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Superior Court of California,
County of Placer

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on behalf of himself and in his representative
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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF PLACER**

KEVIN HARRIS, individually and on
behalf of himself and all others similarly
situated,

Plaintiff,

v.

MCKESSON MEDICAL-SURGICAL
INC., a Delaware Corporation; and DOES
1-50, inclusive,

Defendants.

Case No. S-CV-0045007

Assigned for All Purposes To:

Hon.

Dept.:

COMPLAINT FOR DAMAGES FOR:

1.) Civil Penalties Under the Private
Attorneys' General Act, Labor Code
Section 2698 *et seq.*

DEMAND FOR JURY TRIAL

COMES NOW, Plaintiff KEVIN HARRIS (“Plaintiff”), individually and on behalf of the general public as private attorneys general, hereby asserts representative claims against defendants MCKESSON MEDICAL SURGICAL, INC., a Virginia Corporation, and DOES 1-50, inclusive (collectively “McKesson” or “Defendants”) as follows:

INTRODUCTION

1. This is a representative action for recovery of penalties under the Private Attorneys General Act of 2004 (“PAGA”), Cal. Lab. Code sections 2698 *et seq.* PAGA permits “aggrieved employees” to bring a lawsuit as a representative action on behalf of themselves and all other current and former employees, to recover civil penalties and address an employer’s violations of the California Labor Code.

2. Plaintiff brings this action pursuant to the PAGA on a representative basis. Any and all persons who are or were employed by Defendants as non-exempt employees, however titled, in distribution or delivery positions in the State of California (the “Aggrieved Employees” or “Aggrieved Non-Exempt Employees”) during the liability period are Aggrieved Employees.

3. Plaintiff brings this suit on behalf of himself and the Aggrieved Non-Exempt Employees during the relevant time period to recover civil penalties and address the employer’s violations of the California Labor Code and the IWC Wage Order 4-2001, 7-2001, and 9-2001.

4. In this case, Defendants violated various provisions of the California Labor Code and relevant IWC Wage Orders. As set forth below, Defendants implemented policies and practices which led to Defendants’ (1) failure to accurately calculate and pay all wages owed, including minimum wages and overtime wages; (2) failure to authorize and permit rest periods; (3) failure to pay rest period premiums for rest periods that were not lawfully authorized and permitted; (4) failure to timely pay all owed wages at the time of separation from employment; (5) failure to provide employees with accurate, itemized wage statements; and (6) failure to indemnify employees for necessary expenses.

5. Plaintiff in his representative capacity seeks civil penalties on behalf of himself and other aggrieved non-exempt employees pursuant to PAGA for Defendants failure to comply with California Labor Code and IWC Wage Order requirements.

7. This action is timely because Plaintiff suffered from a violation or numerous violations of the California Labor Code within one year of the date on which a PAGA notice was sent to the LWDA via online submission. More than 65 days have passed and no response has been received by the LWDA. A copy of the letter sent to the LWDA with enclosure is attached hereto as **Exhibit A**, thereby satisfying the notice requirement under the statute and permitting Plaintiff to proceed with this action in a representative capacity.

8. The California Superior Court has jurisdiction over this action pursuant to California Constitution Article VI, Section 10, which grants the Superior Court "original jurisdiction in all cases except those given by statute to other trial courts." The statutes under which this action is brought do not give jurisdiction to any other court.

10. This Court has jurisdiction over the Defendants because each Defendant is a person with sufficient minimum contacts with the State of California so as to render the exercise of jurisdiction over the Defendant by the California courts consistent with traditional notions of fair play and substantial justice.

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14. Venue is proper in this Court because upon information and belief, one or more of the Defendants transact business, or have offices in this County and the acts or omissions alleged herein took place in this County.

15. McKesson Medical Surgical, Inc., is a Virginia Corporation in good standing that is authorized to do business throughout the state of California. Its headquarters are located at 9954 Mayland Dr., Richmond, VA 23233.

19. Plaintiff was employed by Defendants as a delivery driver and worked at Defendant's facility in Placer County. Plaintiff maintained a Class C Driver's license

1 20. Upon information and belief, all of the routes that Plaintiff and the members of the
2 aggrieved group serviced were within the State of California.

3 21. Upon information and belief, Plaintiff and the members of the aggrieved group did
4 not operate a vehicle with a gross vehicle weight rating or gross combination weight rating of
5 10,001 lbs. or more.

