

Exhibit E

Testone v Barlean's Organic Oil, LLC -
Proposed Final Approval Order

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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
FINAL APPROVAL OF CLASS
SETTLEMENT**

Judge: Hon. Ruth Bermudez Montenegro

1 The Court having held a Final Approval Hearing on [date], 2022, notice of the Final
2 Approval Hearing having been duly given in accordance with this Court’s Order Granting
3 Preliminary Approval of the Class Action Settlement, and having considered all matters
4 submitted to it at the Final Approval Hearing and otherwise, and good cause appearing
5 therefore,

6 **THE COURT HEREBY FINDS AND ORDERS AS FOLLOWS:**

7 1. Incorporation of Other Documents. The Class Action Settlement Agreement
8 dated [date], 2022, including its exhibits (collectively, “Settlement Agreement”), and the
9 definitions of words and terms contained therein are incorporated by reference in this Order.
10 The terms of this Court’s Preliminary Approval Order are also incorporated by reference in
11 this Order.

12 2. Jurisdiction. This Court has jurisdiction over the subject matter of this Action
13 and over the Parties, including all members of the following Settlement Class certified for
14 settlement purposes in this Court’s Preliminary Approval Order: all persons who in the United
15 States, during the Class Period, purchased Coconut Oil Products (defined by the Settlement
16 Agreement), for personal or household use. Excluded from the Class are: (a) persons or
17 entities who purchased Coconut Oil Products for the purpose of resale or distribution; (b)
18 persons who are directors and Officers of Barlean’s or its parent, subsidiary, or affiliate
19 companies; (c) governmental entities; (d) persons who timely and properly exclude
20 themselves from the Class as provided in the Agreement; (e) persons who signed a release of
21 Barlean’s for compensation for the claims arising out of the facts or claims asserted in the
22 Action; and (f) any judicial officer hearing this Action, including his or her immediate family
23 members and employees.

24 3. Class Certification. For purposes of settlement only, the Settlement Class, as
25 defined in the Settlement Agreement and above, meets the requirements of Federal Rule of
26 Civil Procedure Rule 23(a) and 23(b). Accordingly, for purposes of settlement, the Court
27 finally certifies the Settlement Class.
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1 4. Adequate Representation. The Class Representatives and Class Counsel have
2 adequately represented the Settlement Class in accordance with Federal Rule of Civil
3 Procedure 23(e)(2)(A).

4 5. Arms-Length Negotiations. The Settlement Agreement is the product of arms-
5 length settlement negotiations between the Plaintiffs and Class Counsel, on the one hand, and
6 Defendant and its counsel, on the other, in accordance with Federal Rule of Civil Procedure
7 23(e)(2)(B).

8 6. Class Notice. The Class Notice and claims submission procedures set forth in
9 Sections X and X of the Settlement Agreement, and the Notice Plan filed on [date], 2022,
10 fully satisfy Rule 23 of the Federal Rules of Civil Procedure and the requirements of due
11 process, were the best notice practicable under the circumstances, provided individual notice
12 to all Settlement Class Members who could be identified through reasonable effort, and
13 support the Court's exercise of jurisdiction over the Settlement Classes as contemplated in
14 the Settlement Agreement and this Order. *See* Fed. R. Civ. P. 23(e)(2)(C)(ii).

15 7. CAFA Notice. The notice provided by the Class Administrator to the appropriate
16 State and federal officials pursuant to 28 U.S.C. § 1715 fully satisfied the requirements of
17 that statute.

18 8. Settlement Class Response. A total of [number] Settlement Class Members
19 submitted timely and proper Requests for Exclusion, as reported in the declaration of the
20 Class Administrator submitted to this Court. The Court hereby orders that each of the
21 individuals listed by the Class Administrator as having submitted a valid Request for
22 Exclusion is excluded from the Settlement Class. Those individuals will not be bound by the
23 Settlement Agreement, and neither will they be entitled to any of its benefits.

24 9. Objections. A total of [number] Settlement Class Members submitted timely and
25 proper Objections to the Settlement Agreement. Having considered those Objections and the
26 Parties' responses to them, the Court finds that none of the Objections is well founded.
27 Plaintiffs faced serious risks both on the merits of their claims and on the ability to maintain
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1 certification as a litigation class in this matter. The relief provided to the Settlement Class
2 pursuant to the Settlement Agreement is adequate, given the costs, risks, and delay of trial
3 and appeal, and taking into consideration the attorney’s fees this Court has awarded. *See* Fed.
4 R. Civ. P. 23(e)(2)(C)(i), (iii). The Settlement also treats class members equitably relative to
5 each other. *See* Fed. R. Civ. P. 23(e)(2)(D).

6 10. Final Settlement Approval. The Court hereby finally approves the Settlement
7 Agreement, the exhibits, and the Settlement contemplated thereby (“Settlement”), and finds
8 that the terms constitute, in all respects, a fair, reasonable, and adequate settlement as to all
9 Settlement Class Members in accordance with Rule 23 of the Federal Rules of Civil
10 Procedure, and directs its consummation pursuant to its terms and conditions.

