

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

U.S. EQUAL EMPLOYMENT)
OPPORTUNITY COMMISSION,)

Plaintiffs,)

v.)

MCKESSON WATER PRODUCTS)
COMPANY; its SUCCESSOR; and)
DOES 1 through 5, inclusive,)

Defendants.)

STEVE CRUTCHFIELD, JASON GRAY)
DERRICK KING, SALLIE KIRBY,)
DANIEL MENO, LEROY MOORE, ED)
WASHINGTON AND DONNIE WHITE,)
on behalf of themselves and all others)
similarly situated)

Plaintiffs-In-Intervention,)

v.)

MCKESSON WATER PRODUCTS)
COMPANY; its SUCCESSOR, and)
DOES 1 through 5, inclusive,)

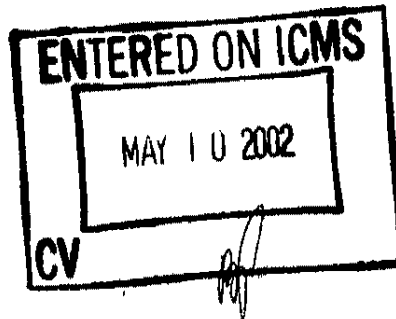
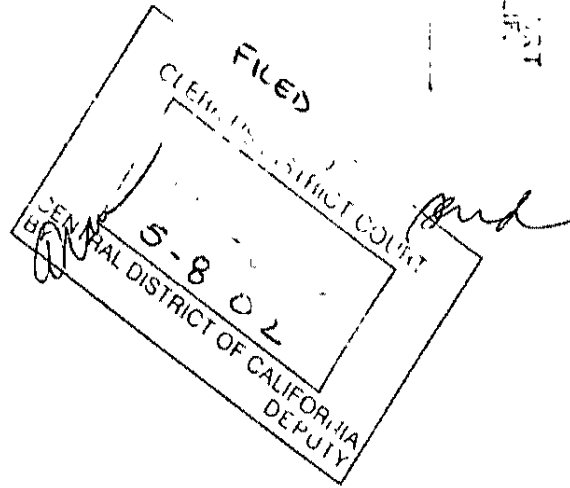
Defendants.)

CASE NO. 01-09496 FMC PJWX

AMENDED CONSENT DECREE

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I.

INTRODUCTION

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3 Steve Crutchfield, Jason Gray, Derrick King, Sallie Kirby, Daniel Meno, Leroy Moore, Ed
4 Washington and Donnie White (collectively referred to as "Individually Named Intervenors") filed
5 charges of discrimination with the Plaintiff, U.S. Equal Employment Opportunity Commission
6 ("EEOC"), against their former employer Defendant McKesson Water Products Company. Each of
7 the charges was cross-filed with the California Department of Fair Employment and Housing. Each
8 of the Individually Named Intervenors was or had been employed as a Route Sales Representative
9 or Senior Account Representative in McKesson Water Products Company's Los Angeles Metro
10 Region. The Individually Named Intervenors alleged in their EEOC charges that McKesson Water
11 Products Company discriminated against them and other similarly situated African American
12 employees in the Los Angeles Metro Region with respect to assignment of routes, pay, promotions
13 and discipline and that certain individuals were subjected to racial harassment and retaliation.

14 In response to the charges, McKesson Water Products Company denied any wrongdoing.
15 In February 29, 2000, while the charges were still pending, McKesson Water Products Company was
16 purchased by Danone Holdings, Inc., and was subsequently conveyed to its wholly-owned
17 subsidiary, Danone Waters of North America, Inc. (the "Successor") which assumed all potential
18 liability arising out of the charges. In July 2000, after investigating the charges of discrimination,
19 the EEOC concluded that there was reasonable cause to believe that McKesson Water Products
20 Company discriminated against the Individually Named Intervenors in route assignments,
21 promotions, discipline, and pay. Moreover, the EEOC concluded that there was reasonable cause
22 to believe that McKesson Water Products Company also discriminated against similarly situated
23 African-American employees in route assignments and pay. As part of the conciliation held
24 discussions pursuant to section 706(b) of Title VII of the Civil Rights Act of 1964, as amended, 42
25 U.S.C. § 2000e et seq. ("Title VII"), the EEOC, Class Counsel, and Successor engaged in an
26 informal exchange of discovery which included class-wide statistical data for a five-year period
27 about the pay, assignments and promotion of McKesson Water Products-Los Angeles Metro Region
28 Route Sales Representatives. The parties each retained statistical consultants to analyze what, if any,

1 patterns of discrimination were evidenced by the data. The Individually Named Intervenors provided
2 detailed summaries of the facts supporting their allegations.

3 A tentative agreement was reached in November 2000 and the parties subsequently
4 negotiated the terms of this Consent Decree ("Decree").

5 To fully effectuate the settlement, the EEOC filed this class action under sections 706 and
6 707 of Title VII. The Individually Named Intervenors concurrently filed a motion to intervene and
7 alleged that Defendant had also committed violations under the California Fair Employment and
8 Housing Act, Cal. Govt. Code § 12940 et seq., ("FEHA") against themselves and similarly situated
9 African-Americans. Concurrently, the Individually Named Intervenors have filed a motion for
10 certification of a settlement class pursuant to Federal Rules of Civil Procedure Rule 23(b)(2) and
11 Rule 23(b)(3).

12 II.

13 JURISDICTION

14 The Court has jurisdiction over the parties and the subject matter of this lawsuit. The
15 Complaint asserts claims that, if proven, would authorize the Court to grant the monetary and
16 equitable relief set forth in this Decree against Successor. This Decree conforms with the Federal
17 Rules of Civil Procedure and Title VII and is not in derogation of the rights and privileges of any
18 person. The Court shall retain jurisdiction of this action during the duration of the Decree for the
19 purposes of entering all orders, judgments and decrees which may be necessary to implement the
20 relief provided herein.

21 III.

22 PURPOSES OF THE CONSENT DECREE

23 The parties have entered into this Decree for the following purposes:

- 24 A. To provide appropriate monetary and injunctive relief for all class members;
- 25 B. To provide a fair and objective promotion system and to increase promotion and
26 assignment opportunities for the class;
- 27 C. To provide an appropriate and effective mechanism for the reporting and
28 investigation of discrimination, harassment and retaliation in the workplace;

- 1 D. To avoid the time, risk and expense of protracted litigation; and
- 2 E. To provide a final and binding settlement upon the parties as to all Title VII and
- 3 FEHA claims alleged by the Class Representatives in the Complaint filed in this
- 4 action.

5 **IV.**

6 **NON-ADMISSION OF LIABILITY**

7 This Decree represents the compromise of disputed claims which the parties recognize would
8 require protracted and costly litigation. The entry into this Decree is not, and may not be used by
9 any person as, an admission or evidence that Defendant or its Successor in interest has engaged in
10 discriminatory employment practices.

