

FILED
San Diego Superior Court

AUG 30 2024

Clerk of the Superior Court
By: K. Mulligan, Deputy

RECEIVED

~~July 31, 2024~~

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

LARISSA ALCARAZ and SAMSON
PEDROZA, individually, and on behalf of
other members of the general public similarly
situated;

Plaintiffs,

v.

MOTIVATIONAL SYSTEMS, INC., a
California corporation; and DOES 1 through
100, inclusive;

Defendants.

Case No.: 37-2022-00045734-CU-OE-CTL

Assigned for All Purposes to:
Honorable Blaine K. Bowman
Department C-74

CLASS ACTION

**[PROPOSED] ORDER OF FINAL
APPROVAL AND JUDGMENT**

Hearing Date: August 30, 2024
Hearing Time: 8:30 a.m.
Hearing Place: Department C-74

Complaint Filed: November 10, 2022
FAC Filed: October 16, 2023
Trial Date: None Set

1 The Court, having read the papers filed regarding Plaintiffs Larissa Alcaraz and Samson
2 Pedroza's ("Plaintiffs") Motion for Final Approval of Class Action Settlement, and considering
3 the papers submitted in support of the motion, including the Class Action and PAGA Settlement
4 Agreement ("Settlement Agreement," "Settlement," or "Agreement"), hereby **FINDS AND**
5 **ORDERS:**

6 Plaintiffs and Defendant Motivational Systems, Inc. ("Defendant") entered the Settlement
7 Agreement on or about March 19, 2024 to settle this lawsuit.

8 The Court entered an order dated April 26, 2024 preliminarily approving the settlement
9 of this lawsuit ("Preliminary Approval Order"), consistent with the Code of Civil Procedure
10 section 382 and California Rule of Court 3.769, ordering notice to be sent to Class Members,
11 providing Class Members with an opportunity to object to the Settlement or exclude themselves
12 from the Class, and scheduling a Final Approval Hearing.

13 The Court held a Final Approval Hearing on August 30, 2024 to determine whether to
14 give final approval to the Settlement of this lawsuit.

15 1. Incorporation of Other Documents. This Order of Final Approval and Judgment
16 ("Order and Judgment") incorporates the Settlement Agreement. Unless otherwise provided
17 herein, all capitalized terms in this Order and Judgment shall have the same meaning as set forth
18 in the Settlement Agreement.

19 2. Jurisdiction. Because adequate notice has been disseminated and the Class has
20 been given the opportunity to request exclusion, the Court has personal jurisdiction with respect
21 to the claims of all Class Members. The Court has subject matter jurisdiction over this lawsuit,
22 including jurisdiction to approve the Settlement and grants final certification of the Class.

23 3. Final Class Certification. The Court finds the Class satisfies all applicable
24 requirements of Code of Civil Procedure section 382, California Rule of Court 3.769, and due
25 process. The Court certifies the Class consisting of all current and former hourly-paid or non-
26 exempt employees of Defendant within the State of California at any time during the period from
27 November 10, 2018, through January 26, 2024 ("Class," "Class Members," and "Class Period").
28

1 There are nine hundred sixty-eight (968) Class Members who did not submit valid and timely
2 Requests for Exclusion from the Settlement (“Participating Class Members”).¹

3 4. Adequacy of Representation. Class Counsel fully and adequately represented the
4 Class for purposes of entering and implementing the Settlement and satisfied the requirements of
5 Code of Civil Procedure section 382.

6 5. Class Notice. The Court finds the Court Approved Notice of Class Action
7 Settlement and Hearing Date for Final Court Approval (“Class Notice”) and its distribution to
8 Class Members were implemented pursuant to the Settlement and this Court’s Preliminary
9 Approval Order. The Court also finds the Class Notice:

- 10 a. constitutes notice reasonably calculated to apprise Class Members of: (i)
11 pendency of this lawsuit; (ii) material terms and provisions of the
12 Settlement Agreement and their rights; (iii) their right to object to any
13 aspect of the Settlement Agreement; (iv) their right to exclude themselves
14 from the Settlement Agreement; (v) their right to receive settlement
15 payments; (vi) their right to appear at the Final Approval Hearing; and
16 (vii) binding effect of the orders and judgment in this lawsuit on all
17 Participating Class Members;
- 18 b. constitutes notice that fully satisfied the requirements of Code of Civil
19 Procedure section 382, California Rule of Court 3.769, and due process;
- 20 c. constitutes the best practicable notice to Class Members under the
21 circumstances of this lawsuit; and
- 22 d. constitutes notice reasonable, adequate, and sufficient to Class Members.