6 22. Upon information and belief, Plaintiff and the members of the aggrieved group did
7 not operate a vehicle designed or used to transport between 9 and 15 passengers for compensation,
8 nor did Plaintiff and the members of the aggrieved group operate a vehicle designed or used to
9 transport 15 or more passengers for compensation.

10 23. Upon information and belief, Plaintiff and the members of the aggrieved group did
11 not operate a vehicle used in the transportation of materials found to be hazardous for purposes of
12 the Hazardous Materials Transportation Act, 49 U.S.C. 5101 et seq. and which required the vehicle
13 to be placarded under the Hazardous Materials Regulations, 49 CFR Parts 100-177.

14 24. Plaintiff and the members of the aggrieved group were employed by Defendants as
15 non-exempt employees, however titled, working in distribution or delivery positions in the State of
16 California during the liability period.

17 25. Whenever in this complaint reference is made to any act, deed, or conduct of
18 Defendants, the allegation means that Defendants engaged in the act, deed, or conduct by or through
19 one or more of Defendants' officers, directors, agents, employees, or representatives, who was
20 actively engaged in the management, direction, control, or transaction of the ordinary business and
21 affairs of Defendants.

22 26. The true names and capacities of Defendants, whether individual, corporate,
23 associate, or otherwise, sued herein as DOES 1 through 50, inclusive, are currently unknown to
24 Plaintiff, who therefore sue Defendants by such fictitious names under Code of Civil Procedure §
25 474. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and
26 capacities of the Defendants designated hereinafter as DOES when such identities become known.

27 27. Plaintiff is informed and believes, and thereon allege, that the Doe Defendants are
28 the partners, agents, or principals and co-conspirators of Defendants and of each other; that

1 Defendants and the Doe Defendants performed the acts and conduct herein alleged directly, aided
2 and abetted the performance thereof, or knowingly acquiesced in, ratified, and accepted the benefits
3 of such acts and conduct, and therefore each of the Doe Defendants is liable to the extent of the
4 liability of the Defendants as alleged herein.

5 28. Plaintiff is further informed and believes, and thereon alleges, that at all times
6 material herein, each Defendant was completely dominated and controlled by its co-Defendants
7 and each was the alter ego of the other. Whenever and wherever reference is made in this complaint
8 to any conduct by Defendant or Defendants, such allegations and references shall also be deemed
9 to mean the conduct of each of the Defendants, acting individually, jointly, and severally.
10 Whenever and wherever reference is made to individuals who are not named as Defendants in this
11 complaint, but were employees and/or agents of Defendants, such individuals, at all relevant times
12 acted on behalf of Defendants named in this complaint within the scope of their respective
13 employments.

14 **FACTUAL ALLEGATIONS**

15 29. During the relevant time frame, Defendants compensated Plaintiff and the
16 Aggrieved Employees based upon an hourly wage.

17 30. Plaintiff and the Aggrieved Employees were, and at all times pertinent hereto,
18 have been non-exempt employees within the meaning of the California Labor Code, and the
19 implementing rules and regulations of the IWC California Wage Orders. They are subject to the
20 protections of the IWC Wage Orders and the Labor Code.

21 31. Plaintiff performed delivery and distribution services for Defendants, as he was
22 employed as an hourly non-exempt delivery driver from March 2012 through April 2019.

23 32. The members of the aggrieved group provided delivery and distribution services as
24 employees of Defendants throughout the state of California during the liability period.

25 33. Plaintiff typically worked 5 days a week, and in excess of 40 hours.

26 34. Plaintiff is informed and believes, and thereon alleges, that Defendants are and were
27 advised by skilled lawyers and other professionals, employees, and advisors with knowledge of the
28 requirements of California's wage and employment laws.

1 35. All Aggrieved Employees, including Plaintiff, are similarly situated in that they
2 are all subject to Defendants' uniform policies and systemic practices as specified herein.

3 36. Plaintiff and the Aggrieved Employees were not properly compensated for all hours
4 worked, in part because they were not paid overtime at the proper regular rate.

