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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

LATISHA SHACONNA ANDERSON,
SARAH BAXLEY, JASON ANDERSON,
and MELODY JAMES, individually, on
behalf of all persons similarly situated,

Plaintiffs,

vs.

BARTON MYERS ASSOCIATES, INC., a
California Corporation; BARTON
ASSOCIATES, INC. a California Corporation;
BARTON & ASSOCIATES, INC., which will
do business in California as BARTON
MEDICAL, INC., a Delaware Corporation; and
DOES 1 through 50 Inclusive,

Defendants.

Case No. 21STCV43314

**~~PROPOSED~~ AMENDED ORDER AND
JUDGMENT GRANTING FINAL
APPROVAL**

Date: June 2, 2023
Time: 9:00 AM

Judge: Hon. Elihu M. Berle
Dept.: 6

FILED
Superior Court of California
County of Los Angeles

05/28/2024

David W. Slayton, Executive Officer / Clerk of Court

By: N. Quispe Deputy

1 Plaintiff's motion for an order finally approving the Class Action and PAGA Settlement
2 Agreement ("Agreement") and Motion for Class Counsel Fees Payment, Class Counsel Litigation
3 Expenses Payment, and Class Representative Service Payment duly came on for hearing on June 2,
4 2023, before the above-entitled Court. JCL Law Firm, APC, Hartounian Law Firm, P.C., Law
5 Offices of Corbett H. Williams, and Zakay Law Group, APLC appeared on behalf of Plaintiffs
6 LATISHA SHACONNA ANDERSON, SARAH BAXLEY, JASON ANDERSON, and MELODY
7 JAMES (collectively "Plaintiffs"). Gibson, Dunn & Crutcher LLP appeared on behalf of
8 Defendants Barton & Associates, Inc. and Safety Management Systems, LLC (hereinafter
9 "Defendants").

10 **I.**

11 **FINDINGS**

12 Based on the oral and written argument and evidence presented in connection with the
13 motion, the Court makes the following findings:

14 1. All capitalized terms used herein shall have the same meaning as defined in
15 the Agreement.

16 2. This Court has jurisdiction over the subject matter of this litigation pending
17 in the California Superior Court for the County of Los Angeles ("Court"), Case No. 21STCV43314,
18 entitled *Latisha Anderson v. Barton & Associates, Inc.* and over all Parties to this litigation,
19 including the Class.

20 **Preliminary Approval of the Settlement**

21 3. On February 2, 2023, the Court granted preliminary approval of a class-wide
22 settlement. At this same time the court approved certification of a provisional settlement class for
23 settlement purposes only. The Court confirms this Order and finally approves the settlement and
24 the certification of the Class.

25 **Notice to the Class**

26 4. In compliance with the Preliminary Approval Order, the Notice Packet was
27 mailed by first class mail to the Class Members at their last known addresses on March 2, 2023.
28 Mailing of the Notice Packet to their last known addresses was the best notice practicable under the

1 circumstances and was reasonably calculated to communicate actual notice of the litigation and the
2 proposed settlement to the members of the Class Members. The Court finds that the Notice Packet
3 provided fully satisfies the requirements of California Rules of Court, rule 3.769.

4 5. The Response Deadline for opting out or objecting was May 2, 2023. There
5 was an adequate interval between notice and deadline to permit Class Members to choose what to
6 do and act on their decision. No Class Members objected. Only two (2) Class Members requested
7 exclusion. The name of the Class Members who requested exclusion are Divia Smith and Christy
8 Mezger.

9 **Fairness Of The Settlement**

10 6. The Agreement provides for a Gross Settlement Amount of \$900,000.00.
11 The Agreement is entitled to a presumption of fairness. (*Dunk v. Ford Motor Co.* (1996) 48
12 Cal.App.4th 1794, 1801.)

13 a. The settlement was reached through arms-length bargaining between
14 the parties. There is no evidence of any collusion between the parties in reaching the proposed
15 settlement.

16 b. The Parties' investigation and discovery have been sufficient to allow
17 the Court and counsel to act intelligently.

18 c. Counsel for all parties are experienced in similar employment class
19 action litigation and have previously settled similar class claims on behalf of employees claiming
20 compensation. All counsel recommended approval of the Settlement.

21 d. No objections were received.

22 e. The participation rate is high. Nearly all Class Members will be
23 participating in the Settlement and will be sent settlement payments. Two requests for exclusion
24 were received. The names of the Class Members who requested exclusion are Divia Smith and
25 Christy Mezger.

