

FILED
San Diego Superior Court

AUG 16 2024

By: S. Christensen, 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 the Honorable
Judge: Hon. Katherine Bacal, Department: C-
69) 63

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Date Action Filed: January 31, 2023

Trial Date: February 7, 2025

1 This matter has come before the Court on the motion of Plaintiff Lorena Gutierrez' for
2 preliminary approval of the Settlement of the above-captioned Action ("Motion"). A hearing on
3 the Motion was held on **August 16, 2024 at 1:30 p.m.** The Court, having duly considered the
4 Motion, good cause appearing, hereby orders as follows:

5 1. The Court grants preliminary approval of the Settlement based upon the terms set
6 forth in the Class and PAGA Action Settlement Agreement and Release ("Agreement"). The
7 Settlement appears to be fair, reasonable, and adequate to the Class and presumptively valid, subject
8 only to any objections that may be raised at or before the Final Approval Hearing.

9 2. The Settlement provides for Defendants to pay the Gross Settlement Amount of Six
10 Hundred and Seventy-Five Thousand Dollars (\$675,000.00). The Court preliminary finds that the
11 Settlement is fair, adequate, and reasonable to the Class, and preliminary approves the terms of the
12 Settlement. This preliminary approval is subject to any objections of Class Members and final
13 review by the Court.

14 3. A Final Approval Hearing on the question of whether the proposed Settlement,
15 attorneys' fees and costs to Class Counsel, the PAGA Settlement Amount, and Settlement
16 Administration Costs should finally be approved as fair, reasonable, and adequate as to the Class
17 Members is scheduled for **January 10, 2025, at 1:30 p.m. in Department C-69** of this Court. The
18 motion for final approval and the motion for award of attorneys' fees and costs shall be filed no
19 later than sixteen (16) court days before the Final Approval Hearing.

20 4. The Court approves as to form and content the Class Notice attached hereto as
21 **Exhibit 1**. The Court approves the procedure for Class Members to request exclusion from or to
22 object to the Settlement as set forth in the Class Notice.

23 5. The Court recognizes that Plaintiff and Defendants stipulate and agree to
24 certification of the Class for settlement purposes only. This stipulation will not be deemed
25 admissible in this or any other proceeding should this Settlement not become final. Whether or not
26 the settlement is finally approved, neither the Agreement, nor any document, statement, proceeding
27 or conduct related to the Agreement may be admitted in any proceeding as an admission by
28 Defendants or any of the Released Parties, Plaintiff, or any person within the definition of the Class.

1 6. The Court directs the mailing of the Class Notice in accordance with the
2 Implementation Schedule set forth below. The Court finds that the manner and mode of giving
3 notice to Class Members meet the requirements of due process and provide the best notice
4 practicable under the circumstances, and shall constitute due and sufficient notice to all persons
5 entitled thereto.

6 7. For settlement purposes only, the Court certifies the following Settlement Class: “all
7 current and former non-exempt employees employed by Defendants in California who worked at
8 any time during the period four (4) years preceding January 15, 2024.”

9 8. The Court preliminarily approves Alex Asil Mashiri of the Mashiri Law Firm, APC
10 and Tamim Jami of The Jami Law Firm P.C. as Class Counsel.

11 9. The Court approves Phoenix Class Action Administration Solutions as the
12 Settlement Administrator.

13 10. The Agreement specifies for an attorneys’ fees award not to exceed one-third 1/3
14 of the Gross Settlement Amount, and an award of actual litigation expenses incurred (not to exceed
15 \$20,000). While these awards appear to be within the range of reasonableness, the Court will make
16 a final determination on reasonableness of the amounts of attorneys’ fees and costs at the Final
17 Approval Hearing. Plaintiff will be required to present evidence supporting these requests prior to
18 final approval.

