

1 **JAMES HAWKINS APLC**

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individually and on behalf of all others similarly situated

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **COUNTY OF PLACER**

12
13 DARWIN COLINAYO and EDELMIRA
MALDONADO, on behalf of themselves and
14 all others similarly situated,

15 Plaintiff,

16 v.

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

20 Defendants.

Case No. S-CV-0049039

Hon. Trisha Hirashima
Dept.: 42

**[PROPOSED] ORDER GRANTING
PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT
AGREEMENT, APPROVAL OF NOTICE TO
CLASS MEMBERS, APPROVAL OF
SETTLEMENT ADMINISTRATOR, AND
SETTING HEARING FOR FINAL
APPROVAL OF SETTLEMENT**

Date: October 29, 2024
Time: 8:30 a.m.

1 This matter, having come before the Honorable Trisha Hirashima of the Superior Court of
2 the State of California, in and for the County of Placer, on October 29, 2024 for the Motion by
3 Plaintiffs Darwin Colinayo and Edelmira Maldonado (“Plaintiffs”) for Preliminary Approval of the
4 Class Action and PAGA Settlement that resolves all claims alleged by Plaintiffs and the Class
5 against Defendant McKesson Medical-Surgical, Inc. (“Defendant”) (collectively referred to herein as
6 the “Parties”). The Court, having considered the briefs, argument of counsel and all matters
7 presented to the Court, and good cause appearing, hereby GRANTS Plaintiffs’ Motion for
8 Preliminary Approval of Class Action and PAGA Settlement.

9 IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

10 1. The Court preliminarily approves of the Class Action and PAGA Settlement
11 (“Settlement”) upon the terms and conditions set forth in therein, which is attached as Exhibit 1 to
12 the Declaration of James R. Hawkins in Support of Plaintiffs’ Motion for Preliminary Approval of
13 Class Action and PAGA Settlement (“Preliminary Approval Motion”). This is based on the Court’s
14 determination that the Settlement set forth in the Class Action and PAGA Settlement is within the
15 range of possible final approval, pursuant to the provisions of Section 382 of the California Code of
16 Civil Procedure and California Rules of 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 arm’s-length by the Parties, with the assistance of a mediator.
21 The Court has considered the alleged merit of Plaintiffs’ claims, Defendant’s potential liability, the
22 allocation of Settlement proceeds among Class Members and Aggrieved Employees, and the fact
23 that the Settlement represents a compromise of the Parties’ respective positions. The Court therefore
24 preliminarily finds that the Settlement is fair, adequate, and reasonable when balanced against the
25 probable outcome of further litigation and the significant risks related to certification, liability, and
26 damages issues, subject to further consideration at the Final Fairness and Approval Hearing
27 described below.

28 4. Solely for the purpose of settlement in accordance with the Settlement, the Court

1 finds that the requirements for certification under Section 382 of the California Code of Civil
2 Procedure and other laws applicable to preliminary settlement approval of class actions have been
3 satisfied, and the Court hereby certifies, for settlement purposes only, the following Class (the
4 “Class”): all persons who are or were employed by Defendant McKesson Medical-Surgical Inc. as
5 hourly paid, non-exempt employees who worked in distribution centers in the State of California at
6 any time during the period from June 28, 2018 through April 7, 2024 (the “Class Period”), except
7 those employed in the position of delivery driver.

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

- 10 a. The Class is so numerous that joinder of all members is impracticable;
- 11 b. There are questions of law or fact common to the Class which predominate
12 over the questions affecting only individual members;
- 13 c. The claims of the Class Representatives are typical of the claims of the Class
14 that the Class Representatives seek to certify;
- 15 d. The Class Representatives, Plaintiffs Darwin Colinayo and Edelmira
16 Maldonado, will fairly and adequately protect the interests of the Class, and
17 therefore are appointed as the representative of the Class;
- 18 e. Class Counsel, James R. Hawkins and Christina M. Lucio of James Hawkins
19 APLC, and Zorik Mooradian and Haik Hacopian of Mooradian Law, APC
20 will fairly and adequately protect the interests of the Class and are qualified to
21 represent the Class and are, therefore, appointed as attorneys for the Class for
22 purposes of settlement only; and
- 23 f. Certification of the Class is superior to other available methods for fair and
24 efficient adjudication of the controversy.