23 6. Final Settlement Approval. The terms and provisions of the Settlement
24 Agreement have been entered into good faith and are the product of arm’s-length negotiations by
25 experienced counsel who have done a meaningful investigation of the claims. The Settlement
26 Agreement and all its terms and provisions are fully and finally approved as fair, reasonable,
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28 ¹ The Administrator mailed out Class Notices to nine hundred sixty-nine (969) Class
Members and received one (1) request for exclusion. As a result, there are nine hundred

adequate, and in the best interests of the Parties. The Parties are hereby directed to implement the Settlement Agreement according to its terms and provisions.

7. Binding Effect. The terms and provisions of the Settlement Agreement and this Order and Judgment are binding on Plaintiffs, Participating Class Members, Aggrieved Employees, and their spouses, heirs, registered domestic partners, executors, administrators, successors, and assigns. In addition, those terms shall have res judicata and other preclusive effect in all pending and future claims, lawsuits, or other proceedings maintained by or on behalf of any such persons to the extent those claims, lawsuits, or other proceedings involve matters that were or could have been raised in this lawsuit and are encompassed by the Released Class Claims and Released Private Attorneys General Act of 2004 ("PAGA") Claims. The Settlement Agreement will have no binding effect upon, and provide no res judicata preclusion to, those Class Members who have submitted timely requests for exclusion.

8. Enforcement of Settlement. Nothing in this Order and Judgment shall preclude any action to enforce the terms and provisions of the Settlement Agreement.

9. Release by Participating Class Members. Effective on the date when Defendant fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, all Participating Class Members, on behalf of themselves and their former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release the Released Parties from the Released Class Claims.

a. Release by Aggrieved Employees. Effective on the date when Defendant fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, all Participating and Non-Participating Class Members, who are Aggrieved Employees, are deemed to release, on behalf of themselves and their former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from the Released PAGA Claims.

sixty-eight (968) Participating Class Members.

1 b. Plaintiffs' Release. Effective on the date when Defendant fully funds the
2 entire Gross Settlement Amount and funds all employer payroll taxes
3 owed on the Wage Portion of the Individual Class Payments, Plaintiffs and
4 their former and present spouses, representatives, agents, attorneys, heirs,
5 administrators, successors, and assigns generally release and discharge
6 Released Parties from all claims, transactions, or occurrences that
7 occurred during the Class Period. Furthermore, Plaintiffs expressly waive
8 and relinquish the provisions, rights, and benefits, if any, of section 1542
9 of the Civil Code.

10 c. Released Parties. The Released Parties include Defendant and its parents,
11 predecessors, successors, all affiliates, subsidiaries, officers, directors,
12 members, agents, employees, and stockholders.

13 10. Class Representative Service Payments. The Court finds the Class Representative
14 Service Payments of \$7,500, to be paid by Defendant to each Plaintiff (totaling \$15,000), out of
15 the Gross Settlement Amount, to be reasonable and appropriate. The Class Representative
16 Service Payments are to be paid pursuant to the terms and provisions set forth in the Agreement.

17 a. The rationale for making enhancement payments is class representatives
18 should be compensated for the expense and risk they incurred in
19 conferring a benefit on the Class. Criteria courts consider include: (i) risk
20 to the class representatives in commencing suit; (ii) notoriety and personal
21 difficulties; (iii) amount of time and effort spent by the class
22 representatives; (iv) duration of the litigation; and (v) personal benefit (or
23 lack thereof) enjoyed by class representatives.