26 7. The consideration to be given to the Class Members under the terms of the
27 Agreement is fair, reasonable, and adequate considering the strengths and weaknesses of the claims
28 asserted in this Action and is fair, reasonable, and adequate compensation for the release of the

Released Class Claims, given the uncertainties and risks of the litigation and the delays which would ensue from continued prosecution of the Action.

8. The Agreement is finally approved as fair, adequate, and reasonable and in the best interests of the Participating Class Members.

PAGA Penalties

9. The Agreement provides for a payment of PAGA Penalties in the amount of \$50,000.00. The Court has reviewed the PAGA Penalties and finds and determines that the PAGA Settlement and the allocation of \$37,500.00 to LWDA and \$12,500.00 of the PAGA Penalties to PAGA Settlement Class Members is fair and reasonable and complies with the requirements set forth in *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56.

Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment

10. Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment (collectively “Class Counsel Fee and Litigation Expenses Payment”) in the amount of up to Three Hundred Twenty-Five Thousand, Six Hundred Fifty-Eight Dollars and Fifty-Five Cents (\$325,658.55). Subject to Court approval, the Class Counsel Fee and Litigation Expenses Payment consists of attorneys’ fees equal to one-third (1/3) of the Gross Settlement Amount, Three Hundred Thousand Dollars, and Zero Cents (\$300,000.00) and litigation expenses in the amount of Twenty-Five Thousand, Six Hundred Fifty-Eight Dollars and Fifty-Five Cents (\$25,658.55).

11. A Class Counsel Fee and Litigation Expenses Payment of Three Hundred Twenty-Five Thousand, Six Hundred Fifty-Eight Dollars and Fifty-Five Cents (\$325,658.55) comprised of attorneys’ fees in the amount of Three Hundred Thousand Dollars and Zero Cents (\$300,000.00) and reimbursement of costs and expenses in the amount of Twenty-Five Thousand, Six Hundred Fifty-Eight Dollars and Fifty-Five Cents (\$25,658.55) is reasonable in light of the contingent nature of Class Counsel’s fee, the hours worked by Class Counsel, and the results achieved by Class Counsel. The requested attorneys’ fee award represents one-third (1/3) of the common fund, which is reasonable and at the low end of the range for fee awards in common fund cases and is supported by Class Counsel’s lodestar.

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1 **Class Representative Service Payment**

2 12. The Agreement provides for a Class Representative Service Payment of up
3 to \$26,000.00, with \$6,500.00 allocated to each named Plaintiff subject to the Court's approval. The
4 Court finds that the amount of \$6,500.00 is reasonable in light of the risks and burdens undertaken
5 by the Plaintiffs in this class action litigation.

6 **Administrator Expenses Payment**

7 13. The Agreement provides for Administrator Expenses Payment to be paid in
8 an amount not to exceed \$9,980.00. The Declaration of the Settlement Administrator provides that
9 the actual claims administration expenses were \$9,980.00. The amount of this payment is
10 reasonable in light of the work performed by the Settlement Administrator.

11 **II.**

12 **ORDERS**

13 Based on the foregoing findings, and good cause appearing, IT IS HEREBY ORDERED:

14 1. The Class is certified for the purposes of settlement only. The Settlement
15 Class is hereby defined to include:

16 All nurse practitioners and physician assistants who were classified as independent
17 contractors by Defendant Barton and placed by Defendant Barton to perform services
18 at the Pomona, California Border Crisis Covid-19 emergency response site during
19 the period between April 15, 2021, to November 30, 2021.

20 2. There are 358 members of the Class. Every person in the Class who did not
21 opt out is a Settlement Class Member. After providing Notice to the Class, there are two opt-outs
22 to the Settlement. The names of the Class Members who requested exclusion are Divia Smith and
23 Christy Mezger.

24 3. The Agreement is hereby approved as fair, reasonable, adequate, and in the
25 best interest of the Class. The Parties are ordered to effectuate the Settlement in accordance with
26 this Order and the terms of the Agreement.

27 4. Defendants shall fund the Gross Settlement Amount on the Funding Date. In
28 exchange the Class Members shall release Defendants and the Released Parties from the Released

1 Class Claims and Released FLSA Claims, and the PAGA Settlement Class Members shall release
2 the Released PAGA Claims.

3 a. The “Released Parties” means Barton & Associates, Inc., and its
4 parents, subsidiaries, predecessors, successors, affiliates, owners, officers, employees, and clients,
5 including SMS and SMS’s parents, subsidiaries, predecessors, successors, affiliates, owners,
6 officers and employees.

