

1 **JAMES HAWKINS APLC**

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8 on behalf of himself and all others similarly situated

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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF PLACER**

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

14
15 Plaintiff,

16 **v.**

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

20 Defendants.
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Case No. S-CV-0044686

Assigned for All Purposes to:
Hon. Garen Horst
Dept.: 42

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL AND
JUDGEMENT THEREON**

1 This matter, having come before the Honorable Garen Horst of the Superior Court of the
2 State of California, in and for the County of Placer, on December 7, 2023, for the motion by Plaintiff
3 Kevin Harris (“Plaintiff”) for Preliminary Approval of Joint Stipulation of Class Action and PAGA
4 Settlement that resolves all claims alleged by Plaintiff and the Class against Defendant McKesson
5 Medical-Surgical, Inc. (“Defendant”) (collectively referred to herein as “Parties”). The Court,
6 having considered the briefs, argument of counsel and all matters presented to the Court, and good
7 cause appearing, hereby GRANTS Plaintiff’s Motion for Preliminary Approval of the joint
8 Stipulation of Class Action and PAGA Settlement.

9 IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

10 1. The Court preliminarily approves of the Joint Stipulation of Class Action and PAGA
11 Settlement (“Settlement”) upon the terms and conditions set forth in the Settlement, which is
12 attached as Exhibit 1 to the Declaration of James R. Hawkins in Support of Plaintiff’s Motion for
13 Preliminary Approval of Joint Stipulation of Class Action and PAGA Settlement. This is based on
14 the Court’s determination that the Settlement is within the range of possible final approval, pursuant
15 to the provisions of Section 382 of the California Code of Civil Procedure and California Rules of
16 Court, rule 3.769.

17 2. For purposes of this Preliminary Approval Order and Judgement (“Order”), the Court
18 hereby adopts and incorporates all definitions set forth in the Settlement.

19 3. The Court preliminarily finds that the Settlement is the product of informed, non-
20 collusive negotiations conducted at arms’ length by the Parties. The Court has considered the
21 alleged merit of Plaintiff’s claims, Defendant’s potential liability, the allocation of Settlement
22 proceeds among Class Members and PAGA Employees, and the fact that the Settlement represents a
23 compromise of the Parties’ respective positions. The Court therefore preliminarily finds that the
24 Settlement is fair, adequate, and reasonable when balanced against the probable outcome of further
25 litigation and the significant risks related to certification, liability, and damages issues, subject to
26 further consideration at the Final Fairness and Approval Hearing described below.

27 1. Solely for the purpose of settlement in accordance with the Settlement, the Court finds
28 that the requirements for certification under section 382 of the California Code of Civil Procedure

1 and other laws applicable to preliminary settlement approval of class actions have been satisfied, and
2 the Court hereby certifies, for settlement purposes only, the following Class (the “Class”): all current
3 and former non-exempt employees of Defendant in the State of California who hold/held delivery
4 driver positions from April 3, 2016 to January 27, 2023 (the “Class Period”).

5 4. Pursuant to the Settlement, and for settlement purposes only, the Court further finds
6 as to the Class that:

- 7 a. The Class is so numerous that joinder of all members is impracticable;
- 8 b. There are questions of law or fact common to the Class which predominate
9 over the questions affecting only individual members;
- 10 c. The claims of the Class Representative is typical of the claims of the Class
11 that the Class Representative seeks to certify;
- 12 d. The Class Representative, Plaintiff Kevin Harris, will fairly and adequately
13 protect the interests of the Class is, therefore, appointed as the representative
14 of the Class;
- 15 e. Class Counsel, James R. Hawkins and Christina M. Lucio of James Hawkins
16 APLC will fairly and adequately protect the interests of the Class and are
17 qualified to represent the Class and are, therefore, appointed as attorneys for
18 the Class for purposes of settlement only; and
- 19 f. Certification of the Class is superior to other available methods for fair and
20 efficient adjudication of the controversy.

21 5. PAGA Employees are defined as all current and former non-exempt employees of
22 Defendant in the State of California who hold/held delivery driver positions from April 3, 2019 to
23 January 27, 2023 (the “PAGA Period”).

