

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)
Sydney S. Castillo-Johnson (State Bar #343881)
Monnett De La Torre (State Bar #272884)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619)599-8292
Facsimile: (619) 599-8291
jlapuyade@jcl-lawfirm.com
scastillo@jcl-lawfirm.com
mdelatorre@jcl-lawfirm.com

ZAKAY LAW GROUP, APLC

Shani O. Zakay (State Bar #277924)
Jackland K. Hom (State Bar #327243)
Julieann Alvarado (State Bar #334727)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619)255-9047
Facsimile: (858) 404-9203
shani@zakaylaw.com
jackland@zakaylaw.com
julieann@zakaylaw.com

Attorneys for Plaintiffs

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] ORDER GRANTING FINAL
APPROVAL**

Date: June 2, 2023

Time: 9:00 AM

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

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 one (1) Class Member requested
7 exclusion. The name of the Class Member who requested exclusion is Divia Smith.

8 **Fairness Of The Settlement**

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

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

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

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

20 d. No objections were received.

21 e. The participation rate is high. Nearly all Class Members will be
22 participating in the Settlement and will be sent settlement payments. One request for exclusion was
23 received. The name of the Class Member who requested exclusion is Divia Smith.

24 7. The consideration to be given to the Class Members under the terms of the
25 Agreement is fair, reasonable, and adequate considering the strengths and weaknesses of the claims
26 asserted in this Action and is fair, reasonable, and adequate compensation for the release of the
27 Released Class Claims, given the uncertainties and risks of the litigation and the delays which would
28 ensue from continued prosecution of the Action.

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

3 **PAGA Penalties**

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

9 **Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment**

10 10. Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment
11 (collectively “Class Counsel Fee and Litigation Expenses Payment”) in the amount of up to Three
12 Hundred Twenty-Five Thousand, Six Hundred Fifty-Eight Dollars and Fifty-Five Cents
13 (\$325,658.55). Subject to Court approval, the Class Counsel Fee and Litigation Expenses Payment
14 consists of attorneys’ fees equal to one-third (1/3) of the Gross Settlement Amount, Three Hundred
15 Thousand Dollars, and Zero Cents (\$300,000.00) and litigation expenses in the amount of Twenty-
16 Five Thousand, Six Hundred Fifty-Eight Dollars and Fifty-Five Cents (\$25,658.55).

17 11. A Class Counsel Fee and Litigation Expenses Payment of Three Hundred
18 Twenty-Five Thousand, Six Hundred Fifty-Eight Dollars and Fifty-Five Cents (\$325,658.55)
19 comprised of attorneys’ fees in the amount of Three Hundred Thousand Dollars and Zero Cents
20 (\$300,000.00) and reimbursement of costs and expenses in the amount of Twenty-Five Thousand,
21 Six Hundred Fifty-Eight Dollars and Fifty-Five Cents (\$25,658.55) is reasonable in light of the
22 contingent nature of Class Counsel’s fee, the hours worked by Class Counsel, and the results
23 achieved by Class Counsel. The requested attorneys’ fee award represents one-third (1/3) of the
24 common fund, which is reasonable and at the low end of the range for fee awards in common fund
25 cases and is supported by Class Counsel’s lodestar.

26 **Class Representative Service Payment**

27 12. The Agreement provides for a Class Representative Service Payment of up
28 to \$40,000.00, with \$10,000.00 allocated to each named Plaintiff subject to the Court’s approval.

1 The Court finds that the amount of \$10,000.00 is reasonable in light of the risks and burdens
2 undertaken by the Plaintiffs in this class action litigation.

3 **Administrator Expenses Payment**

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

8 **II.**

9 **ORDERS**

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

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

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

17 2. There are 358 members of the Class. Every person in the Class who did not
18 opt out is a Settlement Class Member. After providing Notice to the Class, there is one opt-out to
19 the Settlement. The name of the Class Member who requested exclusion is Divia Smith.

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

23 4. Defendants shall fund the Gross Settlement Amount on the Funding Date. In
24 exchange the Class Members shall release Defendants and the Released Parties from the Released
25 Class Claims and Released FLSA Claims, and the PAGA Settlement Class Members shall release
26 the Released PAGA Claims.

27 a. The “Released Parties” means Barton & Associates, Inc., and its
28 parents, subsidiaries, predecessors, successors, affiliates, owners, officers, employees, and clients,

1 including SMS and SMS's parents, subsidiaries, predecessors, successors, affiliates, owners,
2 officers and employees.

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

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

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

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

8 5. Class Counsel are awarded a Class Counsel Fee and Litigation Expenses
9 Payment in the amount of \$325,658.55 comprised of attorneys' fees in the amount of Three Hundred
10 Thousand Dollars and Zero Cents (\$300,000.00) and reimbursement of costs and expenses in the
11 amount of Twenty-Five Thousand, Six Hundred Fifty-Eight Dollars and Fifty-Five Cents
12 (\$25,658.55). Class Counsel shall not seek or obtain any other compensation or reimbursement
13 from Defendants, Plaintiffs, or members of the Class.

14 6. The payment of the Class Representative Service Payment to the Plaintiffs
15 Latisha Shaconna Anderson, Sarah Baxley, Jason Anderson, and Melody James in the amount of
16 \$10,000 to each Plaintiff is approved.

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

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

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

25 10. Final Judgment shall also bind Plaintiffs, acting on behalf of the State of
26 California and all PAGA Settlement Class Members, pursuant to the California Private Attorneys'
27 General Act ("PAGA").
28

1 11. The Court further finds and determines that Class Counsel satisfied California
2 Labor Code § 2699(l)(2) by giving the LWDA notice of the proposed Settlement of claims arising
3 under the Private Attorney General Act (“PAGA”) on November 15, 2022, and again on April 3,
4 2023.

5 12. The Court orders Class Counsel to comply with California Labor Code §
6 2699(l)(3) by providing the LWDA a copy of this order within ten (10) calendar days of the Court’s
7 entry of this Order.

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

23 14. Notice of entry of this Final Approval Order and Judgment shall be given to
24 Class Counsel on behalf of Plaintiffs and all Class Members. It shall not be necessary to send notice
25 of entry of this Final Approval Order and Judgment to individual Class Members and the Final
26 Approval Order and Judgment shall be posted on Settlement Administrator’s website as indicated
27 in the Notice Packet.

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

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

IT IS SO ORDERED.

DATED: _____, 2023

Hon. Elihu M. Berle
JUDGE OF THE SUPERIOR COURT