19 11. Any Settlement Class Member may choose to opt out of and be excluded from the
20 Settlement Class (the “Class Portion” of the Settlement) as provided in the Class Notice by
21 following the instructions for requesting exclusion from the Settlement Class that are set forth in
22 the Class Notice. All requests for exclusion must be submitted within forty-five (45) days from the
23 date the Class Notice is first mailed, unless extended by remailing, as provided in the Settlement
24 Agreement. Any such person who chooses to opt out of and be excluded from the Settlement Class
25 will not be entitled to any recovery of the Settlement Class funds under the Settlement and will not
26 be bound by the Class portion of the Settlement or have any right to object, appeal, or comment
27 thereon. Any written request to opt out must comply with the instructions in the Class Notice and
28 be signed by each such person opting out. Settlement Class Members who have not validly

requested exclusion shall be bound by all determinations of the Court, the Agreement, and the Judgment.

12. Any Settlement Class Member who has not opted out may file a written objection and/or appear at the final approval hearing and may object to the Class Portion of the Settlement. Class Members will have forty-five (45) days from the date the Class Notices are mailed to submit their written objections to the Settlement Administrator, unless extended by remailing, as provided in the Settlement Agreement. Settlement Class Members who fail to timely submit objections in the manner specified above shall be deemed to have waived any objections and shall be foreclosed from making any written objection (whether by appeal or otherwise) to the Settlement. However, Settlement Class Members who fail to timely submit a written objection may still appear at the Final Approval Hearing to object orally at the hearing, without requiring prior submittal of a written objection.

13. The Court orders the following Implementation Schedule for further proceedings:

Deadline for Defendant to submit Class Member information to Settlement Administrator.	September 9, 2024 (15 business days from entry of this Order.)
Settlement Administrator mails Class Notice to Class Members.	September 23, 2024 (10 business days from receipt of Class Member information from Defendant.)
Deadline for Class Members to mail Requests for Exclusion.	November 7, 2024 (45 calendar days from initial mailing of Class Notice)
Deadline for submitting to the Settlement Administrator any objections to Settlement.	November 7, 2024 (45 calendar days from initial mailing of Class Notice)
Deadline for Class Counsel to file Motion for Final Approval of Settlement and Attorneys' Fees and Costs. <i>[no sooner than three weeks after deadline for Class Members to mail Requests for Exclusion and for submitting any objections to Settlement]</i>	December 17, 2024

14. The Settlement is not a concession or admission, and shall not be used against Defendant as an admission or indication with respect to any claim of any fault or omission by Defendant. Whether or not the Settlement is finally approved, neither the Settlement, nor any document, statement, proceeding or conduct related to the Settlement, nor any reports or accounts thereof, shall in any event be construed as, offered or admitted in evidence as, received as or deemed to be evidence for any purpose adverse to the Defendant, including, but not limited to, evidence of a presumption, concession, indication or admission by Defendant of any liability, fault, wrongdoing, omission, concession, or damage.

15. In the event the Settlement does not become effective in accordance with the terms of the Agreement, or the Settlement is not finally approved, or is terminated, canceled or fails to become effective for any reason, this Order shall be rendered null and void and shall be vacated, and the Parties shall revert to their respective positions as of before entering into the Agreement.

16. The Court reserves the right to adjourn or continue the date of the final approval hearing and all dates provided for in the Agreement without further notice to Class Members, and retains jurisdiction to consider all further applications arising out of or connected with the proposed Settlement.

IT IS SO ORDERED.

Dated: 8/16/24



Honorable Katherine Bacal
Judge of the Superior Court

EXHIBIT 1

**NOTICE OF PENDENCY OF CLASS ACTION SETTLEMENT
AND FINAL HEARING DATE**

Lorena Gutierrez v. MDRS Holdings, Inc. et al.
San Diego Superior Court Case No. 37-2023-00004328-CU-OE-CTL