25 6. Aggrieved Employees is defined as all persons who are or were employed by
26 Defendant as hourly paid, non-exempt employees who worked in distribution centers in the State of
27 California at any time during the period from September 2, 2021 through April 7, 2024 (the “PAGA
28 Period”), except those employed in the position of delivery driver.

1 7. Apex Class Action LLC is hereby appointed to serve as the Settlement Administrator.
2 The Settlement Administrator will administer the applicable provisions of the Settlement, which will
3 include, inter alia: (i) printing and mailing and re-mailing (if necessary) of Notices of Class Action
4 and PAGA Settlement to Class Members and Aggrieved Employees and receiving Requests for
5 Exclusion and Objections from Class Members; (ii) preparing and submitting to Participating Class
6 Members, Aggrieved Employees, and government entities all appropriate tax filings and forms; (iii)
7 computing the amount of and distributing Individual Class Payments, Individual PAGA Payments,
8 Class Representative Service Payments, and Class Counsel Attorneys' Fees, Costs and Expenses;
9 (iv) processing and validating challenges concerning the calculation of workweeks and pay periods;
10 (v) establishing a Qualified Settlement Fund, as defined by the Internal Revenue Code; (vi)
11 calculating and remitting to the appropriate government agencies all employer and employee payroll
12 tax obligations arising from the Settlement and preparing and submitting filings required by law in
13 connection with the payments required by the Settlement; (vii) performing a National Change of
14 Address (NCOA) search and a Class Member Address Search in order to obtain the best possible
15 address for Class Members and Aggrieved Employees; and (viii) providing necessary reports and
16 declarations, as requested by the Parties.

17 8. Pursuant to the terms of the Settlement, Defendant is hereby directed to prepare and
18 provide the Class and PAGA Data to the Settlement Administrator within twenty-one (21) days of
19 entry of this Order.

20 9. Pursuant to the terms of the Settlement, Apex Class Action LLC is hereby directed to
21 mail the Notice of Class Action and PAGA Settlement ("Class Notice") to all Class Members and
22 PAGA Employees via first-class regular U.S. Mail within thirty-five (35) days of receiving this
23 Order.

24 10. The Court approves as to form and content the Class Notice attached as Exhibit 2 to
25 the Declaration of James R. Hawkins. The Court finds that the Class Notice appears to inform the
26 Class Members fully and accurately of all material elements of the proposed Settlement, of the Class
27 Members' right to be excluded from the Class by submitting a written Request for Exclusion, and of
28 each Class Member's right and opportunity to object to the Settlement. The Court further finds that

1 the distribution of the Class Notice in the manner and form set forth in the Settlement and this Order
2 meets the requirements of due process, is the best notice practicable under the circumstances, and
3 constitutes valid, due and sufficient notice to all members of the Class entitled thereto. The Court
4 orders the mailing of the Class Notice by first class mail, pursuant to the terms set forth in the
5 Settlement.

6 11. The Court hereby preliminarily approves the proposed procedure for exclusion from
7 the Settlement. Any Class Member may request to be excluded from the Class and the release of
8 Released Class Claims by submitting a written Request for Exclusion in accordance with Section 7.5
9 of the Settlement. Any such Request for Exclusion will be timely only if postmarked, emailed, or
10 faxed to the Settlement Administrator within the Response Deadline, which is 45 days after the
11 Administrator mails the Class Notice (plus an additional fourteen (14) days for Class Members
12 whose Class Notice is re-mailed). Any Class Member who submits a completed, signed, and timely
13 written Request for Exclusion shall no longer be a member of the Class, shall be barred from
14 participating in this Settlement, shall be barred from objecting to this Settlement, and shall receive
15 no benefit from this Settlement, except that Class Members who are Aggrieved Employees will still
16 receive their Individual PAGA Payments and will release the Released PAGA Claims. Class
17 Members shall be bound by this Settlement and shall release all Released Class Claims unless they
18 submit a completed, signed, and timely Request for Exclusion. If they submit a valid Request for
19 Exclusion, they will still be bound by the release of the Released PAGA Claims.

20 12. Any Class Member wishing to object to this Settlement may submit a written
21 objection or appear at the Final Approval Hearing in person or through counsel of their choice
22 following the procedure set forth in the Class Notice and prescribed by Section 7.7 of the Settlement.
23 Any Class Member who wishes to submit a written objection to the Settlement must submit their
24 objection on or before the Response Deadline.