24 6. ILYM Group, Inc. is hereby appointed to serve as the Settlement Administrator. The
25 Settlement Administrator will administer the applicable provisions of the Settlement, will include,
26 *inter alia*: (i) printing and mailing and re-mailing (if necessary) of Notices of Class Action and
27 PAGA Settlement to Class Members and PAGA Employees and receiving Requests for Exclusion
28 and Objections from Class Members; (ii) preparing and submitting to Settlement Class Members,

1 PAGA Employees, and government entities all appropriate tax filings and forms; (iii) computing the
2 amount of and distributing Individual Settlement Payments, Class Representative Service Payment,
3 and Class Counsel Attorneys' Fees, Costs and Expenses; (iv) processing and validating disputes
4 concerning the calculation of Individual Settlement Payments; (v) establishing a Qualified
5 Settlement Fund, as defined by the Internal Revenue Code; and (vi) calculating and remitting to the
6 appropriate government agencies all employer and employee payroll tax obligations arising from the
7 Settlement and preparing and submitting filings required by law in connection with the payments
8 required by the Settlement; (vii) performing a National Change of Address (NCOA) search and a
9 skip trace in order to obtain the best possible address for Class Members and PAGA Employees; and
10 (viii) providing necessary reports and declarations, as requested by the Parties.

11 7. Pursuant to the terms of the Settlement, Defendant is hereby directed to prepare and
12 provide the Class and PAGA Data to the Settlement Administrator within twenty-one (21) days of
13 entry of this Order.

14 8. Pursuant to the terms of the Settlement, ILYM Group, Inc. is hereby directed to mail
15 the Notice of Class Action and PAGA Settlement ("Notice") to all Class Members and PAGA
16 Employees via first-class regular U.S. Mail within fourteen (14) days of receiving the Class and
17 PAGA Data from Defendant.

18 9. The Court approves as to form and content the Notice attached as Exhibit 2 to the
19 Declaration of James R. Hawkins. The Court finds that the Notice appears to inform the Class and
20 PAGA Employees fully and accurately of all material elements of the proposed Settlement, of the
21 Class Members' right to be excluded from the Class by submitting a written Opt-Out request, and of
22 each Class Member's right and opportunity to object to the Settlement. The Court further finds that
23 the distribution of the Notice in the manner and form set forth in the Settlement and this Order meets
24 the requirements of due process, is the best notice practicable under the circumstances, and
25 constitutes valid, due and sufficient notice to all members of the Class and PAGA Employees
26 entitled thereto. The Court orders the mailing of the Notice by first class mail, pursuant to the terms
27 set forth in the Settlement.

28 10. The Court hereby preliminarily approves the proposed procedure for exclusion from

1 the Settlement. Any Class Member may request to be excluded from the Class and the release of
2 Released Class Claims by submitting a written Request for Exclusion in accordance with Section
3 C.5 of the Settlement. Any such Request for Exclusion will be timely only if postmarked, emailed,
4 or faxed to the Settlement Administrator within the Response Deadline. Any Class Member, who
5 submits a completed, signed, and timely written Request for Exclusion shall no longer be a member
6 of the Class, shall be barred from participating in this Settlement, shall be barred from objecting to
7 this Settlement, and shall receive no benefit from this Settlement, except that Class Members who
8 are PAGA Employees will still receive their Individual PAGA Payments and will release the
9 Released PAGA Claims. Class Members shall be bound by this Settlement and shall release all
10 Released Class Claims unless they submit a completed, signed, and timely Request for Exclusion. If
11 they submit a valid Request for Exclusion, they will still be bound by the release of the Released
12 PAGA Claims.

13 11. Any Class Member wishing to object to this Settlement may submit a written
14 objection or appear at the Final Fairness and Approval Hearing in person or through counsel of their
15 choice following the procedure set forth in the Notice and prescribed by Section C.5 of the
16 Settlement. Any Class Member who wishes to submit a written Objection to the Agreement must
17 submit their objection on or before the Response Deadline.