**YOUR LEGAL RIGHTS MAY BE AFFECTED WHETHER YOU ACT OR DO NOT ACT. PLEASE
READ THIS NOTICE CAREFULLY.**

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
Do Nothing and Receive a Payment	To receive a cash payment from the Settlement, you do not have to do anything. Your estimated Settlement Share is: \$<<__>>. See the explanation in Section 5 below. After final approval by the Court, your Settlement Share will be mailed to you at the same address as this notice. If your address has changed, please notify the Settlement Administrator as explained on Section 7 of this Notice. In exchange for receiving your Settlement Share, you will release claims against Defendants as detailed in Section 4, below.
Exclude Yourself	If you wish to exclude yourself from the Class Portion of the Settlement, you must send a written request for exclusion to the Settlement Administrator as provided below. If you request exclusion from the Class Portion of the Settlement, you will not receive money from the Class Portion of the Settlement, but will still receive your share of civil penalties under the PAGA Portion of the Settlement. Instructions are set forth in Section 7 below.
Object	If you do not exclude yourself from the Settlement, you may object to the Settlement. Instructions are set forth in Section 8 below.

1. Why did I get this Notice?

A proposed class action and representative action settlement (the “Settlement”) of this lawsuit pending in the Superior Court for the State of California, County of San Diego (the “Court”) has been reached between Plaintiff Lorena Gutierrez (“Plaintiff”) and Defendants MDRS Holdings, Inc., MDRS Spine & Sport, Inc., and Measurement Drive Rehabilitation Systems (“Defendants”). The Court has granted preliminary approval of the Settlement. **You may be entitled to receive money from this Settlement.**

You have received this Class Notice because you have been identified as a member of the Settlement Class (collectively “Class Members”), which is defined as follows:

“Class Members” or “Class” means all current and former non-exempt employees employed by Defendants in California who worked at any time during the period four (4) years preceding the

filing of the amended complaint, January 10, 2024 and the date the Court grants preliminary approval of the settlement.

This Class Notice explains the lawsuit, the Settlement, and your legal rights. It is important that you read this Notice carefully as your rights may be affected by the Settlement.

2. What is this class action and representative action lawsuit about?

Plaintiff Lorena Gutierrez (“Plaintiff”) filed this Action against MDRS on January 31, 2023, and filed a First Amended Complaint on January 10, 2024. The operative complaint alleges violations of (1) Labor Code §227.3; (2) Labor Code §§ 512, 226.7 and the IWC Wage Order; (3) Labor Code § 226.7, 226.7(c), and the IWC Wage Order; (4) Labor Code §§ 246, 246(l); (5) Labor Code §§ 510, 1194, 1198 and IWC Wage Order; (6) Labor Code § 226; (7) Labor Code § 204; (8) Labor Code §§ 201, 202, 203; (9) Labor Code § 233; (10) Labor Code § 432.5; (11) Labor Code § 2802; (12) Labor Code §§ 226(b), 226(c), 1198.5, and 432; and (13) Cal. Bus. & Prof. Code §§ 17200, *et seq.* The Action is both a putative class action and a representative action under the Labor Code Private Attorneys General Act of 2004 (PAGA). The Action seeks restitution, compensatory damages, equitable relief including injunctive relief, disgorgement, and civil penalties, as well as interest, attorneys’ fees, and costs. Defendants deny and continue to deny all claims asserted against it in the Action.

No court has made a ruling on the merits of the claims alleged in the Action and there has been no trial on the merits relating to any of the claims referenced above. Defendants deny the allegations and assert that it has no liability to Plaintiff or the Class Members. Plaintiff believes that the claims have merit. Plaintiff and Defendants have agreed to settle, resolve and compromise the claims alleged in the Action in order to avoid the costs and risks of litigation. Further, Class Counsel believes that the Settlement is in the Class Members best interests. The Court has preliminarily approved the proposed Settlement. The Court will decide whether to give final approval to the Settlement at a hearing scheduled for [Insert Date], 2024. The final approval hearing date may change without further notice. You may contact Class Counsel, access the settlement administrator website at [insert web address here] or access the Court docket in this case to confirm that the date has not been changed.