5 37. Plaintiff and the Aggrieved Employees frequently worked in excess of eight (8)
6 hours a day and/or over forty (40) hours in a workweek, but were not properly paid for such time
7 at a rate of time and one-half the employee's regular rate of pay per hour. Plaintiff and the
8 Aggrieved Employees also often worked in excess of twelve (12) hours in one day and/or over
9 eight (8) hours on the seventh day of the workweek, but were not properly paid for such time at a
10 rate of two times the employee's regular rate of pay per hour.

11 38. At times, Plaintiff and the Aggrieved Employees received additional remuneration,
12 including commissions, non-discretionary bonuses and/or incentive pay during pay periods in
13 which they had worked over eight hours in a day or over forty hours in a week. Defendants failed
14 to account for the additional remuneration when calculating Plaintiffs' and similarly situated
15 employees' overtime rate of pay. This policy, practice, and/or procedure resulted in Defendants
16 paying its hourly non-exempt employees less overtime than they should have received.

17 39. Upon information and belief, Defendants knew or should have known Plaintiffs
18 and the Aggrieved Employees were undercompensated.

19 40. In addition, during the relevant time frame, Plaintiff and the Aggrieved Employees
20 were systematically not authorized and permitted to take one net ten-minute paid, rest period for
21 every four hours worked or major fraction thereof, which is a violation of the Labor Code and
22 IWC wage order.

23 41. Defendants maintained and enforced scheduling practices, policies, and imposed
24 work demands that frequently required Plaintiff and Aggrieved Employees to forego their lawful,
25 paid rest periods of a net ten minutes for every four hours worked or major fraction thereof. Such
26 requisite rest periods were not timely authorized and permitted.

27 42. Defendants failed to provide one rest period on shifts between 3.5 and 6 hours;
28 failed to provide two rest periods on shifts between 6 hours and 10 hours; and failed to provide

1 third rest periods on shifts over ten hours.

2 43. Moreover, upon information and belief, Plaintiff alleges that Defendants impeded
3 or discouraged the taking of lawful rest breaks through its practices, policies, and procedures.

4 44. Despite the above-mentioned rest period violations, Defendants did not
5 compensate Plaintiff, and on information and belief, did not pay Aggrieved Employees one
6 additional hour of pay at their regular rate as required by California law, including Labor Code
7 section 226.7 and the applicable IWC wage order, for each day on which lawful rest periods were
8 not authorized and permitted.

9 45. Defendants also failed to provide accurate, lawful itemized wage statements to
10 Plaintiff and the Aggrieved Employees in part because of the above specified violations. In
11 addition, upon information and belief, Defendants omitted all applicable rates in effect during the
12 pay period (in particular as to overtime rates and the incentive/bonus rate), and an accurate
13 itemization of total hours worked, from Plaintiff and the Aggrieved Employees' wage statements.

14 46. Defendants have also made it difficult to determine applicable rates of pay and
15 account with precision for the unlawfully withheld wages and deductions due to be paid to Non-
16 exempt Employees, including Plaintiff, during the liability period because they did not implement
17 and preserve a lawful record-keeping method to record all wages earned, hours worked, and non-
18 provided rest periods owed to employees as required for non-exempt employees by 29 U.S.C.
19 section 211(c), California Labor Code section 226, and applicable California Wage Orders.

20 47. Moreover, Plaintiff and the Aggrieved Employees were required to incur necessary
21 expenses in the discharge of their duties, including for the usage of cellular phones and GPS
22 devices, but were not reimbursed for such necessary expenses.

23 48. Plaintiff is informed and believes, and thereon alleges, that at all times herein
24 mentioned, Defendants knew that at the time of termination of employment (or within 72 hours
25 thereof for resignations without prior notice as the case may be) they had a duty to accurately
26 compensate Plaintiffs and Aggrieved Employees for all wages owed including minimum wages,
27 overtime wages, rest period premiums, and that Defendants had the financial ability to pay such
28 compensation, but willfully, knowingly, recklessly, and/or intentionally failed to do so in part

1 because of the above-specified violations.

2 49. Plaintiff and the Aggrieved Employees are covered by applicable California IWC
3 Wage Orders 7-2001 and/or 9-2001 and corresponding applicable provisions of the California Code
4 of Regulations, Title 8, section 11000 *et seq.*

5 **Failure To Pay Overtime Wages**

6 50. At all times relevant, Labor Code §1194 provides that any employee receiving less
7 than the legal minimum wage or the legal overtime compensation applicable to the employee is
8 entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or
9 overtime compensation, including interest thereon, reasonable attorneys' fees, and costs of suit.