24 b. The Court reviewed Plaintiffs' declarations outlining their involvement.
25 Given the risks inherent in the services as the class representatives,
26 duration of the case and time involved, and benefits created for the Class,
27 the Court approves the payment of the Class Representative Service
28 Payments of \$7,500 to each Plaintiff.

11. Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment.

The Court finds the Class Counsel Fees Payment of \$293,333.33, to be paid by Defendant to Class Counsel out of the Gross Settlement Amount, to be reasonable and appropriate. In addition, the Court finds the Class Counsel Litigation Expenses Payment as reimbursement for actual litigation costs incurred of \$12,139.36, to be paid by Defendant to Class Counsel out of the Gross Settlement Amount, to be reasonable and appropriate. Such fees and costs are to be paid pursuant to the terms and provisions set forth in the Settlement Agreement. Defendant shall not be required to pay for any other attorneys' fees and expenses, costs, or disbursements incurred by Class Counsel or any other counsel representing Plaintiffs or Class Members. Defendant shall also not be required to pay for any other attorneys' fees and expenses, costs, or disbursements incurred by Plaintiffs or Class Members in connection with or related in any manner to this lawsuit, Settlement Agreement, settlement administration, Released Class Claims, and Released PAGA Claims.

- a. The Court has an independent right and responsibility to review the Class Counsel Fees Payment and only award so much as it determines reasonable. (See *Garabedian v. Los Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127-128.) The Class Counsel Fees Payment of \$293,333.33 is one-third (1/3) of the common fund created for the benefit of the Class and is supported by use of the percentage-fee method. (See *Laffitte v. Robert Half International, Inc.* (2016) 1 Cal.5th 480, 504.) Considering the results achieved, financial risk undertaken, difficult nature of this litigation, skills required, percentage fees award in previous and other cases, and contingent fees charged in the marketplace, the Court finds the Class Counsel Fees Payment is consistent with the marketplace, is reasonable, and is approved.

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1 b. The Court reviewed the declaration of Douglas Han regarding the costs
2 expended in prosecuting this case. Under the terms of the Settlement,
3 Class Counsel may seek reimbursement of up to \$20,000 in litigation
4 costs. The Court finds Class Counsel expended \$12,139.36 in litigation
5 costs, and such costs were reasonable. The Court approves the payment of
6 the Class Counsel Litigation Expenses Payment of \$12,139.36 from the
7 common fund for the reimbursement of Class Counsel's litigation costs.

8 12. Administration Expenses Payment. The Court finds Administration Expenses
9 Payment of \$10,500, to be paid by Defendant to the Administrator out of the Gross Settlement
10 Amount, to be reasonable and appropriate. The Administration Expenses Payment are to be paid
11 pursuant to terms and provisions set forth in the Settlement Agreement.

12 a. The Court reviewed the declaration of Cassandra Polites from ILYM
13 Group, Inc., the Administrator. The Court finds notice was provided to the
14 Class pursuant to the Preliminary Approval Order, constitutes the best
15 practicable notice to the Class, and satisfied due process. Thus, the Court
16 approves the payment of the Administration Expenses Payment of \$10,500
17 for the Administrator's services in administering the Settlement.

18 13. PAGA Penalties. The Court finds the PAGA Penalties of \$75,000, seventy-five
19 percent (75%) of which (\$56,250) will be paid to the California Labor and Workforce
20 Development Agency ("LWDA") out of the Gross Settlement Amount and twenty-five percent
21 (25%) of which (\$18,750) will be distributed to Aggrieved Employees, on a pro rata basis, to be
22 reasonable and appropriate. The PAGA Penalties is to be paid pursuant to the terms and
23 provisions set forth in the Settlement Agreement.

24 14. Funding the Gross Settlement Amount. Defendant shall fund the Gross
25 Settlement Amount by transmitting the funds to the Administrator no later than seven (7)
26 calendar days of notice to Defendant of the Effective Date. Within fourteen (14) calendar days
27 after Defendant fully funds the Gross Settlement Amount, the Administrator will mail settlement
28 checks to the appropriate entities and persons.