7 b. The Released Class Claims are defined as all claims alleged in the
8 *Latisha Anderson v. Barton* (L.A. Super.) Operative Complaint (or which could have been alleged
9 based on the facts pleaded in the Operative Complaint) and which accrued during the Class Period.
10 Released Class Claims shall include all claims arising out of or relating to the alleged
11 misclassification of Settlement Class Members, and all claims based on state, federal, local, or
12 common law for unpaid wages, minimum wages, regular wages, overtime wages, working more
13 than six days in seven, expense reimbursement, wage statements, payroll recordkeeping, reporting
14 time, improper deduction of wages, failure to provide workers’ compensation insurance, meal
15 periods, rest breaks, sick leave, final pay, timely payment of wages, waiting time penalties, and
16 unfair business practices. Released Class Claims shall extend to all forms of relief, including
17 restitution, damages, interest, costs and expenses, attorneys’ fees, declaratory relief, injunctive
18 relief, penalties, equitable remedies, and pre or post judgment interest. Released Class Claims shall
19 also include all claims brought in *Sarah Baxley v. Barton*, Case No. 2:22-cv-01011 (C.D. Cal.) (or
20 which could have been alleged based on the facts pleaded in the *Baxley* complaint), and all claims
21 which could have been brought based on the facts pleaded in *Jason Anderson v. Barton & SMS*, No.
22 22STCV05355 (L.A. Super.).

23 c. The Released FLSA Claims are defined as all Federal Labor
24 Standards Act (“FLSA”) claims which could have been brought based on the facts pleaded in the
25 Operative Complaint, and all FLSA claims which could have been brought based on the facts
26 pleaded in *Sarah Baxley v. Barton*, Case No. 2:22-cv-01011 (C.D. Cal.) and *Jason Anderson v.*
27 *Barton & SMS*, No. 22STCV05355 (L.A. Super.).

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1 d. The PAGA Settlement Class Members are defined as all nurse
2 practitioners and physician assistants who were classified as independent contractors by Defendant
3 Barton and placed by Defendant Barton to perform services at the Pomona, California Border Crisis
4 Covid-19 emergency response site during the PAGA Period. The PAGA Period means the period
5 from April 15, 2021, to November 30, 2021 (“PAGA Period”).

6 e. The Released PAGA Claims are defined as all PAGA claims alleged
7 in the Operative Complaint (or which could have been alleged based on the facts pleaded in the
8 Operative Complaint), and all PAGA claims alleged in Latisha Anderson’s PAGA letter to the
9 LWDA, which accrued during the PAGA Period. The release shall include all PAGA claims
10 brought (or which could have been brought based on the facts pleaded) in *Sarah Baxley v. Barton*,
11 Case No. 2:22-cv-01011 (C.D. Cal.) and *Jason Anderson v. Barton & SMS*, No. 22STCV05355
12 (L.A. Super.) and the PAGA letters sent to the LWDA by Sarah Baxley and Jason Anderson.

13 5. Class Counsel are awarded a Class Counsel Fee and Litigation Expenses
14 Payment in the amount of \$325,658.55 comprised of attorneys’ fees in the amount of Three Hundred
15 Thousand Dollars and Zero Cents (\$300,000.00) and reimbursement of costs and expenses in the
16 amount of Twenty-Five Thousand, Six Hundred Fifty-Eight Dollars and Fifty-Five Cents
17 (\$25,658.55). Class Counsel shall not seek or obtain any other compensation or reimbursement
18 from Defendants, Plaintiffs, or members of the Class.

19 6. The payment of the Class Representative Service Payment to the Plaintiffs
20 Latisha Shaconna Anderson, Sarah Baxley, Jason Anderson, and Melody James in the amount of
21 \$6,500 to each Plaintiff is approved.

22 7. The payment of \$9,980.00 to the Settlement Administrator for the
23 Administration Expenses Payment is approved.

24 8. The PAGA Penalties of \$50,000 is hereby approved as fair, reasonable,
25 adequate, and adequately protects the interests of the public and the LWDA. Further, the Court
26 finds that Plaintiffs and Class Counsel negotiated the PAGA Penalties at arms-length, absent of any
27 fraud or collusion.

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1 9. Final Judgment is hereby entered in this action. The Final Judgment shall
2 bind each Participating Class Member.