10 51. Labor Code §1197 states: "The minimum wage for employees fixed by the
11 commission is the minimum wage to be paid to employees, and the payment of a less wage than
12 the minimum so fixed is unlawful."

13 52. Cal. Lab. Code § 1198 further states that the employment of an employee for longer
14 hours than those fixed by the Industrial Welfare Commission is unlawful.

15 53. At all times relevant, pursuant to Labor Code section 510, and the IWC Wage
16 orders 7-2001 and 9-2001, non-exempt employees working for more than eight (8) hours in a day
17 or forty (40) hours in a work week were entitled to overtime compensation at the rate of one and
18 one-half times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or
19 forty (40) hours in a work week. An employee who works more than twelve (12) hours in a day
20 or in excess of eight (8) hours in a day on the seventh day of work in a particular work week is
21 entitled to overtime compensation at a rate of twice the regular rate of pay.

22 54. California law requires that in determining the regular rate of pay for purposes of
23 calculating the proper overtime premium pay, the employer must consider not only straight
24 hourly wage compensation but must also include payment of all remuneration earned during the
25 applicable time period.

26 55. At times, Plaintiff and the Members of the Aggrieved Employees received
27 additional remuneration, including commissions, non-discretionary bonuses and/or incentive pay
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1 during pay periods in which they had worked over eight hours in a day or over forty hours in a
2 week. Defendants failed to account for the additional remuneration when calculating Plaintiffs'
3 and similarly situated employees' overtime rate of pay. This policy, practice, and/or procedure
4 resulted in Defendants paying its hourly non-exempt employees less overtime than they should
5 have received.

6 56. Upon information and belief, Defendants knew or should have known Plaintiffs
7 and the Aggrieved Employees were undercompensated.

8 57. Defendants' failure to pay Plaintiff and Aggrieved Employees the unpaid balance of
9 wages owed violates the provisions of Labor Code §510, §1194, §1197, §1198, and Wage Order
10 7-2001 and/or 9-2001 and is therefore unlawful.

11 **Failure To Authorize And Permit Lawful Rest Periods**

12 58. Labor Code section 1198 makes the employment of any employee for longer hours
13 than those fixed by the IWC Wage Order or under conditions of labor prohibited by the IWC Order
14 unlawful.

15 59. Labor Code §226.7 and Section 12(A) of Wage Order 7 and 9 provide that "Every
16 employer shall authorize and permit all employees to take rest periods, which insofar as practicable
17 shall be in the middle of each work period.... [The] authorized rest period time shall be based on
18 the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours worked
19 or major fraction thereof.... Authorized rest period time shall be counted as hours worked, for
20 which there shall be no deduction from wages."

21 60. Labor Code §226.7(b) and Section 12(B) of Wage Order 7 and 9 provide that if an
22 employer fails to provide an employee with a rest period, the employer shall pay the employee one
23 hour of pay for each work day that a rest period was missed.

24 61. Labor Code §226.7(a) prohibits an employer from requiring any employee to work
25 during any rest period mandated by an applicable order of the IWC.

26 62. As such, Defendants were required to authorize and permit employees such as
27 Plaintiff and Aggrieved Employees to take rest periods during shifts in excess of 3.5 hours, based
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1 upon the total hours worked at a rate of ten (10) minutes net rest per four (4) hours worked, or major
2 fraction thereof, with no deduction from wages.

3 63. Thus, Defendants were required to provide one rest period on shifts between 3.5
4 and 6 hours; to provide two rest periods on shifts between 6 hours and 10 hours; and to provide
5 third rest periods on shifts over ten hours.

6 64. However, as a consequence of Defendants' staffing and scheduling practices, lack
7 of coverage, work demands, and Defendants' policies and practices, Plaintiff and the Aggrieved
8 Employees were not authorized and permitted to take legally required rest periods.

9 65. Despite said requirements of the IWC wage orders applicable to Plaintiff's and
10 Aggrieved Employees' employment with Defendants, Defendants failed and refused to authorize
11 and permit Plaintiff and Aggrieved Employees to take lawful, net ten (10) minute rest periods for
12 every four (4) hours worked, or major fraction thereof. Specifically, Defendants failed to provide
13 one rest period on shifts between 3.5 and 6 hours; failed to provide two rest periods on shifts
14 between 6 hours and 10 hours; and failed to provide third rest periods on shifts over ten hours.