11 **V.**

12 **PARTIES**

- 13 **A. Plaintiff** - The Plaintiff is the United States Equal Employment Opportunity Commission.
- 14 **B. Individually Named Intervenors** - The Individually Named Intervenors are Steve
- 15 Crutchfield, Jason Gray, Derrick King, Sallie Kirby, Daniel Meno, Leroy Moore, Ed
- 16 Washington and Donnie White.
- 17 **C. Defendants** - The Defendants are McKesson Water Products Company and its Successor.
- 18 **D. Successor**- Danone Waters of North America, Inc. is the current Successor to McKesson
- 19 Water Products Company.

20 **VI.**

21 **DEFINITIONS**

- 22 **A. Claims Administrator** - Lawson Law Offices shall serve as the Claims Administrator for
- 23 this Decree.
- 24 **B. Claim Share** - Claim Share refers to the portion of the Class Fund payable to each Eligible
- 25 Class Member as calculated in Section XIX(B) below.
- 26 **C. Class Counsel**- Class Counsel are Lawson Law Offices, Traber & Voorhees and The Impact
- 27 Fund. Appointment of these attorneys to serve as Class Counsel for Intervenors is subject
- 28 to approval by the Court.

1 **D. Class Fund** - The sum of \$1,145,500 paid by Successor in full settlement of all claims for
2 monetary relief to members of the class.

3 **E. Class Liability Period** - The Class Liability Period is February 24, 1996 through December
4 31, 2000.

5 **F. Class Positions** - The Class Positions are defined as Route Sales Representatives and Senior
6 Account Representatives in Successor's Los Angeles Metro Region.

7 **G. Date of Final Approval** - The Date of Final Approval is the date upon which the Court gives
8 final approval to the Decree after hearing, if required.

9 **H. Dispute Resolution Arbitrator** - The parties shall select the Dispute Resolution Arbitrator.

10 **I. EEO Consultant** - The parties shall select the EEO Consultant.

11 **J. Effective Date of Decree** - The Effective Date of this Decree is the date upon which the Court
12 gives final approval to the Decree.

13 **K. Eligible Class Members** - All African-Americans employed as Route Sales Representatives
14 or Senior Account Representatives in the Los Angeles Metro Region of McKesson Water
15 Products Company at some time between February 1, 1996 and December 31, 2000
16 ("Eligible Class Members"), and must have been employed in one of these positions for a
17 total of at least six months.

18 **L. Final Class Distribution List** - The Final Class Distribution List is the list of Eligible Class
19 Members who have submitted timely and qualifying claims and the amount of each such
20 class member's Claim Share.

21 **M. Final Notice List** - The Final Notice List refers to the list of all Eligible Class Members to
22 whom the Notice of Settlement will be sent.

23 **N. Los Angeles Metro Region** - The Los Angeles Metro Region is comprised of branch offices
24 in Culver City, Oxnard, Los Angeles, Covina, Van Nuys, Lancaster and Gardena.

25 **VII.**

26 **RELEASE OF CLAIMS**

27 A. This Decree fully and completely resolves all class issues, claims and allegations
28 concerning discrimination based upon race with respect to route assignments and pay for members

1 of the Settlement Class for the Class Period, and all issues, claims, and allegations of the Individually
2 Named Intervenors that are alleged in the complaint against Successor. The EEOC will take no
3 further action against Successor based upon any of the factual allegations which were raised in the
4 charges. This Decree shall not impact claims for gender discrimination other than those relating to
5 the individual charging party, Sally Kirby.

6 B. Nothing in this Decree shall be construed to limit or reduce Defendant or Successor's
7 obligations to fully comply with Title VII.

8 C. The parties shall use their best efforts to defend this Decree from any legal challenge
9 whether by appeal, collateral attack or objection.

10 **VIII.**

11 **NON-DEROGATION OF EEOC RIGHTS**

12 A. This Decree in no way effects the EEOC's rights to proceed against Successor, nor
13 does it in any way effect the EEOC's rights to process charges against Successor not otherwise
14 covered by this Decree in accordance with standard EEOC procedures and to commence civil action
15 on any such charges.

16 B. Under no circumstances shall the EEOC, by commenting or electing not to comment
17 upon proposed policies or procedures pursuant to Section XVI (Injunctive Relief), be deemed to have
18 waived its right to investigate or litigation any alleged adverse effects of said policy upon equal
19 employment opportunities. Nor shall the EEOC, by commenting or electing not to comment upon
20 said policies or procedures, be considered to have accepted the validity of, or approved, the
21 provisions adopted by the Successor.

22 **IX.**

23 **NON-WAIVER OF RIGHT TO COURT ENFORCEMENT**

24 The EEOC shall not be in any way bound by the rulings of the Special Master/Magistrate
25 in connection with disputes that arise between Class Counsel and the Successor pursuant to Sections
26 XIII and XVI (Special Master/Magistrate and Injunctive Relief, respectively). Rather, the EEOC
27 shall resort directly to the Court, as provided in Section XI (Decree Enforcement), to resolve any
28 dispute that it might have with Successor regarding Successor's compliance with this Decree.

1 X.

2 **MODIFICATION AND SEVERABILITY**

3 A. This Decree and its Exhibits constitute the complete understanding of the parties with
4 respect to the matters contained within it. No waiver, modification or amendment of any provision
5 of this Decree will be effective unless made in writing and signed by an authorized representative
6 of each of the parties.

7 B. If one or more provisions of the Decree are rendered unlawful or unenforceable, the
8 parties shall make good faith efforts to agree upon appropriate amendments to this Decree in order
9 to effectuate the purposes of the Decree. If the parties are unable to reach agreement, the Court shall
10 order appropriate alternative provisions in order to effectuate the purposes of the Decree. Should
11 one or more provisions of this Decree be deemed unlawful, all other lawful and enforceable
12 provisions will remain in full force and effect.

13 XI.

14 **DECREE ENFORCEMENT**

15 A. **Parties Authorized to Enforce Decree** - The EEOC, Class Counsel for Intervenors
16 or Successor may bring an action before this Court to enforce the Decree.

17 B. **Requirement of Informal Resolution Efforts**

- 18 1. Prior to initiating an action to enforce the Decree, the party bringing the
19 action will notify the other parties, in writing, of the nature of the dispute.
20 This notice shall specify the particular provision(s) believed to have been
21 breached and a statement of the issues in dispute. The notice may also
22 include a reasonable request for documents or information relevant to the
23 dispute.
- 24 2. Within fourteen (14) days of the notice, the responding parties will provide
25 written responses to the notice setting forth their positions. They will also
26 provide the requested documents or information.
- 27 3. After the receipt of the responses, the parties will schedule a telephone or in-
28 person meeting to attempt to resolve the dispute resolution.

1 4. A thirty (30) day dispute resolution period will be provided from the date of
2 notice prior to the institution of any legal proceeding. After the expiration of
3 the thirty (30) day dispute resolution period, an action to enforce the Decree
4 may be brought in this Court.

5 5. The provisions of this section do not prevent the EEOC from bringing an
6 issue before the Court when the facts and circumstances require immediate
7 Court action. The moving party's papers shall explain the facts and
8 circumstances that necessitate immediate Court action. If a party brings a
9 matter before the Court requiring immediate Court action, the opposing party
10 or parties shall be provided with appropriate notice under the Local Rules of
11 the Court and the Federal Rules of Civil Procedure.