3. What are the terms of the Settlement?

Gross Settlement Amount. Under the proposed settlement, Defendants have agreed to pay an “all inclusive” amount of Six Hundred and Seventy Five Thousand Dollars and Zero Cents (\$675,000.00). This amount shall be referred to herein as the “Gross Settlement Amount”. The Gross Settlement Amount includes, amongst other things, the payment of all Settlement Shares to Participating Class Members, Class Counsel’s attorneys’ fees and costs, Settlement Administration Expenses, a payment to California’s Labor and Workforce Development Agency (“LWDA”) for its share of civil PAGA penalties (“LWDA Payment”), a payment to all individuals eligible to receive a share of civil PAGA penalties, and any and all employer payroll and/or unemployment insurance tax obligations of Defendants with respect to the settlement payments made by the Settlement Administrator to Participating Class Members.

The following is a summary of the Settlement provisions. The specific and complete terms of the proposed Settlement are stated in the Stipulation for Class Action Settlement between Plaintiff and Defendants, a copy of which is filed with the Clerk of the Court. You can obtain a copy of the Settlement Agreement from the Settlement Website:

a. Amounts to be Deducted From the Gross Settlement Amount. The Settlement provides for certain payments to be deducted from the Gross Settlement Amount, which will be subject to final Court approval, and which will

be deducted from the Gross Settlement Amount before settlement payments are made to Class Members, as follows:

- Settlement Administration Expenses. Payment to the Settlement Administrator, which will not exceed Fifteen Thousand Dollars (\$15,000.00). These costs include expenses arising out of sending this Notice, processing opt outs, and distributing settlement payments.
- Attorneys' Fees and Costs. Payment to Class Counsel of an award of a Class Counsel Fees Payment of no more than \$225,000.00 (1/3 of the Gross Settlement Amount) and a Class Counsel Litigation Expense Payment for all expenses incurred as documented in Class Counsel's billing records, both subject to Court approval. Class Counsel have been prosecuting the Action on behalf of Plaintiff and the Class on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses.
- PAGA Payment. A payment of \$40,000.00 relating to Plaintiff's claim under PAGA, \$30,000.00 of which will be paid to the State of California's LWDA for its 75% share of PAGA Penalties, and the remaining 25% of which (\$10,000.00) will be distributed to PAGA Group Members, regardless of whether they are a Participating Class Member or not, as part of the Net Settlement Amount.
- Employer Taxes. Defendants' share of payroll taxes from the payments to Class Members.

b. Calculation of Your Settlement Share

According to Defendants' records, you were employed for [insert number] Workweeks total during the Settlement Release Period (*i.e.* xxx through xxx). If you do not agree with the total number of Workweeks shown above, you must immediately provide documents supporting the total number of workweeks you claim you worked.

NOTE: Defendants' records will control unless you are able to provide documentation that establishes Defendants' records are in error. If there is a dispute about whether Defendants' information or yours is accurate, the Settlement Administrator will resolve the dispute and the Settlement Administrator's decision will be final.

Your share of the settlement proceeds ("Settlement Share") is calculated as follows:

The Net Settlement Amount less 25% of the approved PAGA Payment will be divided by the total number of Workweeks at issue for all Class Members, and then taking that number and multiplying it by the number of Workweeks at issue for you.

Based on this formula, your share of the settlement proceeds for the Released Class Claims will be approximately \$ _____. This number is subject to change, based on the terms of the Court's final approval order.

Tax Matters. Twenty-five (25%) of each Settlement Share constitutes wages in the form of back-pay (and each Participating Class Member will be issued an Internal Revenue Service Form W-2 for such payment), fifty percent (50%) of each Settlement Share constitutes penalties and other non-wage payments, and twenty-five (25%) allocated to interest (and each Participating Class Member will be issued an Internal Revenue Service Form 1099 for such payment). Neither Class Counsel nor Defendants' counsel intend anything contained in this Settlement to constitute advice regarding taxes or taxability. You may wish to consult a tax advisor concerning the tax consequences of the payments received under the Settlement.

Conditions of Settlement. This Settlement is conditioned upon the Court entering an order granting final approval of the Settlement and entering judgment.