3 10. Final Judgment shall also bind Plaintiffs, acting on behalf of the State of
4 California and all PAGA Settlement Class Members, pursuant to the California Private Attorneys'
5 General Act ("PAGA").

6 11. The Court further finds and determines that Class Counsel satisfied California
7 Labor Code § 2699(l)(2) by giving the LWDA notice of the proposed Settlement of claims arising
8 under the Private Attorney General Act ("PAGA") on November 15, 2022, and again on April 3,
9 2023.

10 12. The Court orders Class Counsel to comply with California Labor Code §
11 2699(l)(3) by providing the LWDA a copy of this order within ten (10) calendar days of the Court's
12 entry of this Order.

13 13. The Agreement is not an admission by Defendants, nor is this Final Approval
14 Order and Judgment a finding, of the validity of any claims in the Action or of any wrongdoing by
15 Defendants. Neither this Final Approval Order, the Settlement, nor any document referred to herein,
16 nor any action taken to carry out the Settlement is, may be construed as, or may be used as an
17 admission by or against Defendants of any fault, wrongdoing, or liability whatsoever. The entering
18 into or carrying out of the Agreement, and any negotiations or proceedings related thereto, shall not
19 in any event be construed as, or deemed to be evidence of, an admission or concession with regard
20 to the denials or defenses by Defendants and shall not be offered in evidence in any action or
21 proceeding against Defendants in any court, administrative agency or other tribunal for any purpose
22 as an admission whatsoever other than to enforce the provisions of this Final Approval Order and
23 Judgment, the Settlement, or any related agreement or release. Notwithstanding these restrictions,
24 any of the Parties may file in the Action or in any other proceeding this Final Approval Order and
25 Judgment, the Agreement, or any other papers and records on file in the Action as evidence of the
26 Settlement to support a defense of res judicata, collateral estoppel, release, or other theory of claim
27 or issue preclusion or similar defense as to the claims being released by the Settlement.

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1 14. Notice of entry of this Final Approval Order and Judgment shall be given to
2 Class Counsel on behalf of Plaintiffs and all Class Members. It shall not be necessary to send notice
3 of entry of this Final Approval Order and Judgment to individual Class Members and the Final
4 Approval Order and Judgment shall be posted on Settlement Administrator's website as indicated
5 in the Notice Packet.

6 15. After entry of Final Judgment, the Court shall retain jurisdiction to construe,
7 interpret, implement, and enforce the Settlement, to hear and resolve any contested challenge to a
8 claim for settlement benefits, and to supervise and adjudicate any dispute arising from or in
9 connection with the distribution of settlement benefits.

10 16. If the Settlement does not become final and effective in accordance with the
11 terms of the Settlement, resulting in the return and/or retention of the Gross Settlement Amount to
12 Defendants consistent with the terms of the Settlement, then this Final Approval Order and
13 Judgment, and all orders entered in connection herewith shall be rendered null and void and shall
14 be vacated.

15 17. **Pursuant to the Declaration of Cassandra Polites of ILYM Group, Inc.,**
16 **a total of \$ \$70,710.84, remain uncashed after the June 4, 2023 check cashing deadline date.**
17 **In accordance with the terms of the Parties' Settlement Agreement, the necessary paperwork**
18 **to report the unclaimed funds was sent on May 21, 2024 to the California State Controller's**
19 **Office - Unclaimed Property Fund. In this submission, ILYM Group provided the name,**
20 **contact information, social security number, and unclaimed amount for each individual.**
21 **ILYM Group will continue to hold these unclaimed funds until such time it is required to**
22 **transfer said funds to the State Controller's Office subsequent to the following process: the**
23 **State Controller's Office will then use the information provided in the aforementioned**
24 **paperwork to contact the individuals to notify them that they have unclaimed funds and how**
25 **to obtain them. On a future date assigned by the State Controller's Office, ILYM Group will**
26 **send the Holder Remit Reminder Letter to the State Controller's Office with the updated final**
27 **unclaimed amount and class member's name and contact information of who remain**
28 **unclaimed and then, transfer all unclaimed funds to the State Controller's Office at its**

1 instruction. This process usually takes about 8-9 months until ILYM Group receives the letter
2 from the State Controllers' Office instructing ILYM Group when to send the money.

3
4 **IT IS SO ORDERED.**

5 DATED: _____ May 28 , 2024



Elihu M. Berle

Elihu M. Berle / Judge

Hon. Elihu M. Berle
JUDGE OF THE SUPERIOR COURT