12 **XII.**

13 **CERTIFICATION AND APPROVAL OF SETTLEMENT CLASS**

14 The Individually Named Intervenors have filed or will file a motion for class certification
15 under Fed. R. Civ. Proc. Rule 23(b)(2) and Rule 23(b)(3) with the District Court. The proposed
16 settlement class ("Settlement Class") is defined as all African-Americans who, at any time between
17 February 24, 1996 and December 31, 2000 were employed as Route Sales Representatives or Senior
18 Account Representatives ("Class Positions") in the Los Angeles Metro Region of McKesson Water
19 Products Company and who were employed in these position(s) for a total of at least six months.
20 The Los Angeles Metro Region is comprised of branch offices in Culver City, Oxnard, Los Angeles,
21 Covina, Van Nuys, Lancaster and Gardena. The Settlement Class claims are claims of race
22 discrimination in route assignments and pay.

23 **XIII.**

24 **SPECIAL MASTER/MAGISTRATE**

25 1. No later than sixty (60) days after the Effective Date of the Decree, the Successor and Class
26 Counsel shall select a Special Master for resolution of disputes between the Successor and
27 Class Counsel arising under Section XXI (Procedure for Distribution of Class Fund), XVI
28 (Injunctive Relief) and XVII (Reporting and Record Keeping). The parties may, at their

1 election, propose that a specific Magistrate Judge act as Special Master.

2 2. The Special Master/Magistrate shall have no authority to resolve disputes between the
3 Successor and the EEOC. Rather, all disputes between the Successor and the EEOC shall
4 be subject to resolution by the District Court Judge retaining jurisdiction in this matter,
5 consistent with Section XI (Decree Enforcement).

6 3. Prior to resorting to the Special Master/Magistrate, the Class Counsel and the Successor shall
7 attempt to informally resolve any dispute as provided in Section XI (Decree Enforcement).

8 4. Either the Successor or Class Counsel, in seeking resolution of a dispute subject to the
9 jurisdiction of the Special Master/Magistrate shall submit a written statement of dispute to
10 the Special Master/Magistrate and all parties. The written statement of dispute shall describe
11 the dispute at issue, the basis of the Special Master/Magistrate's authority to resolve the
12 dispute and the party's position. Within fifteen (15) days of receipt of the written statement
13 of dispute, any party may submit a written response. The Special Master/Magistrate shall
14 review all written submissions and may request additional information from any party.
15 Within thirty (30) days of receipt of all written submissions and requests for additional
16 information, the Special Master/Magistrate shall issue a ruling. The rulings of the Special
17 Master/Magistrate are binding upon Class Counsel and Successor. The rulings shall have no
18 binding effect on the EEOC.

19 5. In the event that the Special Master/Magistrate becomes unavailable, the parties will select
20 a substitute Special Master/Magistrate by agreement. If the parties cannot reach agreement
21 on a new Special Master/Magistrate, the Court will appoint one. Successor shall pay all
22 reasonable costs associated with the Special Master/Magistrate.

23 **XIV.**

24 **EFFECTIVE DATE AND DURATION OF DECREE**

25 This Decree shall be deemed effective as of the Date of Final Approval of this Decree by the
26 Court. The Date of Final Approval means the date upon which the Court approves the Decree
27 following a fairness hearing. This Decree shall remain in effect for five years.

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XV.

EQUAL EMPLOYMENT OPPORTUNITY CONSULTANT

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3 Within thirty (30) days of the Effective Date of this Decree and for a period of five (5) years
4 from the Effective Date of this Decree, Successor and Class Counsel shall retain an Equal
5 Employment Opportunity Consultant to implement and monitor Successor's compliance with Title
6 VII and with the provisions of this Decree. The EEOC, Successor and Class Counsel shall use their
7 best efforts to select an Equal Employment Opportunity Consultant agreeable to all parties. If,
8 however, the parties cannot agree upon an Equal Employment Opportunity Consultant within 21
9 days of the Effective Date of this Decree, the EEOC and Class Counsel shall provide the Successor
10 with a list of at least three candidates, from which list the Successor shall select the Equal
11 Employment Opportunity Consultant. The Equal Employment Opportunity Consultant's
12 responsibilities shall include ensuring that all reports required by this Decree are accurately compiled
13 and timely submitted. In addition, the Equal Employment Opportunity Consultant shall assist in
14 training Successor's employees, developing anti-discrimination policies and ensuring compliance
15 under this Consent Decree. Class Counsel and the EEOC shall be notified of any recommendation
16 made by the Equal Employment Opportunity Consultant which Successor declines to adopt within
17 thirty (30) days of Successor's decision not to adopt said recommendation. Any changes in the
18 designation of the Equal Employment Opportunity Consultant shall be communicated to the EEOC
19 and Class Counsel, in writing, within thirty (30) days of such designation. The Equal Employment
20 Opportunity Consultant shall report directly to Successor's Vice President of Human Resources and
21 Class Counsel.

XVI.

INJUNCTIVE RELIEF

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23
24 The Successor shall implement the following provisions in order to ensure equal employment
25 opportunities for all employees and remove any discriminatory employment practices or barriers to
26 African American employees. These provisions shall be limited to Successor's Los Angeles Metro
27 Region. Every policy or procedure developed by the Successor, the Equal Employment Opportunity
28 Consultant, and Class Counsel pursuant to this Section shall be submitted to the EEOC at least thirty

1 (30) days prior to its adoption, during which time the EEOC may comment upon the proposed
2 policy. Any disputes between Class Counsel and Successor arising out of this section shall be
3 referred to the Special Master/Magistrate for resolution. The EEOC shall apply to the District Court,
4 as provided in Section XI (Decree Enforcement), for resolution of any dispute with the Successor
5 arising under this section.

6 **A. Non-Discrimination and Retaliation Provisions**

- 7 1. The Successor shall not discriminate against any employee or applicant in
8 hiring, promotions, pay or assignment of routes because of race and/or
9 gender. The Successor shall consider all African-American and female
10 applicants on the same basis as all other applicants for those positions. The
11 Successor shall afford all African American and female employees the same
12 training and conditions of employment it affords all other employees in
13 similar positions.
- 14 2. The Successor shall not discriminate against any African American and/or
15 female employee with respect to performance evaluation, discipline or
16 termination.
- 17 3. The Successor shall not retaliate against any employee or class member for
18 his or her participation in the EEOC process, the investigation by Class
19 Counsel into this matter, participation in this lawsuit or for having asserted
20 any rights under this Decree.

21 **B. Racial Harassment Policy**

- 22 1. The Successor, the Equal Employment Opportunity Consultant, and Class
23 Counsel shall develop a written policy specifically prohibiting harassment in
24 the workplace based upon race by July 19, 2002. At a minimum, the policy
25 shall:
- 26 a. specify the kinds of verbal or written statements or graphic
27 depictions which are prohibited in the workplace;
- 28 b. specify that violation of the policy will result in discipline, up to and

1 including termination; and

2 c. explain the process for filing a complaint of racial harassment.