15 66. As a further and independent violation of the law, Defendants did not pay Plaintiff
16 one additional hour of pay at his regular rate of pay for each day that a rest period violation occurred.
17 On information and belief, the other members of the aggrieved group endured similar violations as
18 a result of Defendants' rest period policies and practices and Defendant did not pay said Aggrieved
19 Non-Exempt Employees premium pay as required by law.

20 67. By their failure to authorize and permit Plaintiff and the Aggrieved Employees to
21 take a lawful, net ten (10) minute rest period free from work duties every four (4) hours or major
22 fraction thereof worked, including failure to provide two (2) total rest periods on six to ten hour
23 shifts and three (3) total ten (10) minute rest periods on days on which Plaintiff and the other
24 Aggrieved Employees work(ed) work a third rest period for shifts in excess of ten (10) hours, and
25 by their failure to provide compensation for such unprovided rest periods as alleged herein,
26 Defendants willfully violated the provisions of Labor Code sections 1198, 226.7 and the applicable
27 IWC Wage Order(s).

28

Failure To Timely Pay Wages Owed At Separation

68. Labor Code § 201 requires an employer, like Defendant to pay all wages earned and unpaid at the time of termination.

69. Labor Code § 202 require Defendants to pay their employees all wages due within seventy-two (72) hours of separation of employment.

70. Section 203 of the Labor Code provides that if an employer willfully fails to timely pay such wages the employer must, as a penalty, continue to pay the subject employee's wages until the back wages are paid in full or an action is commenced. The penalty cannot exceed 30 days of wages.

71. Plaintiff and Aggrieved Employees are entitled to compensation for all forms of wages earned, including but not limited to minimum wages, overtime, and premium rest period compensation, but to date have not received such compensation, therefore entitling them to Labor Code § 203 penalties.

72. More than thirty (30) days have passed since affected Aggrieved Employees have left Defendants' employ, and on information and belief, they have not received payment pursuant to Labor Code § 203.

73. Defendant violated Labor Code sections 201 and 202 by failing to pay all wages due at termination, and violated Labor Code section 203 by failing to pay waiting time penalties.

Failure To Provide Accurate Itemized Wage Statements

74. This action is brought under Labor Code §226, which sets for reporting requirements for employers when paying wages.

75. Labor Code section 226(a) reads in pertinent part: "Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee... (4) all deductions... (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an

1 employee identification number other than a social security number, (8) the name and address of
2 the legal entity that is the employer, and (9) all applicable hourly rates in effect during each the
3 pay period and the corresponding number of hours worked at each hourly rate by the
4 employee....”.

5 76. Further, the IWC Wage Orders require in pertinent part: Every employer shall
6 keep accurate information with respect to each employee including the following: (3) Time
7 records showing when the employee begins and ends each work period. Meal periods, split shift
8 intervals, and total daily hours worked shall also be recorded...(5) Total hours worked in the
9 payroll period and applicable rates of pay....”

10 77. Labor Code section 1174 of the California also requires Defendants to maintain
11 and preserve, in a centralized location, among other items, records showing the names and
12 addresses of all employees employed and payroll records showing the hours worked daily by, and
13 the wages paid to, its employees. On information and belief and based thereon, Defendants have
14 knowingly and intentionally failed to comply with Labor Code section 1174, including by
15 implementing the policies and procedures and committing the violations alleged in the preceding
16 causes of action and herein. Defendants’ failure to comply with Labor Code section 1174 is
17 unlawful pursuant to Labor Code section 1175.

18 78. Defendants have failed to record many of the items delineated in applicable
19 Industrial Wage Orders and Labor Code section 226, and required under Labor Code section
20 1174, including by virtue of the fact that each wage statement which failed to accurately
21 compensate Plaintiff and Aggrieved Employees for all hours worked and for missed and non-
22 provided rest periods, or which failed to include compensation for all minimum wages earned or
23 overtime hours worked, was an inaccurate wage statement.

24 79. On information and belief, Defendants failed to implement and preserve a lawful
25 record-keeping method to record all hours worked, all earned sums, and non-provided rest periods
26 owed to employees, as required for Non-Exempt Employees under California Labor Code section
27 226 and applicable California Wage Orders. In order to determine if they had been paid the
28 correct amount and rate for all hours worked, Plaintiff and Aggrieved Employees have been,

1 would have been, and are compelled to try to discover the required information missing from
2 their wage statements and to perform complex calculations in light of the inaccuracies and
3 incompleteness of the wage statements Defendants provided to them.