4. What Do I Release Under the Settlement?

Released Claims. Upon entry of final judgment, if you do not make a valid and timely request to be excluded from the Settlement, you shall be deemed to release all Released Class Claims that occurred during the Release Period as to the Released Parties. Released Claims are defined as any and all federal, state, local and common law claims for unpaid wages and overtime compensation (including but not limited to any claims based on working “off-the-clock”), unpaid minimum wages, unpaid rest break premiums, unpaid meal period premiums, waiting time penalties, wage statement penalties, any and all claims for civil penalties (including those asserted under PAGA) based on any of the acts alleged in the Action or arising out of the facts, matters, transactions or occurrences set forth in the Action as set forth above and any other violation of any wage and hour, wage payment, wage deduction, meal and rest break, recordkeeping, unfair business practice or any other wage-related statutes, laws or regulations, including but not limited to the California Labor Code and IWC wage order provisions that are or could have been asserted by any Class Member arising out of the acts alleged in the Action or arising out of the facts, matters, transactions or occurrences set forth in the Action during the Class Period (“Released Class Claims”). Released Class Claims shall also include any and all claims for attorneys’ fees, costs, expenses, interest, penalties, liquidated damages, punitive damages and any other damages or relief that have been or could have been asserted by any Class Member arising out of the acts alleged in the Action or arising out of the facts, matters, transactions or occurrences set forth in the Action. Specifically excluded from the Released Class Claims are claims that: (1) cannot be waived as a matter of law, such as claims for unemployment insurance, workers’ compensation and vested benefits covered by ERISA; (2) claims for wrongful termination, discrimination, retaliation and harassment under any state or federal civil rights law, including Title VII and California’s Fair Employment and Housing Act; and (3) claims outside the temporal scope of the California Class Period. The release will only become effective upon Defendants’ funding of the Gross Settlement Amount.

Additionally, individuals who are or previously were employed as non-exempt employees by Defendants in California at any time during the period of November 21, 2021 through the earlier of January 15, 2024, or the date the Courts grants final approval of the settlement (“PAGA Period”), will receive a pro rata payment of the \$10,000 allocated to these PAGA Group Members based on their respective number of workweeks during the PAGA Period. This payment is being provided to these individuals because it releases claims for civil penalties belonging to the State of California for alleged violations of the California Labor Code and IWC Wage Order provisions identified in the PAGA Notice sent to the LWDA and further identified in the operative complaint in the Action that are alleged to have occurred during the PAGA Period, including alleged violations of California Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 227.3, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, and 1198. The release will only become effective upon Defendants’ funding of the Gross Settlement Amount.

5. How much will my payment be?

Defendants’ records reflect that you have <<_____>> work-weeks/work-days worked during the Class Period (January 10, 2020 to January 10, 2024).

Defendants’ records reflect that you have <<_____>> work-weeks/work-days worked during the PAGA Group Period (November 22, 2021 to January 15, 2024).

Based on this information, your estimated Settlement Share is << _____ >>. This is an estimate only, and your actual payment might be higher or lower.

If you wish to challenge the information set forth above, meaning you believe you worked a different number of workweeks or work-days during the relevant time period, then you must submit a written, signed dispute challenging the information along with supporting documents, to the Settlement Administrator at the address provided in this Notice no later than _____, 2024 [forty-five (45) days after the Notice mailing].

6. How can I get a payment?

To get money from the settlement, you do not have to do anything. A check for your settlement payment will be mailed automatically to the same address as this Notice. **If your address is incorrect or has changed, you must notify the Settlement Administrator.** The Settlement Administrator is: _____, (800) _____, fax.

The Court will hold a hearing on _____ to decide whether to approve the Settlement. If the Court approves the Settlement and there are no objections or appeals, payments will be mailed within a few weeks after this hearing. If there are objections or appeals, resolving them can take time, perhaps more than a year. Please be patient.

7. What if I don't want to be a part of the Settlement?

If you do not wish to participate in the Class Portion of the Settlement, you may exclude yourself from the Settlement or "opt out." **If you opt out, you will receive NO money from the Class Portion of the Settlement, and you will not be bound by the Class Release.** However, to the extent you are a PAGA Group Member, you may still receive a payment consisting of your share of the PAGA Penalties allocated to aggrieved employees for the release of your and other aggrieved employees' PAGA Claims.