3 2. Upon adoption, the policy shall be conspicuously posted in all Successor's
4 facilities in the Los Angeles Metro Region and be placed in employee and
5 manager manuals.

6 **C. Complaint and Investigation Procedure**

7 1. The Successor, the Equal Employment Opportunity Consultant, and Class
8 Counsel shall develop a written procedure for the reporting and investigation
9 of claims of discrimination, harassment or retaliation by July 19, 2002. At
10 a minimum, the procedure shall:

11 a. specify how an employee may make a complaint internally to
12 Successor under the procedure; and

13 b. will include a provision that specifically notifies employees that they
14 are not required to use the internal complaint procedure, and may
15 make complaints of discrimination, harassment or retaliation directly
16 to the EEOC.

17 2. Upon adoption, the policy shall be conspicuously posted in all of the
18 Successor's facilities in the Los Angeles Metro Region. In the event Class
19 Counsel and/or the EEOC receives complaints under this Agreement, it/they
20 shall so advise Successor unless the complaining party requests
21 confidentiality.

22 **D. Job Descriptions**

23 1. The Successor, the Equal Employment Opportunity Consultant, and Class
24 Counsel shall develop a detailed job descriptions pursuant to professional
25 standards of job analysis which include duties and minimum qualifications
26 for each Class Position by July 19, 2002.

27 2. Upon adoption, the job descriptions shall be accessible to all employees in
28 every facility in Successor's Los Angeles Metro Region and shall be

1 referenced in any Open Position Notice subject to the Job Posting
2 requirements.

3 **E. Job Posting and Bidding System**

4 1. The Successor, the Equal Employment Opportunity Consultant, and Class
5 Counsel shall develop a job posting and bidding system, conforming to the
6 requirements set forth below by July 19, 2002.

7 2. Upon adoption, the Successor shall conspicuously post all openings in Class
8 Positions as well as any open positions for Managers using an Open Position
9 Notice. An opening is defined as any position, including route assignments
10 and special assignment in the Los Angeles Metro Region other than a
11 temporary vacancy of less than thirty days. For each opening, the Open
12 Position Notice shall list the minimum qualifications for the position, the
13 expected starting date, the procedure for submitting a bid, the deadline for
14 submitting a bid, and the location/availability of the Job Description for the
15 position, and the salary and, if bonus and commissions are part of the
16 compensation for the position, average earnings potential for the route or
17 position. The Open Position Notice shall be posted for a minimum of ten
18 (10) business days in all facilities within the Los Angeles Metro Region, in
19 a location that is readily accessible to all employees. The Successor shall also
20 post all job openings covered by this Decree on an online system accessible
21 to all employees.

22 4. The Successor shall select the successful candidate for each Open Position
23 from among the Eligible Bidders. An Eligible Bidder is defined as an
24 employee who has submitted a timely bid and who meets the minimum
25 qualifications listed in the Open Position Notice. The minimum qualifications
26 shall be those listed in the applicable job description. Only as required by law
27 or, if there are no eligible bidders or upon consent of the EEO Consultant,
28 may Successor fill the position with a new hire or other non-bidder. If a

1 person other than an Eligible Bidder is selected for the Open Position, the
2 hiring official shall document in writing the reason for the non-selection of
3 each Eligible Bidder.

4 **F. Criteria for Assignment of Routes**

5 1. The Successor, the Equal Employment Opportunity Consultant, and Class
6 Counsel shall develop criteria for route assignments by July 19, 2002. At a
7 minimum, the route assignment criteria:

- 8 a. shall be clear and objective;
- 9 b. shall consider length of service as a route driver with Successor as a
10 primary factor, so long as the bidder is otherwise qualified, for
11 selection (a minimum period of employment as a route driver before
12 bid eligibility is permitted, so long as this minimum does not exceed
13 1 year);
- 14 c. shall give priority to existing drivers over relief drivers and outside
15 hires;
- 16 d. shall give priority to relief drivers over outside hires;
- 17 e. may include consideration of the bidder's attendance and accident
18 record; and
- 19 f. may only compare the bidder's customer satisfaction index and
20 number of new accounts generated with the historical performance by
21 predecessors on that route.

22 **G. Criteria for Route Sales Representative Compensation**

23 1. The Successor, the Equal Employment Opportunity Consultant, and Class
24 Counsel shall develop criteria for compensation of Route Sales
25 Representatives by July 19, 2002. At a minimum, the compensation criteria:

- 26 a. shall be clear and objective;
- 27 b. shall consider length of service as a route driver as a primary factor;
- 28 c. shall not be entirely commission based;

1 d. if the parties determine that payment history, new accounts and/or
2 credit route revenues are appropriate criteria, that criteria shall take
3 into account historical route data as a significant factor in setting a
4 reasonable goal.

5 e. shall not result in lower compensation, bonus or commission rates for
6 African-American drivers because of their race.

7 **H. Criteria For Promotions and Special Assignments**

8 1. The Successor, the Equal Employment Opportunity Consultant, and Class
9 Counsel shall develop criteria for promotions and special assignments other
10 than route assignments by July 19, 2002. At a minimum, the promotions and
11 special assignments criteria:

12 a. shall be clear and objective;

13 b. may consider the bidder's personnel evaluations and performance.

14 The bidder's customer satisfaction index and number of new
15 accounts generated may only be considered in comparison to
16 historical performance by predecessors on that route.

17 **I. Annual Performance Evaluation Policy**

18 1. The Successor, the Equal Employment Opportunity Consultant, and Class
19 Counsel shall develop an annual performance evaluation policy for class
20 positions by July 19, 2002. At a minimum, the performance evaluation
21 policy shall include the following:

22 a. to the extent possible, clear and objective criteria that set forth
23 for an employees the goals and objectives he or she is
24 expected to accomplish during the evaluation period and
25 which will be provided to the employee at the beginning of
26 the evaluation period;

27 b. specific written instructions to supervisors on how to
28 complete the evaluations;

- c. a procedure for discussion of the annual performance evaluations with the employee and supervisor; and
- d. a procedure for review of annual evaluations by next-level management.

J. Management Evaluation and Accountability Policy

- 1. The Successor, the Equal Employment Opportunity Consultant, and Class Counsel shall develop a revise management evaluation and compensation system by July 19, 2002. The Successor shall evaluate each manager for compliance with this Decree and its goal to eliminate discrimination in the workplace. The Successor shall implement management evaluation and compensation systems that take into consideration any valid complaints of discrimination. Such complaints shall be reflected in management evaluations and copies maintained in the relevant manager's personnel file.

K. Addition or Amendment of Other Employment Policies

During the period in which this Decree is in effect, Successor shall deliver to the EEOC and Class Counsel any proposed changes or amendments to the EEO, Affirmative Action, Assignment or Promotion policies at least thirty (30) days prior to their implementation so that the EEOC and Class Counsel may review such policies. Under no circumstances shall the EEOC, by commenting or electing not to comment upon Successor's proposed changes or amendments, be deemed to have waived its right to investigate or litigation any alleged adverse effects of said policy upon equal employment opportunities. Prior to delivery to the EEOC and Class Counsel, the Equal Employment Opportunity Consultant shall evaluate the effect of the proposed or amended policies with regard to the goal of eliminating workplace discrimination.