4 80. As a pattern and practice, in violation of Labor Code section 226(a) and the IWC
5 Wage Orders, Defendants did not and still do not furnish each of the members of the Aggrieved
6 Group with an accurate itemized statement in writing accurately reflecting all of the required
7 information. Specifically, Defendants have also omitted accurate itemizations of total hours
8 worked, all applicable hourly rates in effect during each pay period and the corresponding number
9 of hours worked at each hourly rate by the employee from Plaintiff and the Aggrieved
10 Employees' wage statements. In addition, Defendants have failed to provide accurate itemized
11 wage statements as a consequence of the above-specified violations for failure to accurately pay
12 all wages owed, accurately record all hours worked, and failure to pay rest period premiums as
13 required by law.

14 81. Moreover, upon information and belief, as a pattern and practice, in violation of
15 Labor Code section 226(a) and the IWC Wage Orders, Defendants did not and do not maintain
16 accurate records pertaining to the total hours worked for Defendants by the members of the Wage
17 Statement Class, including but not limited to, beginning and ending of each work period, the total
18 hours worked per pay period and applicable rates of pay.

19 **Failure To Reimburse Necessary Expenses**

20 82. Wage Order 7-2001, 9-2001, and Labor Code § 2802 require Defendants to
21 indemnify Plaintiff and Aggrieved Employees for necessary expenditures incurred in direct
22 consequence of the discharge of his or her duties.

23 83. Plaintiff and the Aggrieved Employees were required to incur expenses in the
24 performance of their assigned job duties. For example, Plaintiff and the Aggrieved Employees
25 were required to incur numerous out of pocket expenses, including without limitation, for GPS
26 devices and for the usage of cellular phones in direct consequence of the discharge of their
27 duties.

28 84. Upon information and belief, the Defendants did not reimburse Plaintiff or the

1 Aggrieved Employees for such expenses. This constitutes a violation of Labor Code section 2802,
2 and the Wage Orders.

3 **FIRST CAUSE OF ACTION**

4 **THE PRIVATE ATTORNEYS GENERAL ACT - LABOR CODE §§ 2698, et. seq.**

5 85. Plaintiff incorporates by reference and realleges each and every allegation contained
6 above, as though fully set forth herein.

7 86. On or about April 3, 2020, Plaintiff provided written notice by online filing to the
8 Labor and Workforce Development Agency ("LWDA") and certified mail to the Defendants of the
9 specific violations of the California Labor Code that Defendants have violated and continue to
10 violate, including the facts and theories that supported each alleged violation. All fees were paid
11 as required by statute. A copy of the letter sent to the LWDA with enclosure is attached hereto as
12 **Exhibit A.**

13 87. The LWDA did not provide notice of intention to investigate Plaintiff's allegations
14 within 65 calendar days of the April 3, 2020 notice. Labor Code section 2699.3(a)(2)A). Thus,
15 this action is timely.

16 88. Accordingly, Plaintiff has exhausted all administrative procedures required of him
17 under Labor Code §§2698, 2699 and 2699.3, and as a result, is justified as a matter of right in
18 bringing forward this cause of action.

19 89. Plaintiff is an aggrieved employee as defined in Labor Code Section 2699(a). He
20 bring this cause of action on his own behalf and any and all persons who are or were employed by
21 Defendants as non-exempt employees, however titled, in distribution or delivery positions in the
22 State of California during the liability period.

23 90. Pursuant to Labor Code section 2698 et seq and 2699(a) Plaintiff seeks to recover
24 civil penalties on behalf of the Aggrieved Employees for which Defendants are liable due to
25 numerous Labor Code and Wage Order violations as set forth in this Complaint.