11 11. Attorneys’ Fees and Costs; Service Awards. The Court approves Class
12 Counsel’s application for attorneys’ fees and costs in the amount of \$ _____ in
13 fees and \$ _____ in costs; and approves service awards of \$ _____ for
14 Plaintiffs Michael Testone, Collin Shanks, and Lamartine Pierre. The Settlement Agreement
15 provides for Class Counsel’s Fee Award to be paid before the time to appeal this Order has
16 expired. If the Fee Award is voided or reduced on appeal, either directly or as a result of the
17 final approval of the Settlement as a whole being vacated, overturned, reversed, or rendered
18 void as a result of an appeal, Class Counsel shall within thirty (30) days repay either to the
19 Common Fund or to Barlean’s the affected amount of the attorneys’ fees and costs paid to
20 Class Counsel, in an amount proportionate to the distribution among Class Counsel’s firms,
21 in accordance with the directions in the Settlement Agreement. By receiving any payments
22 pursuant to the Settlement Agreement, Fitzgerald Joseph LLP and their shareholders,
23 members, and/or partners submit to the jurisdiction of this Court for the enforcement of the
24 reimbursement obligation set forth herein and in the Settlement Agreement. If Class Counsel
25 fails to timely repay the attorneys’ fees and costs that are owed under this provision, the Court
26 shall be entitled, upon application of Barlean’s and notice to Class Counsel, to summarily
27 issue orders, including but not limited to judgments and attachment orders against each of
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1 Class Counsel.

2 12. Dismissal. The Court hereby DISMISSES WITH PREJUDICE, without costs to
3 any party, except as expressly provided for in the Settlement Agreement, the Action, as
4 defined in the Settlement Agreement.

5 13. Release. Upon the Effective Date as defined in the Settlement Agreement, the
6 Plaintiffs and each and every one of the Settlement Class Members unconditionally, fully,
7 and finally releases and forever discharges the Released Parties from the Released Claims.

8 14. Injunction Against Released Claims. Each and every Settlement Class Member,
9 and any person actually or purportedly acting on behalf of any Settlement Class Member(s),
10 is hereby permanently barred and enjoined from commencing, instituting, continuing,
11 pursuing, maintaining, prosecuting, or enforcing any Released Claims (including, without
12 limitation, in any individual, class or putative class, representative or other action or
13 proceeding), directly or indirectly, in any judicial, administrative, arbitral, or other forum,
14 against the Released Parties. This permanent bar and injunction is necessary to protect and
15 effectuate the Settlement Agreement, this Final Order of Dismissal, and this Court's authority
16 to effectuate the Settlement Agreement, and is ordered in aid of this Court's jurisdiction and
17 to protect its judgments.

18 15. No Admission of Liability. The Settlement Agreement and any and all
19 negotiations, documents, and discussions associated with it will not be deemed or construed
20 to be an admission or evidence of any violation of any statute, law, rule, regulation, or
21 principle of common law or equity, or of any liability or wrongdoing by Defendant, or the
22 truth of any of the claims. Evidence relating to the Agreement will not be discoverable or
23 admissible, directly or indirectly, in any way, whether in this Action or in any other action or
24 proceeding, except for purposes of demonstrating, describing, implementing, or enforcing the
25 terms and conditions of the Agreement, the Preliminary Approval Order, or this Order.

26 16. Findings for Purposes of Settlement Only. The findings and rulings in this Order
27 are made for the purposes of settlement only and may not be cited or otherwise used to support
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1 the certification of any contested class or subclass in any other action.

2 17. Effect of Termination or Reversal. If for any reason the Settlement terminates or
3 Final Approval is reversed or vacated, the Settlement and all proceedings in connection with
4 the Settlement will be without prejudice to the right of Defendant or the Class Representatives
5 to assert any right or position that could have been asserted if the Agreement had never been
6 reached or proposed to the Court, except insofar as the Agreement expressly provides to the
7 contrary. In such an event, the certification of the Settlement Classes will be deemed vacated.
8 The certification of the Settlement Classes for settlement purposes will not be considered as
9 a factor in connection with any subsequent class certification issues.

10 18. Injunctive Relief. By attaching the Settlement Agreement as an exhibit and
11 incorporating its terms herein, the Court determines that this Final Order complies in all
12 respects with Federal Rule of Civil Procedure 65(d)(1).

13 19. Retention of Jurisdiction. Without affecting the finality of the Judgment, the
14 Court reserves jurisdiction over the implementation, administration, and enforcement of the
15 Judgment and the Agreement and all matters ancillary to the same.

16 20. Entry of Judgment. The Clerk of the Court is directed to enter Judgment.

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19 Dated: _____, 2022

20 Hon. Ruth Bermudez Montenegro
21 United States District Judge
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