25 13. Any Class Member who has submitted such written objections may, but is not
26 required to, appear in person, or through counsel, at the Final Approval Hearing and object to the
27 approval of the Settlement or the award of attorneys' fees and reimbursement of expenses to Class
28 Counsel. Any written objections submitted by Class Members shall be provided to Class Counsel,

1 who shall then file the objections and any response thereto with the Court. The Parties may file any
2 response to the objections submitted by objecting Class Members, if any, no later than five (5) court
3 days prior to the Final Approval Hearing, or on another date set by the Court. Any Class Member
4 who has not submitted a Request for Exclusion may appear at the Final Approval Hearing and may
5 object or express the Class Member's views regarding the Settlement, and may present evidence and
6 file briefs or other papers that may be proper and relevant to the issues to be heard and determined
7 by the Court as provided in the Class Notice.

8 14. Any Class Member who does not make their objection(s) in the manner provided
9 herein and in the Class Notice shall be deemed to have waived such objection(s) and shall forever be
10 foreclosed from making any objection(s) to the fairness or adequacy of the proposed Settlement as
11 incorporated in the Class Action and PAGA Settlement Agreement and the award of attorneys' fees
12 and reimbursement of expenses to Class Counsel and the right to appeal any orders that are entered
13 relating thereto, unless otherwise ordered by the Court.

14 15. The Final Fairness and Approval Hearing shall be held on _____,
15 2024 at _____ a.m./p.m., before the Honorable Trisha Hirashima in Department 42 in the Superior
16 Court of California, Placer County, in the Hon. Howard G. Gibson Courthouse located at 10820
17 Justice Center Drive, Roseville, CA 95678. At that time, the Court shall determine: (a) whether the
18 proposed Settlement of the Action on the terms and conditions provided for in the Settlement is fair,
19 just, reasonable and adequate and should be finally approved; (b) whether Judgment as provided in
20 the Settlement should be entered herein; (c) whether to approve Class Counsel's application for an
21 award of attorneys' fees and costs, and any Class Representative Service Payments to Plaintiffs
22 Darwin Colinayo and Edelmira Maldonado; and (d) to hear any timely objections to the Settlement.

23 16. The Motion for Final Approval, and any motion or application for an award of
24 attorney's fees, costs, and any Class Representative Service Payments to Plaintiffs must be filed and
25 served by _____.

26 17. The Court reserves the right to adjourn the date of the Final Fairness and Approval
27 Hearing and any adjournment thereof without further notice to the Class Members and Aggrieved
28 Employees, and retains jurisdiction to consider all further applications arising out of or connected

1 with the Settlement. The Court may approve the Settlement, with such modifications as may be
2 agreed to by the Parties to the Settlement, if appropriate, without further notice to the Class or
3 Aggrieved Employees.

4 18. Pending further order of this Court, all proceedings in this matter except those
5 contemplated herein and in the Agreement are stayed and suspended until further order of this Court.

6 19. The Court recognizes that certification under this Order is for settlement purposes
7 only, and shall not constitute or be construed as a finding by the Court, or an admission on the part
8 of Defendant or any of the Released Parties, of any fault or omission with respect to any claim or
9 that this Action is appropriate for class or representative treatment for litigation purposes. The Court
10 recognizes that Defendant denies the allegations asserted in the Action and denies liability. The
11 Court has made no finding on the merits of the claims asserted. Entry of this Order is without
12 prejudice to the rights of Defendant or any of the Released Parties to oppose class certification in
13 this Action should the proposed Settlement not be granted final approval.

14 20. If for any reason the Court does not execute and file a Final Order and Judgment, or if
15 the Effective Date of the Settlement, as defined in the Settlement, does not occur for any reason
16 whatsoever, the Settlement that is the subject of this Order, and all evidence and proceedings had in
17 connections therewith, shall be without prejudice to the *status quo ante* rights of the Parties to the
18 litigation, as more specifically set forth in the Settlement.

19
20 **IT IS SO ORDERED.**

21
22 DATED: _____, 2024

23 _____
24 HON. TRISHA HIRASHIMA
25 JUDGE OF THE SUPERIOR COURT
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