

Exhibit B2

Testone v Barlean's Organic Oil, LLC -
Preliminary Approval Order [Draft]

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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

MICHAEL TESTONE, COLLIN SHANKS,
and LAMARTINE PIERRE, on behalf of
themselves, all others similarly situated, and the
general public,

Plaintiffs,

vs.

BARLEAN’S ORGANIC OILS, LLC,

Defendant.

Case No: 3:19-cv-00169-RBM-BGS

**ORDER GRANTING MOTION FOR
PRELIMINARY APPROVAL OF
CLASS SETTLEMENT**

Judge: Hon. Ruth Bermudez Montenegro

1 WHEREAS, the above-entitled action is pending before this Court (the “Action”);

2 WHEREAS, Plaintiffs Michael Testone, Collin Shanks, and Lamartine Pierre have
3 moved, pursuant to Federal Rule of Civil Procedure 23(e), for an order approving the
4 Settlement of this Action in accordance with the [DATE], 2022 Class Action Settlement
5 Agreement (“Settlement Agreement”) attached as Exhibit 1 to the Declaration of Paul K.
6 Joseph in Support of Plaintiffs’ [DATE] Motion for Preliminary Approval of Class Settlement
7 (the “Motion”), which Settlement Agreement sets forth the terms and conditions for a
8 proposed classwide settlement of the Action;

9 WHEREAS, the Court, has read and considered the Settlement Agreement, Plaintiffs’
10 Motion, and the arguments of counsel;

11 **NOW, THEREFORE, THE COURT HEREBY FINDS AND ORDERS AS**
12 **FOLLOWS:**

13 1. Settlement Terms. All capitalized terms herein have the same meanings ascribed
14 to them in the Settlement Agreement.

15 2. Jurisdiction. The Court has jurisdiction over the subject matter of the action and
16 over all parties to the action, including all members of the Settlement Class.

17 3. Preliminary Approval of Proposed Settlement Agreement. The Court finds that,
18 subject to the fairness hearing, the proposed Settlement Agreement is fair, reasonable,
19 adequate, and within the range of possible approval considering the possible damages at issue
20 and defenses to overcome. The Court also finds that the Settlement Agreement: (a) is the
21 result of serious, informed, non-collusive, arms-length negotiations, involving experienced
22 counsel familiar with the legal and factual issues of this case; and (b) meets all applicable
23 requirements of law, including Federal Rule of Civil Procedure 23, and the Class Action
24 Fairness Act (“CAFA”), 28 U.S.C. § 1715. Therefore, the Court grants preliminary approval
25 of the Settlement.

26 4. Class Certification for Settlement Purposes Only. The Court conditionally certifies, for
27 settlement purposes only, a Settlement Class defined as all persons who in the United States,
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1 during the Class Period, purchased Coconut Oil Products (defined by the Settlement
2 Agreement), for personal or household use. Excluded from the Class are: (a) persons or
3 entities who purchased Coconut Oil Products for the purpose of resale or distribution; (b)
4 persons who are directors and Officers of Barlean's or its parent, subsidiary, or affiliate
5 companies; (c) governmental entities; (d) persons who timely and properly exclude
6 themselves from the Class as provided in the Agreement; (e) persons who signed a release of
7 Barlean's for compensation for the claims arising out of the facts or claims asserted in the
8 Action; and (f) any judicial officer hearing this Action, including his or her immediate family
9 members and employees.

10 5. The Court finds, for settlement purposes only, that class certification under
11 Federal Rule of Civil Procedure 23(b)(3) is appropriate in the settlement context because (a)
12 the Settlement Class Members are so numerous that joinder of all Settlement Class Members
13 is impracticable; (b) there are questions of law and fact common to the Settlement Class which
14 predominate over any individual questions; (c) the claims of the Plaintiffs and proposed Class
15 Representatives are typical of the claims of the Settlement Class; (d) the Plaintiffs and
16 proposed Class Representatives and their counsel will fairly and adequately represent and
17 protect the interests of the Settlement Class Members; (e) questions of law or fact common
18 to the Settlement Class Members predominate over any questions affecting only individual
19 Settlement Class Members; and (f) a class action is superior to other available methods for
20 the fair and efficient adjudication of the controversy.

21 6. Class Representatives. The Court appoints Plaintiffs Michael Testone, Collin
22 Shanks, and Lamartine Pierre as Class Representatives.

23 7. Class Counsel. The Court appoints Fitzgerald Joseph LLP as Class Counsel.

24 8. Settlement Class Administrator. The Court hereby approves Kroll to act as Class
25 Administrator. Kroll shall be required to perform all the duties of the Class Administrator as
26 set forth in the Agreement and this Order.