To opt out of the Class portion of the Settlement, you must submit to the Settlement Administrator, by First Class Mail, a written, signed and dated request for exclusion postmarked, emailed or faxed no later than _____, 2024 (45 days from the date of mailing of this Notice). The address for the Settlement Administrator is _____, / fax. The request for exclusion must state in substance: "I have read the Class Notice and I wish to opt out of the class action and settlement of the case *Gutierrez v. MDRS Holdings, Inc.*" The request for exclusion must be dated and contain your name, address, signature and the last four digits of your Social Security Number for verification purposes. The request for exclusion must be signed by you. No other person may opt out for a member of the Class.

The address for the Settlement Administrator is _____, / fax. Written requests for exclusion that are postmarked, or faxed after _____, 2024, or are incomplete or unsigned will be rejected, and those Class Members will remain bound by the Settlement and the release described above.

8. How do I object to the Settlement?

Any Class Member, who has not opted out of participating in the Settlement may object to the proposed Settlement, or any term of it, by filing with the Court a written statement of the grounds of your objection, signed by you or your attorney (retained at your own expense), along with all supporting papers. Your objections must be filed with the Court and postmarked on or before [Insert Date]. All such objections and written notices of intention to appear must be signed and must contain your current address and the address of your attorney, if any,

and your telephone number, and the name of the case which is *Gutierrez v. MDRS Holdings, Inc. et al.*, San Diego Superior Court Case No. 37-2023-00004328-CU-OE-CTL. The objection should clearly explain why you object to the proposed Settlement and state whether you or your attorney intends to appear at the Final Approval Hearing. If you submit a timely and complete objection and written notice of intention to appear, you may appear personally or through an attorney, at your own expense, at the Final Approval hearing to present your objection directly to the Court. However, it is not necessary for you or your attorney to appear at the Final Approval Hearing in order for your objection to be considered by the Court. Also, you may appear at the Final Approval Hearing and present your objection whether or not you submitted a prior written objection. Any attorney who will represent you in objecting to the proposed Settlement must file a notice of appearance with the Court no later than forty-five (45) days after this Notice was initially mailed to you.

To object to the Class portion of the Settlement, you must not opt out of the Class portion of the Settlement. If the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Class Members who do not object. Any Class Member who does not object in the manner provided in this Class Notice shall have waived any objection to the Settlement, whether by appeal or otherwise.

9. Who represents me?

Attorneys for Plaintiff and Class Members (“Class Counsel”) in the Action are:

Class Counsel:

[insert contact information]

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

The Court will hold a Final Approval Hearing at 00:00 AM/PM on _____, at the San Diego County Superior Court, located at [insert address] in Department ____ before Judge _____. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. The purpose of this hearing is for the Court to determine whether to grant final approval to the Settlement. This hearing may be rescheduled by the Court without further notice to you. If you plan to attend the Fairness Hearing, you may contact the Settlement Administrator to confirm the date and time. **You are not required to attend** the Final Approval Hearing, although any Class Member is welcome to attend the hearing.

Due to the COVID-19 pandemic, hearings may be conducted remotely with the assistance of a third-party service provider, CourtCall. Class members who wish to appear at the final fairness hearing should contact Class Counsel to arrange a telephonic appearance through CourtCall, at least three days before the hearing if possible. Any CourtCall fees for an appearance by an objecting class member will be paid by Class Counsel.

11. How do I get more information about the Settlement?

You may call or email the Settlement Administrator at _____ or write to *Gutierrez v. MDRS Holdings, Inc. et al.*, Settlement Administrator, c/o _____. or contact Class Counsel using the information in the section above.

This notice summarizes the proposed settlement. More details are in the Settlement Agreement. You may receive a copy of the Settlement Agreement, the Final Judgment or other Settlement documents by visiting the Settlement Administrator’s website at _____, or writing to Class Counsel at the address or email addresses listed in Section 9 above.

PLEASE DO NOT CALL THE COURT ABOUT THIS NOTICE.