L. Implementation of Injunctive Provisions

- 1. Notice to Employees and Posting of Decree Notice
 - a. By July 19, 2002, Successor and Class Counsel shall conduct orientation meetings advising all non-managerial Route Sales Representatives and Senior Account Representatives in the Los Angeles Metro Region of the terms and

1 conditions of the Decree. The Successor shall notify the EEOC of the dates,
2 *times and locations at least ten (10) business days prior to each of the*
3 *orientation meetings, and the EEOC shall have the right to attend or*
4 *participate in any or all of such meetings. In addition, Successor shall inform*
5 *their employees in the Los Angeles Metro Region that any breach of, or*
6 *failure to comply with, the terms and conditions set forth in this Decree may*
7 *subject them to dismissal or other appropriate disciplinary action.*

8 b. Within sixty (60) days of the Effective Date of this Decree, Successor shall
9 conspicuously post the Notice of Final Approval of Settlement attached
10 hereto as Exhibit 1, in locations where all other employee-related notices are
11 posted.

12 2. Notice to Supervisors, Managers and Human Resources

13 a. By July 19, 2002, Successor and Class Counsel shall conduct orientation
14 meetings advising all supervisors, managers and human resources employees
15 in the Los Angeles Metro Region of the terms and conditions of the Decree.
16 The Successor shall notify the EEOC of the dates, times and locations at least
17 10 business days prior to each of the orientation meetings, and the EEOC
18 shall have the right to attend or participate in any or all such meetings. In ad-
19 dition, Successor shall inform their supervisors, managers and human
20 resources employees in the Los Angeles Metro Region that any breach of, or
21 failure to comply with, the terms and conditions set forth in this Decree shall
22 subject them to dismissal or other appropriate disciplinary action.

23 b. The Successor shall inform each current officer, employee and agent that
24 Successor cannot and will not reprimand, penalize, or otherwise retaliate in
25 any way against any officer, employee or agent for opposing or reporting
26 alleged employment discrimination, in violation of applicable law and/or this
27 Decree.

28 c. The Successor shall notify all employees that failure to comply with the

1 obligations of this Decree shall affect the eligibility of any management
2 employee to receive any benefits under any of Successor's incentive
3 programs for management employees. The Successor shall notify all
4 employees that failure to comply with the obligations of this Decree shall
5 affect the eligibility of any employee to receive a promotion.

6 **3. Training of Employees and Agents**

7 a. By August 2, 2002, Successor and Class Counsel shall submit to the EEOC
8 proposed non-discrimination training programs and identify the person(s)
9 and/or organization(s) conducting the non-discrimination training programs
10 for the instruction of all currently employed personnel. There shall be
11 separate training sessions for supervisory, human resources and management
12 personnel and for other employees. Any dispute between Successor and
13 Class Counsel as to the Training Program shall be submitted to the Special
14 Master/Magistrate for resolution. Thereafter, it shall be presented live to all
15 employees within ninety (90) days, and thereafter on a annual basis for the
16 duration of the Decree. The Successor shall notify the EEOC of the dates,
17 times and locations at least ten (10) business days prior to each of the training
18 sessions, and the EEOC shall have the right to attend or participate in any or
19 all such training.

20 b. At a minimum, the non-discrimination training programs shall include the
21 following:

22 i. instruction on the requirements of all applicable equal employment
23 opportunity ("EEO") laws including, but not limited to Title VII of
24 the Civil Rights Act of 1964, as amended;

25 ii. a review of Successor's non-discrimination employment policies and of
26 the specific requirements of this Consent Decree, including prohibitions on
27 retaliation;

28 iii. instruction on the new performance evaluation process, the job

1 descriptions, job bidding, route assignment criteria; complaint procedures and
2 promotions process; and

3 iv. training of management in dealing with discrimination and harassment
4 complaints.

5 **4. New Employee Training** - Each newly hired officer, employee or agent
6 shall also receive training of the type described above, with the exception that
7 the initial training may be presented via videotape at the election of
8 Successor. The new employee training shall be provided within thirty (30)
9 days of the new officer, employee or agent's commencement date.

10 **5. Other Training** - For the duration of this Decree, Successor shall also in-
11 clude instruction regarding their duties and obligations under Title VII of the
12 1964 Civil Rights Act, the Fair Employment and Housing Act and this
13 Consent Decree, in all written training materials and formal training sessions
14 provided in the ordinary course of business to its officers, employees or
15 agents. Such instruction shall include a statement that Successor cannot and
16 will not reprimand, penalize, or otherwise retaliate against any officer,
17 employee or agent for opposing or reporting alleged
18 employment discrimination, in violation of applicable law and/or this Decree.
19

20 XVII.

21 REPORTING AND RECORD KEEPING

22 A. Document Preservation

23 For the duration of the Decree, Successor agrees to maintain such records as are necessary
24 to demonstrate their compliance with this Decree, including but not limited to the documents
25 specifically identified below, and to verify that the reports submitted are accurate.

26 For the Duration of the Decree, Successor shall retain the following hard-copy (paper or
27 fiche) and computer records for the facilities and employees within the Los Angeles Metro Region:

- 28 1. all Open Position Notices;

- 1 2. all bid forms submitted in response to Open Position Notices;
- 2 3. all records regarding selection of route sales representatives and other class
- 3 positions;
- 4 4. all Route Sales Representative personnel files including all performance
- 5 appraisals, discipline and termination records;
- 6 5. a copy of any advertisement for any open position;
- 7 6. all complaints of discrimination or harassment based upon race, and all
- 8 records of the investigation of those complaints;
- 9 7. all applications for employment;
- 10 8. all notices of rejection to applicants for initial hire, route assignment or
- 11 promotion;
- 12 9. all computerized payroll data pertaining to class positions and their
- 13 incumbents during the pendency of this Decree; and
- 14 10. all computerized data regarding routes, including any data utilized in
- 15 performance reviews and promotion decisions.

B. Reports:

1. Initial Reporting:

18 By September 6, 2002, the EEO Consultant shall provide Successor, Class Counsel and the
19 EEOC with the following:

- 20 a. the racial harassment policy;
- 21 b. the complaint and investigation procedure;
- 22 c. job descriptions for each Class Position;
- 23 d. the job posting and bidding system;
- 24 e. the criteria for assignment of routes;
- 25 f. the criteria for route sales representative compensation;
- 26 g. the criteria for promotions and special assignments;
- 27 h. the annual performance evaluation policy;
- 28 i. the management evaluation and accountability policy;

1 j. verification that all of Successor's employees in the Los Angeles
2 Metro Region have attended an orientation meeting on the terms and
3 conditions of this Decree; and

4 k. proposed non-discrimination training programs and the identities of the
5 persons and/or organizations proposed to conduct the trainings.