26 91. Specifically, Plaintiff seeks penalties under Labor Code §2699, for, without
27 limitation, the following:
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- a. Defendants’ failure to comply with the requirement of Labor Code §510, 1194, 1197, 1198, and Wage Order 4-2001, 7-2001 and/or 9-2001 to pay all wages earned including overtime wages;
- b. Defendants’ failure to comply with the requirement of Labor Code §216 to pay wages after demand was made by Plaintiffs;
- c. Defendants’ failure to comply with the requirement of Labor Code §§204 and 210 to pay, without condition and within the time set by the applicable article, all wages earned;
- d. Defendants’ failure to comply with the requirement of Labor Code §225.5 to pay wages due;
- e. Defendants’ failure to comply with the requirement of Labor Code §§201 and 202 to pay wages due to former employees;
- f. Defendants’ failure to comply with the requirement of Labor Code §203 to pay waiting time penalties to former employees for violating Labor Code §§201-202.
- g. Defendants’ failure to comply with the requirement of Labor Code §226.7, 1198, and IWC Wage Order 4-2001, 7-2001 and/or 9-2001 to authorize and permit ten (10) minute rest breaks;
- h. Defendants’ failure to comply with the requirement of Labor Code §226.7, 1198, and IWC Wage Order 4-2001, 7-2001 and/or 9-2001 to pay one hour of premium pay for each statutorily required rest break that was not authorized and permitted;
- i. Defendants’ failure to maintain required records in violation of Labor Code § 226, 1174, and Wage Order 7-2001;
- j. Defendants’ failure to provide accurate compliant wage statements under Labor Code § 226.
- k. Defendants’ failure to reimburse necessary expenses in violation of Labor Code § 2802.

1 92. As a result of the acts alleged above, Plaintiffs seek penalties under Labor Code
2 §§2698 and 2699 because of Defendants' violation of numerous provisions of the California Labor
3 Code and IWC Wage Orders.

4 93. As a result of the acts alleged above, Plaintiff seeks penalties under Labor Code
5 §§2698 and 2699 because of Defendants' violation of numerous provisions of the California Labor
6 Code and IWC Wage Orders. Plaintiff seeks civil penalties for Defendants' violation of Labor
7 Code provisions for which a civil penalty is specifically provided, including but not limited to the
8 following:

- 9 a. Pursuant to Labor Code § 210, for violations of Labor Code § 204,
10 Defendants are subject to a civil penalty in the amount of one
11 hundred dollars (\$100) for the initial violation for each failure to pay
12 each employee and two hundred (\$200) per employee for violations
13 in subsequent pay periods.
- 14 b. Pursuant to Labor Code § 226.3, for violations of Labor Code §
15 226(a), Defendants are subject to a civil penalty in the amount of two
16 hundred and fifty dollars (\$250) per aggrieved employee for the
17 initial pay period where a violation occurs and one thousand dollars
18 (\$1,000) per aggrieved employee for violations in subsequent pay
19 periods.
- 20 c. Pursuant to Labor Code § 558(a), "[a]ny employer or other person
21 acting on behalf of an employer who violates, or causes to be
22 violated, a section of this chapter or any provision regulating hours
23 and days of work in any order of the Industrial Welfare
24 Commission," including Labor Code §§ 510 and 512, shall be subject
25 to a civil penalty, in addition to any other penalty provided by law,
26 of fifty dollars (\$50) for initial violations for each underpaid
27 employee for each pay period for which the employee was underpaid
28 and one hundred dollars (\$100) for each subsequent violation for

1 each underpaid employee for each pay period for which the
2 employee was underpaid.

3 d. Pursuant to Labor Code § 1174.5, for violations of Labor Code §
4 1174(d), Defendants are subject to a civil penalty of five hundred
5 dollars (\$500).

6 e. Pursuant to Labor Code § 1197.1, an employer who pays or causes
7 to be paid to any employee a wage less than the minimum fixed by
8 an order of the commission, shall be subject to a civil penalty as
9 follows: for any initial violation that is intentionally committed, one
10 hundred dollars (\$100) for each underpaid employee for each pay
11 period for which the employee is underpaid; and for each subsequent
12 violation of the same offense, two hundred fifty dollars (\$250) for
13 each underpaid employee for each pay period for which the
14 employee is underpaid regardless of whether the initial violation was
15 intentionally committed.

16 94. Under Labor Code §2699(f), Plaintiff and the Aggrieved Employees are entitled to
17 \$100 for any initial violation and \$200 for all subsequent violations of the above-mentioned
18 provisions of the California Labor Code for which no other civil penalty is specifically provided.

19 95. Under Labor Code §2699, Plaintiff and the Aggrieved Employees should be
20 awarded twenty-five percent (25%) of all penalties due under California law, as well as interest,
21 attorneys' fees and costs.