1 9. Qualified Common Fund. [---] is authorized to establish the Common Fund
2 under 26 C.F.R. §§ 1.468B-1(c) and (e)(1), to act as the “administrator” of the Common Fund
3 pursuant to 26 C.F.R. § 1.468B-2(k)(3), and to undertake all duties as administrator in
4 accordance with the Treasury Regulations promulgated under § 1.468B of the Internal
5 Revenue Code of 1986. All costs incurred by the Class Administrator operating as
6 administrator of the Common Fund shall be construed as costs of Claims Administration and
7 shall be borne solely by the Common Fund. Interest on the Common Fund shall inure to the
8 benefit of the Class.

9 10. Class Notice. The Court approves the form and content of the Class Notice in
10 the long form attached to the Settlement Agreement as Exhibit **1**, the short form attached to
11 the Settlement Agreement as Exhibit **2**, and the other forms of notice submitted with
12 Plaintiffs’ Motion for Preliminary Approval. The Court finds that dissemination of the Class
13 Notice as proposed in the Settlement Agreement and in Kroll’s Notice Plan as set forth in the
14 **[DATE]** Declaration of Jeanne C. Finegan, meets the requirements of Federal Rule of Civil
15 Procedure 23(c)(2), and due process, and further constitutes the best notice practicable under
16 the circumstances. Accordingly, the Court hereby approves the Notice Plan.

17 11. Objection and Opt-Out/Exclusion Deadline. Settlement Class Members who
18 wish either to object to the Settlement or to exclude themselves from the Settlement must do
19 so by the Objection Deadline and Opt-Out/Exclusion Deadline of **[date]**. Settlement Class
20 Members may not both object to and exclude themselves from the Settlement. If a Settlement
21 Class Member submits both a Request for Exclusion and an Objection, the Request for
22 Exclusion will be controlling.

23 12. Exclusion from the Settlement Class. To submit a Request for Exclusion,
24 Settlement Class Members must follow the directions in the Notice and submit online at the
25 settlement website by the Opt-Out/Exclusion Deadline, or send a compliant request to the
26 Class Administrator at the address designated in the Class Notice, postmarked by the
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1 Exclusion Deadline. No Request for Exclusion may be made on behalf of a group of
2 Settlement Class Members.

3 13. All Settlement Class Members who submit a timely, valid Request for Exclusion
4 will be excluded from the Settlement and will not be bound by the terms of the Settlement
5 Agreement and any determinations and judgments concerning it. All Settlement Class
6 Members who do not submit a valid Request for Exclusion by [date], in accordance with the
7 terms set forth in the Agreement, will be bound by all determinations and judgments
8 concerning the Agreement.

9 14. Objections to the Settlement. To object to the Settlement, Settlement Class
10 Members should follow the directions in the Notice and file with the Court or mail to the
11 Class Administrator a written Objection by the Objection Deadline. In the written Objection,
12 the Settlement Class Member should include (i) a caption or title that clearly identifies the
13 Action and that the document is an objection, (ii) the Settlement Class Member's name,
14 current address, and telephone number, or—if objecting through counsel—his or her lawyer's
15 name, address, and telephone number, (iii) the Coconut Oil Product(s) the Settlement Class
16 Member bought during the Class Period, (iv) a clear and concise statement of the Class
17 Member's objection, as well as any facts and law supporting the objection, (v) the objector's
18 signature, and (vi) the signature of the objector's counsel, if any. Upon the Court's Order at
19 the parties' request, the parties will have the right to obtain document discovery from and
20 take depositions of any objecting Settlement Class Member on topics relevant to the
21 Objection.

22 15. If a Settlement Class Member does not submit a written Objection to the
23 Settlement or to Class Counsel's application for attorneys' fees and costs or the Service
24 Awards in accordance with the deadline and procedure set forth in the Class Notice and this
25 Order, but the Settlement Class Member wishes to be appear and be heard at the Fairness
26 Hearing, the Settlement Class Member may do so provided the Objector satisfies the
27 requirements of Federal Rule of Civil Procedure 23(e)(5)(A) at the Fairness Hearing.

1 16. Objecting Settlement Class Members may appear at the Fairness Hearing and be
 2 heard. Such Class Members are requested, but not required, in advance of the Fairness
 3 Hearing, to file with the Court or mail to the Class Administrator a Notice of Intent to Appear.

4 17. All Members of the Settlement Class, except those who submit timely Requests
 5 for Exclusion, will be bound by all determinations and judgments regarding the Settlement,
 6 whether favorable or unfavorable to the Settlement Class.