6 **2. Subsequent Reports: Reporting Intervals And Content**

7 On a semi-annual basis for the first three years of the decree, and on an annual basis for the
8 last two years, the EEO Consultant shall provide Successor, Class Counsel and the EEOC with a
9 report in both computerized format, if available, and hard copy. The first closing period for the first
10 report shall be six (6) months after the Effective Date of this Decree. The first (semi-annual) report
11 shall be due October 11, 2002. The second (semi-annual) report shall be due April 10, 2003. The
12 third (semi-annual) report shall be due October 11, 2003. The fourth (semi-annual) report shall be
13 due April 10, 2004. The fifth (semi-annual) report shall be due October 11, 2004. The sixth (semi-
14 annual) report shall be due April 10, 2005. The seventh (annual) report shall be due April 10, 2006.
15 The eighth (annual) report shall be due on April 10, 2007. The EEO Consultant's reports shall
16 contain the following:

17 a. An account for the reporting period showing for each class position and route
18 if applicable, broken out by race for the entire region and for each district and
19 branch:

20 i. The number of persons, by race, who bid for each position and the race
21 of the person selected;

22 ii. The number of positions that were not filled by bid, and an explanation
23 of why the bid process was not used;

24 iii. For all class positions and routes filled by hire, the number of hires,
25 broken out by race;

26 iv. The incumbents in all class position as of the start and end of the
27 reporting period.

28 v. An account showing the average earnings of route drivers who worked

1 during the reporting period, broken out by race for the region as a
2 whole and for each district and branch.

3 vi. Exemplars of each Open Position Notice for each opening during the
4 reporting period.

5 vii. All complaints of race discrimination, harassment or retaliation.

6 viii. Verification of employee attendance for all anti-discrimination
7 trainings which took place since the close of the previous reporting
8 period.

9 **3. Other Reports:**

10 a. No later than ten (10) business days prior to holding the orientation
11 meetings regarding the Decree and anti-discrimination trainings,
12 Successor shall provide the EEOC with the dates, times and locations
13 of the meetings/trainings;

14 b. Pursuant to paragraph XVI(K), Successor shall deliver to the Class
15 Counsel and the EEOC any proposed or amended employment
16 policies;

17 c. Within thirty (30) days of the inclusion of instruction regarding
18 Successor's duties and obligations under Title VII of the Civil Rights
19 Act of 1964, as amended, into written training materials, Successor
20 shall provide a copy of such materials to Class Counsel and the EEOC;

21 d. Upon the proposed change in designation of the Equal Employment
22 Opportunity Consultant, Successor shall provide Class Counsel and
23 the EEOC with identity and credentials of the proposed incumbent
24 consultant.

25 e. Class Counsel and the EEOC shall be notified of any recommendation
26 made by the Equal Employment Opportunity Consultant which
27 Successor decline to adopt within thirty (30) days of Successor's
28 decision not to adopt said recommendation.

1 f. Pursuant to Paragraphs XIX(C) and XXI(A) and (D)(4), the Claims
2 Administrator shall provide the EEOC with Claims Distribution
3 Reports and Proposed and Final Class Fund Monetary Distribution
4 Lists.

5 **4. Additional Data**

6 Class Counsel and the EEOC shall each have the right to request additional computer or other
7 data from Successor, so long as the information sought is necessary and consistent with the
8 monitoring of the Decree. Successor shall comply with a request for additional data within thirty (30)
9 days of the request. Any disputes between Successor and Class Counsel regarding the propriety of
10 any request for additional data shall be referred to the Special Master/Magistrate for resolution. The
11 EEOC shall not be bound by the Special Master/Magistrate's decisions, and may apply to the District
12 Court, as provided in Section XI (Decree Enforcement), for resolution of any dispute with the
13 Successor over the propriety of any EEOC request for additional data arising under this Section.

14 **XVIII.**

15 **MONETARY RELIEF**

16 In settlement of all monetary claims of the Individually Named Intervenors and the Settlement
17 Class, other than attorneys' fees and costs, Successor shall pay the following sums:

18 **A. Class Monetary Relief**

19 In full settlement of all claims for monetary relief by members of the class, Successor shall
20 pay the sum of \$1,145,500 ("Class Fund") on or before July 1, 2001 for deposit in an interest bearing
21 account at a Federally Insured Bank selected by Class Counsel. Pending final approval of this
22 Decree, the account shall be under the joint control of Class Counsel and Successor. Upon the Date
23 of Final Approval of the Decree, Class Counsel shall assume full control of the account as fiduciary
24 for the Settlement Class. If the Court does not approve the Decree, the class monetary relief fund shall
25 be returned to Successor along with any accrued interest.

26 **B. Incentive Payments for Individually Named Intervenors**

27 The Successor shall pay the sum of \$99,500 ("Individually Named Intervenors' Fund") on or
28 before July 1, 2001 for deposit into an interest bearing account at a Federally Insured Bank selected

1 by Class Counsel. Pending final approval of the Decree, the account shall be jointly controlled by
2 Class Counsel and Successor. Upon the Date of Final Approval of the Decree, Class Counsel shall
3 assume full control of the account as fiduciary for the Settlement Class.

4 Within seven (7) days of the Date of Final Approval, the Individually Named Intervenors'
5 Fund shall be distributed as follows: Individually Named Intervenors Steve Crutchfield, Jason Gray,
6 Leroy Moore and Ed Washington shall each receive \$14,000.00 (Fourteen Thousand). Individually
7 Named Intervenors Daniel Meno, Derrick King and Donnie White shall each receive \$11,500.00
8 (Eleven Thousand Five Hundred). Individually Named Intervenor Sallie Kirby shall receive
9 \$9,000.00 (Nine Thousand). Additionally, each Individually Named Intervenor shall be eligible to
10 participate in the distribution of the Class Fund.

11 **C. Taxes**

12 The Successor shall prepare and distribute 1099 tax reporting forms to each Class Member
13 and Individually Named Intervenor who has received a distribution and shall make appropriate reports
14 to the Internal Revenue Service and other tax authorities. The Successor shall be responsible for the
15 employer's share of any taxes applicable to these amounts; Class Members shall be responsible for
16 payment of the employee's share of taxes owed to any governmental authority for their individual
17 distributions from the Class Fund. Any taxes on earnings of the Class Fund which may accrue shall
18 be paid out of accrued interest on the Fund. The Successor shall pay tax preparation fees for tax
19 returns required of the Fund(s).

20 **XIX.**

21 **CLASS FUND DISTRIBUTION**

22 **A. Eligibility for Class Fund Distribution** - To be eligible to participate in distribution of
23 the Class Fund, the Class Member must have been employed as a Route Sales Representative or
24 Senior Account Representative in the Los Angeles Metro Region of McKesson Water Products
25 Company at some time between February 1, 1996 and December 31, 2000 ("Eligible Class
26 Members"), and must have been employed in one of these positions for a total of at least six months.
27 All Eligible Class Members who submit timely acknowledgment forms, as provided in Section
28 XXI(D), shall be considered Valid Class Members and eligible to receive their Claim Share as

1 calculated in Section XIX (B).