22 96. Under Labor Code §2699, the State of California should be awarded seventy-five
23 percent (75%) of the penalties due under California law.

24 **PRAYER FOR RELIEF**

25
26 WHEREFORE, Plaintiff prays judgment against Defendants, as follows:

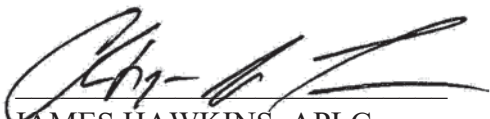
27 1. For penalties according to proof, pursuant to Labor Code §§ 2698 et seq. for the
28 violations specified above;

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- 2. For penalties under Labor Code sections 210, 226.3, 1174.5, 1197.1, and 2699(a) and (f);
- 3. For interest at the legal rate pursuant to Labor Code §§ 218.6, 1194, 2802, California Civil Code §§ 3287, 3288, and/or any other applicable provision providing for pre-judgment interest;
- 4. For reasonable attorneys’ fees, expenses and costs under Labor Code §§1194, 226, 2699, and/or Code of Civil Procedure §1021.5, and/or any other applicable provisions providing for attorneys’ fees and costs; and
- 5. For such other and further relief as the Court deems proper.

Respectfully submitted,

Dated: June 8, 2020


JAMES HAWKINS, APLC
James R. Hawkins, Esq.
Christina M. Lucio, Esq.

Attorneys for Plaintiff KEVIN HARRIS, on behalf of himself and in his representative capacity as private attorney general

EXHIBIT A

JAMES *JH* HAWKINS

A PROFESSIONAL LAW CORPORATION

9880 RESEARCH DRIVE, SUITE 200, IRVINE, CALIFORNIA 92618
TELEPHONE (949) 387-7200; FACSIMILE (949) 387-6676

April 2, 2020

Via Online Filing (LWDA) and Certified Mail (Employer)

California Labor and Workforce Development Agency
Attn: PAGA Administrator

McKesson Medical-Surgical, Inc.
6535 State Highway 161
Irving, Texas 75039
Certified Mail Receipt: 7018 0680 0001 9386 0212

McKesson Medical-Surgical, Inc.
Agent for Service of Process:
Corporation Service Company Which Will Do Business in California as CSC- Lawyers
Incorporating Service
2710 Gateway Oaks Dr., Suite 150N
Sacramento, California 95833
Certified Mail Receipt: 7018 0680 0001 9386 0229

Re: NOTICE PURSUANT TO LABOR CODE SECTIONS 2698 *et seq.*

To Whom It May Concern:

PLEASE TAKE NOTICE that Plaintiff Kevin Harris, on behalf of himself and all others similarly situated, hereby gives NOTICE of his Complaint pursuant to Labor Code Sections 2698, *et seq.* against Defendant McKesson Medical-Surgical, Inc., a Virginia corporation, and DOES 1 through 50, inclusive. Plaintiff intends to commence an action against Defendants pursuant to Labor Code sections 2698 *et seq.* Plaintiff hereby gives written notice by online submission to the Labor and Workforce Development Agency, and by certified mail to Defendant McKesson Medical-Surgical, Inc. via its agent for service of process.

Plaintiff has attached his Complaint, and incorporates the allegations in the Complaint as though fully set forth herewith. The Complaint sets out the specific provisions of the Labor Code that Plaintiff alleges to have been violated, including the facts and relevant theories alleged against Defendants in the PAGA representative action complaint.

NOTICE PURSUANT TO LABOR CODE SECTIONS 2698 et seq.
April 2, 2020
Page 2

Plaintiff alleges that Defendants committed the violations specified in the Complaint against both him and the group of aggrieved employees that he seeks to represent: Any and all persons who are or were employed by Defendants as non-exempt employees, however titled, in distribution or delivery positions in the State of California (the "Aggrieved Employees") during the liability period.

All Labor Code and related Complaint allegations pertain to all entities or individuals named in the Complaint, even if not so specified.

Please advise by certified mail within sixty-five (65) days of the post mark on this letter if the LWDA intends to investigate these claims. Thank you, and please contact me if you have any questions or require additional information.

Please contact me if you have any questions or require additional information.

Very Truly Yours,

/s/ James R. Hawkins

James R. Hawkins, Esq.

Enclosure: Class Action Complaint