18 12. Any Class Member who has submitted such written objections may, but is not
19 required to, appear in person, or through counsel, at the Final Fairness and Approval Hearing and
20 object to the approval of the Settlement or the award of attorneys' fees and reimbursement of
21 expenses to counsel. Any written objections submitted by Class Members shall be turned over to
22 Class Counsel, who shall then file the objections and any response thereto with the Court. The
23 Parties may file any response to the objections submitted by objecting Class Members, if any,
24 no later than three (3) Court days prior to the Final Fairness and Approval Hearing, or on another
25 date set by the Court. Any Class Member who has not opted out may appear at the final approval
26 hearing and may object or express the Class Member's views regarding the Settlement, and may
27 present evidence and file briefs or other papers that may be proper and relevant to the issues to be
28 heard and determined by the Court as provided in the Notice.

1 13. Any Class Member who does not make their objection(s) in the manner so provided
2 herein and in the Notice shall be deemed to have waived such objection(s) and shall forever be
3 foreclosed from making any objection(s) to the fairness or adequacy of the proposed Settlement as
4 incorporated in the Joint Stipulation of Class Action and PAGA Settlement and the award of
5 attorneys' fees and reimbursement of expenses to counsel and the right to appeal any orders that are
6 entered relating thereto, unless otherwise ordered by the Court.

7 14. The Final Fairness and Approval Hearing shall be held on _____,
8 2023 at _____ a.m./p.m., before the Honorable Garen Horst, in Department 42 in the Superior
9 Court of California, Placer County, in the Hon. Howard G. Gibson Courthouse located at 10820
10 Justice Center Drive, Roseville, CA 95678. At that time, the Court shall determine: (a) whether the
11 proposed settlement of the Action on the terms and conditions provided for in the Settlement is fair,
12 just, reasonable and adequate and should be finally approved; (b) whether judgment as provided in
13 the Settlement should be entered herein; (c) whether to approve Class Counsel's application for an
14 award of attorneys' fees and costs, and any Class Representative Service Payment to Plaintiff; and
15 (d) to hear any timely objections to the Settlement.

16 15. The Motion for Final Approval, and any motion or application for an award of
17 attorney's fees, costs, and any Class Representative Service Payment to Plaintiff must be filed and
18 served by _____.

19 16. The Court reserves the right to adjourn the date of the Final Fairness and Approval
20 Hearing and any adjournment thereof without further notice to the Class Members and PAGA
21 Employees, and retains jurisdiction to consider all further applications arising out of or connected
22 with the Settlement. The Court may approve the Settlement, with such modifications as may be
23 agreed to by the Parties to the Settlement, if appropriate, without further notice to the Class or
24 PAGA Employees.

25 17. Pending further order of this Court, all proceedings in this matter except those
26 contemplated herein and in the Agreement are stayed and suspended until further order of this Court.

27 18. The Court recognizes that certification under this Order is for settlement purposes
28 only, and shall not constitute or be construed as a finding by the Court, or an admission on the part

1 of Defendant or any of the Released Parties, of any fault or omission with respect to any claim or
2 that this Action is appropriate for class or representative treatment for litigation purposes. The Court
3 recognizes that Defendant has denied the allegations asserted in the Action and denied liability.
4 Entry of this Order is without prejudice to the rights of Defendant or any of the Released Parties to
5 oppose class certification in this Action should the proposed Settlement not be granted final
6 approval.

7 19. If for any reason the Court does not execute and file a Final Order and Judgment, or if
8 the Effective Date of the settlement, as defined in the Settlement, does not occur for any reason
9 whatsoever, the Settlement and the proposed settlement that is the subject of this Order, and all
10 evidence and proceedings had in connections therewith, shall be without prejudice to the *status quo*
11 *ante* rights of the Parties to the litigation, as more specifically set forth in the Settlement.

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13 **IT IS SO ORDERED.**

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15 DATED: _____, 2023

16 HON. GAREN HORST
17 JUDGE OF THE SUPERIOR COURT
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