2 **B. Determination of Individual Claim Shares of the Class Fund** - Each Valid Class
3 Member shall receive a weighted pro rata share of the Class Fund based on the formula described
4 below:

5 Each Valid Class Member receives one point for each month during which he or she was
6 employed with McKesson Water Products during the Class Liability Period. For persons hired before
7 January 1, 1996, these points shall be multiplied by seven. The total amount of the Class Fund, plus
8 accrued interest (less a reserve for taxes), shall be divided by the total number of points for all Valid
9 Class Members, to produce the Point Share value. Each Valid Class Member will be entitled to a
10 Claim Share amount calculated by multiplying his or her points times the Point Share value.

11 **C. Claims Distribution Reporting**

12 Beginning with final approval of the Consent Decree, the Claims Administrator shall submit
13 a monthly claims distribution report to Successor and the EEOC which shall include:

- 14 1. The name, address and social security number of each class member who has
15 received payment from the class fund during the reporting period;
- 16 2. The amount distributed to each class member during the reporting period;
- 17 3. The dates of employment for each class member;
- 18 4. An explanation of how the points were derived for each class member; and
- 19 5. An accounting of total class funds distributed or expended to date with a
20 statement of funds remaining.

21 **XX.**

22 **DECREE APPROVAL PROCESS AND NOTICE OF SETTLEMENT**

23 **A. Preliminary Approval of Decree and Notice**

24 The parties shall jointly submit this Decree to the Court for preliminary approval and for an
25 order authorizing the content and method for notice to the Settlement Class.

26 **B. Production by Successor of Name and Address List for Notice of Settlement**

27 No later than seven (7) days after Preliminary Approval of the Decree, Successor shall furnish
28 the Claims Administrator, in computer-readable and hard copy form, with the names, last known

1 addresses and social security numbers of all Eligible Class Members to receive the Notice of
2 Proposed Settlement of Class Action (Exhibit A-1). The list of the names and addresses is the Final
3 Notice List.

4 **C. Mailed and Posted Notice of Settlement**

5 No later than twenty-eight (28) days after Preliminary Approval, the C
6 shall send the Notice of Proposed Settlement of Class Action (Exhibit A-1), via first class mail, to
7 all individuals on the Final Notice List. The Successor shall also conspicuously post the Notice of
8 Proposed Settlement of Class Action at each of its facilities in the LA Metro Region.

9 **D. Employee Notice of Settlement**

10 No later than twenty-eight (28) days after Preliminary Approval, Successor shall provide
11 notice of the settlement to every employee in the Los Angeles Metro Region. The Successor shall
12 place a Notice to Employees of Proposed Settlement , in the form of Exhibit A-2, in the paycheck
13 envelope of each employee in the Los Angeles Metro Region.

14 **E. Published Notice of Settlement**

15 Fourteen (14) days after the mailing of the Notice to Employees of Proposed Settlement of
16 Class Action, the Claims Administrator shall begin publication of the Published Notice of Settlement.
17 The Published Notice shall be in the form shown in Exhibit B and shall be published in display
18 advertising in the Los Angeles Times, Pasadena Star News and the largest daily circulation
19 newspapers in Culver City, Oxnard, Covina, Van Nuys, Lancaster and Gardena on the first Sunday
20 and Wednesday.

21 **F. Election to Opt Out of Class Or To Object To Settlement**

22 No later than seventy-five (75) days after Preliminary Approval, Class Members who wish
23 to be excluded from the settlement must fill out an Exclusion Form (Appendix 1 to Notice of
24 Proposed Settlement of Class Action) and file or mail it (timely if postmarked by date) to the Claims
25 Administrator.

26 No later than seventy-five (75) days after Preliminary Approval, Class Members who wish
27 to object to the proposed settlement shall do so by mailing their objections (timely if postmarked by
28 date) to the Claims Administrator. A Class Member who wishes to appear at the hearing must file

1 a written objection with the Court and state his or her intent to appear at the fairness hearing. No less
2 than ten (10) days before the Fairness Hearing, the Claims Administrator shall file all objections with
3 the Court.

4 **G. Fairness Hearing**

5 The parties will ask the Court to set a fairness hearing to consider Final Approval of the
6 Decree ninety (90) days after the date of Preliminary Approval.

7 **XXI**

8 **PROCEDURE FOR DISTRIBUTION OF CLASS FUND**

9 **A. Calculation of Individual Claims Shares**

10 Within seven days of Final Approval, Successor shall provide the EEOC and Claims
11 Administrator computer readable files showing the employment dates, names, addresses, and other
12 identifying information in its possession, for all Eligible Class Members. No later than forty-five (45)
13 days after the Final Approval of the Decree, the Claims Administrator shall furnish to Successor and
14 the EEOC, in hard copy and computer-readable form, its preliminary calculations of the amounts of
15 the individual Claim Shares to be paid to Eligible Class Members. In addition, the Claims
16 Administrator shall furnish to the EEOC the employment dates, raw points calculation and points
17 calculation after application of the multiplier (if applicable) of each Eligible Class Member. The
18 Successor shall respond by presenting any corrections or objections to the EEOC and Claims
19 Administrator within seven days of receipt of the calculations. The Claims Administrator shall make
20 appropriate corrections and present them to the EEOC. If the EEOC has no objections, the Claims
21 Administrator will then file with the Court the proposed Class Monetary Distribution List. If EEOC
22 has objections which cannot be resolved informally, the EEOC may resort to the Court pursuant to
23 Section XI (Decree Enforcement) for resolution of the dispute. Any dispute between the Claims
24 Administrator and Successor regarding the calculations shall be submitted to the EEOC for resolution
25 on an expedited basis.

26 **B. Mailing of Acknowledgment Forms**

27 No later than seven days after filing of the Proposed Class Monetary Distribution List, the
28 Claims Administrator shall mail to each Class Member's last known address via first class mail,

1 together with an addressed and stamped return envelope, the Notice of Final Approval of Settlement
2 and Acknowledgment Form in the form shown in Exhibit C. No later than thirty (30) days after this
3 initial mailing, an identical second Notice of Final Approval of Settlement and Acknowledgment
4 Form along with a Reminder Notice in the form shown in Exhibit C, shall be sent to each Class
5 Member who has not returned the Acknowledgment Form.

6 **C. Tracing**

7 The Claims Administrator shall trace through search databases all class members for whom
8 the mail was returned undelivered. The cost of tracing shall not exceed \$25 per tracing. All class
9 members who are thus located shall be sent an acknowledgment form.

10 **D. Return of Acknowledgment Forms and Objections to Calculations of Claim**
11 **Shares**

12 **1. Acknowledgment Form Requirement** - To be entitled to a share of the class
13 monetary fund, Class Members must return by mail the acknowledgment form postmarked no later
14 than ninety (90) days after the initial mailing. An Acknowledgment Form is valid for purposes of
15 payment of Claim Shares if two conditions are met. First, the Class Member who has returned the
16 form must have provided, under penalty of perjury, his or her signature, social security number, date
17 of birth, current address, and daytime telephone number. Second, the Claims Administrator must
18 verify that the social security numbers provided by the Class Members match the social security
19 numbers and names of Class members entitled to receive the designated Claim Shares. If the social
20 security number on an Acknowledgment Form does not match the social security number of a Class
21 Member, or if the Claims Administrator has any other concerns regarding the acknowledgment, the
22 Claims Administrator may request additional information from Successor or from the Class Member.
23 The Claims Administrator shall have the right to ask the claimant to provide further proof of identity,
24 including, for example, a notarized statement of identify and/or a valid driver's license. If the Class
25 Member and the Claims Administrator cannot resolve any such dispute, it will be submitted in writing
26 to the Special Master/Magistrate for resolution.