1 15. Fairness of the Settlement. As noted in the Preliminary Approval Order, the
2 Settlement is entitled to a presumption of fairness. In the moving papers, Plaintiffs contend the
3 Settlement was the product of arm's-length negotiations following extensive litigation,
4 discovery, and exchange of documentation. The negotiations were facilitated with the aid of
5 Steven R. Denton, an experienced and well-respected mediator.

6 a. The fairness of the Settlement is demonstrated by there being no
7 objections to and one (1) request for exclusion from the Settlement.

8 b. The fairness of the Settlement is further illustrated by the gross *average*
9 Individual Class Payment being approximately \$489.70, and the gross
10 *highest* Individual Class Payment being about \$3,487.76.

11 16. Uncashed Checks. Participating Class Members and Aggrieved Employees must
12 cash or deposit their settlement checks within one hundred eighty (180) calendar days after the
13 checks are mailed by the Administrator to them. Uncashed settlement checks will be canceled
14 and transmitted to the California Controller's Unclaimed Property Fund.

15 17. Modification of Settlement Agreement. The Participating Class Members are
16 hereby authorized to agree to and adopt amendments to or modifications of the Settlement
17 Agreement by an express written instrument signed by all Parties or their representatives and
18 approved by the Court. Such amendments or modifications shall be consistent with this Order
19 and Judgment and cannot limit the rights of Participating Class Members under the Settlement.

20 18. Final Accounting and Compliance. The Court sets a compliance hearing for May
21 ^{at 8:30 AM} 2, 2025 in Department C-74. Within five (5) court days before this hearing, Plaintiffs shall file a
22 compliance status report. Pursuant to Code of Civil Procedure section 384, the compliance status
23 report shall specify the total amount paid to Participating Class Members and the residual of the
24 unclaimed settlement funds that will be paid to the entity identified as the recipient of such funds
25 in the Settlement Agreement.

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1 19. Retention of Jurisdiction. The Court has jurisdiction to enter this Order and
2 Judgment. This Court expressly retains jurisdiction for the administration, interpretation,
3 effectuation, and/or enforcement of the Settlement Agreement and of this Order and Judgment,
4 and for any other necessary purpose, including, without limitation:

- 5 a. enforcing the terms and provisions of the Settlement and resolving any
6 disputes, claims, or causes of action in this lawsuit that, in whole or in
7 part, are related to or arise out of the Settlement or this Order and
8 Judgment;
- 9 b. entering such additional orders as may be necessary or appropriate to
10 protect or effectuate this Order and Judgment approving the Settlement,
11 and permanently enjoining Plaintiffs from initiating or pursuing related
12 proceedings, or to ensure the fair and orderly administration of the
13 Settlement; and
- 14 c. entering any other necessary or appropriate orders to protect and effectuate
15 this Court's retention of continuing jurisdiction.

16 The Motion for Final Approval of Class Action Settlement, Class Counsel Fees Payment,
17 Class Counsel Litigation Expenses Payment, and Class Representative Service Payments is
18 GRANTED. The Administrator is directed to carry out the terms of the Agreement forthwith.

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1 THE PARTIES ARE HEREBY ORDERED TO COMPLY WITH THE TERMS OF
2 THE SETTLEMENT AGREEMENT. PURSUANT TO CALIFORNIA RULES OF COURT
3 3.769, THE COURT HEREBY ENTERS FINAL JUDGMENT BASED UPON THE TERMS
4 OF THIS ORDER AND SETTLEMENT AGREEMENT AND, WITHOUT AFFECTING THE
5 FINALITY OF THIS MATTER, RETAINS EXCLUSIVE AND CONTINUING
6 JURISDICTION TO ENFORCE THIS ORDER, THE SETTLEMENT AGREEMENT, AND
7 THE JUDGMENT THEREON.

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9 **IT IS SO ORDERED.**

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11 DATED: 8-30-24


12 HONORABLE BLAINE K. BOWMAN
13 SUPERIOR COURT JUDGE
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