7 18. Submission of Claims. To receive a Cash Award, Settlement Class Members
 8 must follow the directions in the Class Notice and file a claim with the Class Administrator
 9 by the Claims Deadline of [date], 2022. Settlement Class Members who do not submit a claim
 10 will not receive a Cash Award but will be bound by the Settlement.

11 19. Schedule of Future Events. The Court adopts the schedule proposed by
 12 Plaintiffs, as follows (with Day “0” the date of this Order):

| Event | Day | Approximate Weeks After Preliminary Approval |
|---|-----|--|
| Date of Preliminary Approval Order | 0 | - |
| Deadline to Initiate Notice Plan | 14 | 2 weeks |
| Deadline for Plaintiffs to file Motion for Attorneys’ fees, costs, and incentive awards | 56 | 8 |
| Notice completion date and deadline to make a claim, opt out, or object | 70 | 10 |
| Deadline for Plaintiffs to file Motion for Final Approval | 84 | 12 |
| Fairness Hearing Date | 112 | 16 |

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 22 20. Fairness Hearing. A Fairness Hearing is scheduled for [date], 2022, at [time]
 23 a.m./p.m., for the Court to determine whether the proposed settlement of the Action on the
 24 terms and conditions provided for in the Settlement Agreement is fair, reasonable, and
 25 adequate to the Settlement Class and should be finally approved by the Court; whether a
 26 Judgment should be entered; and to determine any amount of fees, costs, and expenses that
 27 should be awarded to Class Counsel and the amount of any service awards to Plaintiffs. The
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1 Court reserves the right to adjourn the date of the Fairness Hearing without further notice to
2 the members of the Settlement Class, and retains jurisdiction to consider all further
3 applications arising out of or connected with the proposed Settlement. The Court may approve
4 the Settlement, with such modifications as may be agreed to by the settling parties, if
5 appropriate, without further notice to the Settlement Class.

6 21. Stay of Proceedings. All proceedings in this action are stayed until further order
7 of this Court, except as may be necessary to implement the Settlement or comply with the
8 terms of the Settlement Agreement.

9 22. Pending the final determination of whether the Settlement should be approved,
10 the Settlement Class Representatives and all Settlement Class Members are hereby stayed
11 and enjoined from commencing, pursuing, maintaining, enforcing, or prosecuting, either
12 directly or indirectly, any claims released under the Settlement Agreement in any judicial,
13 administrative, arbitral, or other forum, against any of the released parties. Such injunction
14 will remain in force until Final Approval or until such time as the parties notify the Court that
15 the Settlement has been terminated. Nothing herein will prevent any Settlement Class
16 Member, or any person actually or purportedly acting on behalf of any Settlement Class
17 Member(s), from taking any actions to stay or dismiss any released claim(s). This injunction
18 is necessary to protect and effectuate the Agreement, this Preliminary Approval Order, and
19 the Court's flexibility and authority to effectuate the Agreement and to enter Judgment when
20 appropriate, and is ordered in aid of this Court's jurisdiction and to protect its judgments.
21 This injunction does not apply to any person who files a timely, valid Request for Exclusion.

22 23. If the Settlement is not approved or consummated for any reason whatsoever,
23 the Settlement and all proceedings in connection with the Settlement will be without prejudice
24 to the right of Defendant or the Class Representatives to assert any right or position that could
25 have been asserted if the Agreement had never been reached or proposed to the Court, except
26 insofar as the Agreement expressly provides to the contrary. In such an event, the certification
27 of the Settlement Class will be deemed vacated. The certification of the Settlement Class for
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1 settlement purposes will not be considered as a factor in connection with any subsequent class
2 certification issues.

3 24. No Admission of Liability. By entering this Order, the Court does not make any
4 determination as to the merits of this case. Preliminary approval of the Settlement Agreement
5 is not a finding or admission of liability by Barlean’s. Furthermore, the Agreement and any
6 and all negotiations, documents, and discussions associated with it will not be deemed or
7 construed to be an admission or evidence of any violation of any statute, law, rule, regulation,
8 or principle of common law or equity, or of any liability or wrongdoing by Barlean’s, or the
9 truth of any of the claims. Evidence relating to the Agreement will not be discoverable or
10 used, directly or indirectly, in any way, whether in this Action or in any other action or
11 proceeding, except for purposes of demonstrating, describing, implementing, or enforcing the
12 terms and conditions of the Agreement, this Order, the Final Approval Order, and the
13 Judgment.

14 25. Retention of Jurisdiction. The Court retains jurisdiction over the Action to
15 consider all further matters arising out of or connected with the Settlement Agreement and
16 the settlement described therein.

17 **IT IS SO ORDERED.**

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20 Dated: _____, 2022

21 Hon. Ruth Bermudez Montenegro
22 United States District Judge
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