27 **2. Objections to Individual Claim Share Calculation** - A Class Member may object
28 to the calculation of his or her Claim Share if the information used to calculate the Claim Share is

1 incorrect. Objections to the formula used will not be permitted. Upon the receipt of any objections,
2 the Claims Administrator shall promptly evaluate the claim. Upon request, Successor shall provide
3 Class Counsel with additional information pertaining to the objection. The Claims Administrator shall
4 inform the EEOC and the objecting Class Member of the outcome of his investigation. If a Class
5 Member does not agree with the conclusion, he or she may submit a one-page written appeal, together
6 with any supporting documentation, to the Special Master/Magistrate within fourteen (14) days of
7 receipt of the Claims Administrator's report. If the EEOC does not agree with the Claims
8 Administrator's and/or Special Master/Magistrate's conclusions, it may resort to the Court pursuant
9 to Section XI(B)(5) (Decree Enforcement), which provides for expedited decree enforcement.

10 **3. Appeals of Individual Claim Shares** - All timely appeals shall be resolved by
11 the Special Master/Magistrate. The appeal shall be determined by reference to the appeal
12 documentation provided by the class member with his or her appeal, and a written response from the
13 Claims Administrator filed within 14 days thereafter. The share formula itself shall not be subject to
14 challenge. The only relief the Special Master/Magistrate may grant is correction of the data to be used
15 in the formula for that Class Member. The decision of the Special Master/Magistrate is final as to
16 the individual class members, with the exception that the EEOC, at its sole discretion, may proceed
17 to the Court on the individual Class Member's behalf.

18 **4. Final Monetary Distribution List** - No later than thirty (30) days after the receipt
19 of all acknowledgments or, if there are appeals, after the determination of all appeals and the
20 resolution of any concerns regarding the veracity of any acknowledgment, the Claims Administrator
21 shall provide to the EEOC and file with the Court (a) copies of the Special Master/Magistrate's
22 opinions and orders on the objections and (b) a Final Class Monetary Distribution List reflecting any
23 changes to the Preliminary Class Monetary Distribution List resulting from objections approved by
24 the Special Master, or the Parties and a proposed order ("Order Approving Monetary Distribution").

25 **5. Mailing of Fund Shares**

26 Within seven (7) days after the entry of the order approving the Class Monetary Distribution
27 List, the Claims Administrator shall begin mailing via certified mail, return receipt requested, checks
28 for fund shares to Class Members who have returned valid Acknowledgment Forms.

1 Checks must be negotiated within forty (45) days of mailing to the Class Member.

2 **6. Distribution of Unclaimed Portion of Class Payment**

3 All unclaimed funds, including shares of class members who could not be located, checks not
4 cashed within the time limit, or undistributed accrued interest, shall be donated to the United Negro
5 College Fund to further educational opportunities for African Americans.

6 **XXII.**

7 **ATTORNEYS' FEES AND COSTS**

8 **A. Attorneys' Fees on the Merits**

9 Individually Named Intervenors and the Settlement Class are the prevailing parties for
10 purposes of an award of attorneys' fees and costs. Following agreement to the terms of this Decree,
11 the parties negotiated the amount of fees and costs to compensate Class Counsel for their work.

12 Within ten (10) days of the Effective Date of the Decree, Successor shall pay to Class Counsel
13 \$412,000 in settlement of fees and costs for work performed by Class Counsel on this action through
14 the completion of settlement negotiations.

15 **B. Attorneys' Fees For Decree Approval and Implementation**

16 The Successor shall pay Class Counsel's attorneys' fees, at their then-current hourly rates,
17 plus reasonably necessary costs and expenses, including travel and expert costs, for all work
18 reasonably necessary to secure Final Approval of the Decree, to implement and monitor the Decree
19 and to effectuate the distribution of the class monetary relief. Class Counsel will submit monthly
20 statements which Successor will pay within thirty (30) days.

21 **C. Attorneys' Fees For Enforcement of Decree**

22 Successor shall pay Class Counsel attorneys' fees, at their then-current hourly rates, plus
23 reasonably necessary costs and expenses, including travel and expert costs, for all work reasonably
24 necessary to enforce the provisions of this Decree as awarded by the Court. Any dispute brought
25 before the Court by Class Counsel shall be deemed an enforcement action under Section XI (Decree
26 Enforcement).

27 **D. Notice and Distribution Costs**

28 The Successor shall pay all costs of notice and all costs incurred regarding the distribution of

1 the settlement funds, including, without limitation, bank fees, computer and statistical expert
2 assistance, tax preparation costs, publication and mailing costs, tracing costs, EEO Consultant and
3 expenses incurred in connection with use of the Special Master/Magistrate.

4 **XXIII.**

5 **NOTICES**

6 Any notice to the parties permitted or required under this Decree shall be sent as follows:

7 EEOC: U.S. Equal Employment Opportunity Commission
255 E. Temple Street, 4th Floor
8 Los Angeles, California 90012

9 Class Counsel: Lawson Law Offices
130 Webster Street-Suite 105
10 Oakland, CA 94607

11 Traber & Voorhees
128 N. Fair Oaks Avenue-Suite 204
12 Pasadena, CA 91103

13 The Impact Fund
125 University Avenue, Suite 204
14 Berkeley, CA 94710-1616

15 Successor: Michael Harrison, Esq.
Danone North America, Inc.
16 50 Danbury Road, Suite 101
Wilton, CT 06897

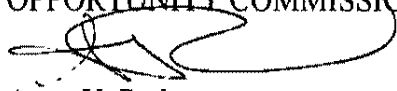
NICHOLAS INZEO
Acting Deputy General Counsel

ANNA Y. PARK
Regional Attorney

DANA JOHNSON
Trial Attorney

U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION


By:


Anna Y. Park
U.S. Equal Employment Opportunity

Attorneys for Plaintiff

ANTONIO M. LAWSON
LAWSON LAW OFFICES

By:



5/7/02
Dated

5/8/02

1 Dated

Antonio M. Lawson
Attorneys for Intervenors

2

3

DONNA R. BESTEIRO
MICHAEL HARRISON
DANONE NORTH AMERICA, INC.
Successor to McKesson Water Products
Company

4

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5/1/02

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Dated

By:

Jan R. B. T.
Michael Harrison
Donna R. Besteiro

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ORDER

12

The provisions of the foregoing Consent Decree are hereby approved and compliance with all
13 provisions thereof is **HEREBY ORDERED.**

14

15

Dated:

May 9, 2002

Bronce Mario Cooper

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Judge United States District Court

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