384, subd. (b).)

9 11. Final Judgment is hereby entered in this action. The Final Judgment shall bind each
10 Participating Class Member. The Final Judgment shall operate as a full release and discharge of
11 Defendants MDRS HOLDINGS, INC.; MDRS SPINE & SPORT, INC.; MEASUREMENT
12 DRIVEN REHABILITATION SYSTEMS, each of their present, former, and future parents, each
13 of their subsidiaries, affiliates, divisions, corporations in common control, predecessors,
14 successors, and assigns, and each of their respective present, past, and future officers, directors,
15 employees, partners (both general and limited), shareholders, agents, attorneys, insurers, and any
16 other successors, assigns, or legal representatives, and any other individual or entity which could
17 be liable for any of the Released Claims ("Released Parties") from any and all Released Class
18 Claims that occurred during the Class Period as to the Participating Class Members. The Released
19 Class Claims are defined as all claims, debts, liabilities, demands, obligations, damages, and actions
20 or causes of action of any kind that arise before or on the Preliminary Approval Date and were
21 alleged in the Complaint or the PAGA Notice or could have reasonably been alleged against any
22 of the Released Parties based on the facts alleged in any of the Complaints or the PAGA Notices
23 and including claims under Labor Code sections 201, 202, 203, 204, 210, 218.5, 226, 226(a)(1)-
24 (9), 226(b), 226(c), 226.7, 227.3, 233, 245 et seq. (the Healthy Workplace Healthy Family Act of
25 2014), 432, 432.5, 510, 558, 1194, 1198, 1198.5, 2802, and 2698 et seq. (PAGA); Business and
26 Professions Code section 17200 et seq. (the Unfair Competition Law), and Code of Civil Procedure
27 section 1021.5. ("Released Class Claims"). Released Class Claims shall also include any and all
28 claims for attorneys' fees, costs, expenses, interest, penalties, liquidated damages, punitive

1 damages and any other damages or relief that have been or could have been asserted by any
2 Settlement Class Member arising out of the acts alleged in the Action or arising out of the facts,
3 matters, transactions or occurrences set forth in the Action. Specifically excluded from the
4 Released Class Claims are claims that: (1) cannot be waived as a matter of law, such as claims for
5 unemployment insurance, workers' compensation and vested benefits covered by ERISA; (2)
6 claims for wrongful termination, discrimination, retaliation and harassment under any state or
7 federal civil rights law, including Title VII and California's Fair Employment and Housing Act;
8 and (3) claims outside the temporal scope of the Class Period.

9 12. The Final Judgment shall also operate as a full release and discharge of Defendants,
10 and the Released Parties from any and all Released PAGA Claims that occurred during the PAGA
11 Group Period as to the PAGA Group Members. "Released PAGA Claims" are defined as all claims
12 asserted in Plaintiff's Complaint pursuant to Labor Code section 2698 *et seq.* that arise out of or
13 are related to the Released Claims during the Settlement Period. ("Released PAGA Claims").

14 13. The Agreement is not an admission by Defendant or any of the other Released
15 Parties, nor is this Final Approval Order and Judgment a finding, of the validity of any claims in
16 the Action or of any wrongdoing by Defendant or any of the other Released Parties. Neither this
17 Final Approval Order, the Agreement, nor any document referred to herein, nor any action taken to
18 carry out the Settlement is, may be construed as, or may be used as an admission by or against
19 Defendant or any of the other Released Parties of any fault, wrongdoing or liability whatsoever.
20 The entering into or carrying out of the Agreement, and any negotiations or proceedings related
21 thereto, shall not in any event be construed as, or deemed to be evidence of, an admission or
22 concession with regard to the denials or defenses by Defendant or any of the other Released Parties
23 and shall not be offered in evidence in any action or proceeding against Defendant or any of the
24 Released Parties in any court, administrative agency or other tribunal for any purpose as an
25 admission whatsoever other than to enforce the provisions of this Final Approval Order and
26 Judgment, the Agreement, or any related agreement or release. Notwithstanding these restrictions,
27 any of the Parties may file in the Action or in any other proceeding this Final Approval Order and
28 Judgment, the Agreement, or any other papers and records on file in the Action as evidence of the

1 Settlement to support a defense of res judicata, collateral estoppel, release, or other theory of claim
2 or issue preclusion or similar defense as to the claims being released by the Settlement.

3 14. Notice of entry of this Final Approval Order and Judgment shall be given to Class
4 Counsel on behalf of Plaintiff and all Class Members. It shall not be necessary to send notice of
5 entry of this Final Approval Order and Judgment to individual Class Members and the Final
6 Approval Order and Judgment shall be posted on the Settlement Administrator's website as
7 indicated in the Class Notice.

8 15. After entry of Final Judgment, the Court shall retain jurisdiction to construe,
9 interpret, implement, and enforce the Agreement pursuant to Code of Civil Procedure section 664.6,
10 to hear and resolve any contested challenge to a claim for settlement benefits, and to supervise and
11 adjudicate any dispute arising from or in connection with the distribution of settlement benefits.

12 16. If the Settlement does not become final and effective in accordance with the terms
13 of the Settlement, resulting in the return and/or retention of the Gross Settlement Amount to
14 Defendant consistent with the terms of the Settlement, then this Final Approval Order and
15 Judgment, and all orders entered in connection herewith shall be rendered null and void and shall
16 be vacated.

17 17. Any uncashed settlement checks shall be transmitted to the California State
18 Controller within 30 days of the expiration of the 180-day check cashing period by the Settlement
19 Administrator, together with names, contact information and information regarding the amount of
20 their payment.

21 **IT IS SO ORDERED AND ADJUDGED. LET JUDGMENT BE FORTHWITH**
22 **ENTERED ACCORDINGLY.**

23
24 Dated: 1/10/25


25 Honorable Katherine Bacal
26 Judge of the Superior Court
27
28